

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

WEDNESDAY, 22 MARCH 2006  
2.55 P.M.  
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Roza Salibekova Ms Anna Matas
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr Desmond de Silva Mr James C Johnson Ms Bianca Suciu (Case Manager)
For the Principal Defender:	Mr Vincent Nmehielle Mr Ibrahim Foday Mansaray
For the accused Sam Hinga Norman:	Dr Bu-Buakei Jabbi Mr Aluseine Sesay
For the accused Moinina Fofana:	Mr Arrow Bockarie
For the accused Allieu Kondewa:	Mr Charles Margai Mr Ansu Lansana Mr Martin Michael (legal assistant)

1 [CDF22MAR06A - CR]  
2 Wednesday, 22 March 2006  
3 [Status Conference]  
4 [Open session]  
14:54:25 5 [The accused not present]  
6 [Upon commencing at 2.55 p.m.]  
7 PRESIDING JUDGE: Good afternoon. Good afternoon, counsel.  
8 I would like to know if -- and before I do, I would like to ask  
9 for representation. For the first accused, Dr Jabbi?  
14:55:32 10 MR JABBI: My Lord, Jabbi and Sesay for the first accused.  
11 PRESIDING JUDGE: This is for the record, Dr Jabbi.  
12 MR JABBI: Dr Bu-Buakei Jabbi and Mr Aluseine Sesay for the  
13 first accused, My Lord.  
14 PRESIDING JUDGE: Thank you, for the second accused?  
14:55:51 15 MR BOCKARIE: Arrow John Bockarie for the second accused,  
16 My Lord.  
17 PRESIDING JUDGE: Thank you. For the third accused.  
18 MR MARGAI: May it please My Lord, CF Margai, Martin  
19 Michael and Ansu Lansana.  
14:56:06 20 PRESIDING JUDGE: Thank you very much. Mr Prosecutor,  
21 whoever wants to speak first?  
22 MR JOHNSON: Thank you, Your Honour. For the Prosecution,  
23 Desmond de Silva, Joseph Kamara and James Johnson.  
24 PRESIDING JUDGE: Mr Principal Defender, I didn't ask you,  
14:56:21 25 not to ignore you, but I was just doing the representation, but I  
26 was coming to you after that.  
27 MR NMEHIELLE: That's fine, Vincent Nmehielle, Principal  
28 Defender.  
29 PRESIDING JUDGE: Thank you very much.



1 I was going to ask, certainly, the Defence, and, I would  
2 imagine, the Prosecution has also been informed of -- I have  
3 asked my legal assistant to distribute some documents this  
4 morning and she did so by email. I don't know if it was received  
14:56:53 5 or not, but it has to do with some tables that we would like to  
6 use this afternoon to go through the review of some witnesses.  
7 So if you have not received them, we might be able to make a few  
8 copies for those that may be in need of these documents.

9 The purpose of this status conference this afternoon, as  
14:57:20 10 you have already been informed of, is pursuant to Rule 66 bis of  
11 the Rules of procedure and evidence of the Special Court. It is  
12 a follow-up to a pre-defence conference which was called on 11th  
13 January 2006 and to finalise and clarify some issues which were  
14 raised or discussed at the last conference. And it was also  
14:57:47 15 brought by the Prosecution in their notice of issues proposed to  
16 be raised by the Prosecution at the hearing of 17th January 2006.

17 I have the wrong paper. It has started well.

18 The purpose again of this conference today is to try to see  
19 if we can make some progress with the witnesses being called by  
14:59:08 20 the Defence, both as to the number of witnesses that have been  
21 appearing on the list of witnesses and to discuss, as well, the  
22 content of the witness summaries that have been produced up to  
23 this particular moment.

24 Pursuant to the Chamber setting an order for a status  
14:59:34 25 conference of 3rd March 2006, this conference is called in order  
26 to review the witness list of the first accused and refile  
27 extended summaries of their witnesses and discuss with the  
28 parties the possible reassessment of the witness list, the order  
29 of witnesses' appearances, the comprehensiveness of witness



1 summaries and their material relevance, common witnesses, as  
2 well, and any other witness related matter as any such matter may  
3 be brought by the parties at this status conference.

4 I would like this status conference to be as an open  
15:00:23 5 discussion with the parties to try to find a suitable solution  
6 for markable progress in trying to see how we can move ahead with  
7 the defence without compromising, obviously, the position of any  
8 particular accused in this trial.

9 Looking at the list of witnesses, if I can start with this,  
15:00:53 10 with the first accused, on 28th November 2005 the Chamber issued  
11 its consequential order for compliance concerning the preparation  
12 and presentation of the Defence case. Ordering each Defence team  
13 to file, by 5th December, a list of witnesses, including, "A  
14 summary of the respective testimony of all witnesses that should  
15:01:20 15 be sufficiently descriptive to allow the Chamber to appreciate  
16 and understand the nature of the proposed testimony." Such list  
17 was filed by Court appointed counsel for first accused Norman on  
18 5th December 2005 and listed 77 witnesses proposed to be called  
19 for the first accused Norman, including a summary of their  
15:01:46 20 proposed testimony.

21 At the pre-defence conference of 11th January 2006, the  
22 Chamber noted the excessive number of witnesses listed on that  
23 witness list and encouraged each defence team to file summaries  
24 that would be a little more comprehensive in nature and give some  
15:02:11 25 more details in terms of the testimony that their core witnesses  
26 will be putting forward. So this is what we said at the  
27 conference at that particular moment.

28 Following the Chamber's consequential order to the status  
29 conference of 18th January 2006, Court appointed counsel for



1 Norman filed an updated list of their witnesses; no new details  
2 to the content of the summaries of witnesses' testimonies were  
3 added.

4 On 1st February 2006, Court appointed counsel for the first  
15:02:46 5 accused filed the first accused's urgent motion for leave to file  
6 additional witness and exhibit lists, seeking leave to add an  
7 additional 13 witnesses to their witness list and add 16 more  
8 exhibits to their exhibit list. The Chamber received the  
9 Prosecution response on 8th February 2006. No reply has been  
15:03:07 10 filed by Court appointed counsel within the time frame prescribed  
11 by sub-rule 7(C) of the Rules of Procedure and Evidence.

12 On 2nd March 2006, the Chamber, considering that it would  
13 be in the interests of justice to allow the defence to expand the  
14 summaries of the 77 witnesses listed on the witness list, save  
15:03:32 15 the ones which have already been heard by the Chamber, and also  
16 to expand the summaries of proposed 13 additional witnesses in  
17 order to enable the Chamber to understand the nature of their  
18 proposed testimony and their material relevance to the case, so  
19 as to determine whether leave to call additional witnesses should  
15:03:54 20 be granted in the present circumstances issued its order to the  
21 first accused to refile summaries of witnesses' testimonies,  
22 ordering inter alia:

23 "1. Court appointed counsel for the first accused" - I'm  
24 just repeating what the order said - "shall refile summaries of  
15:04:16 25 their proposed 77 witnesses, save the eight witnesses who have  
26 already been heard by the Chamber and those summaries of their  
27 proposed 13 additional witnesses.

28 "2. These summaries shall include detailed summaries of  
29 the incidents and/or events which a witness is called to testify





1 upon, exact location and date (if available) of these alleged  
2 incidents and/or events, position and/or role of a witness in  
3 relation to the crimes charged in the indictment, nexus between  
4 the accused and the proposed testimony of a witness and other  
15:05:01 5 details as counsel deems necessary and would clearly demonstrate  
6 the essence of that testimony.

7 "3. Court appointed counsel for the first accused shall  
8 review and reduce their list of witnesses, if necessary, bearing  
9 in mind the considerations of avoiding repetitive evidence and  
15:05:18 10 calling an excessive number of witnesses to prove the same fact  
11 or calling witnesses in relation to crimes or events which do not  
12 form part of the indictment or are outside the time frame of the  
13 indictment."

14 Now looking at the comprehensiveness of the summaries. On  
15:05:42 15 14th March 2006, pursuant to this order, Court appointed counsel  
16 refiled their motion and expanded summaries of their 77 proposed  
17 witnesses, less the seven witnesses who had testified. On  
18 17th March 2006, the Prosecution already filed its response,  
19 indicating that it would be prepared to address these issues as  
15:06:05 20 appropriate at the status conference. I will come to you,  
21 Mr Prosecutor, on this.

22 The Chamber has reviewed expanded summaries and finds that  
23 counsel for the first accused Norman has not fully complied with  
24 the specific orders of the Chamber as outlined in the Chamber's  
15:06:23 25 order of 2nd March 2006. Although most of the refiled summaries  
26 do list additional incidents or outline additional areas of  
27 testimony of the proposed witness, these expanded summaries still  
28 lack in their specificity in terms of identifying particular  
29 incidents and/or events which a witness is called to testify



1 upon, exact location and date of these alleged incidents or  
2 events, position and/or role of the witness in relation to the  
3 crimes charged in the indictment, nexus, if any, between the  
4 accused and the proposed testimony of a witness and thus failed  
15:07:01 5 to clearly demonstrate the essence of that testimony. This is  
6 the big problem we are having at this moment.

7 The Chamber therefore finds itself in a very difficult  
8 position to assess the materiality of the proposed testimony of  
9 these witnesses for the first accused Norman and to make an  
15:07:20 10 appropriate decision in determining to grant or not the motion to  
11 add witnesses to the list presented for the first accused.

12 The Chamber will give you some examples from the list of  
13 witnesses of the first accused and indicate to counsel for Norman  
14 why the Chamber considered that these summaries are still not  
15:08:00 15 comprehensive enough and what other specific details this Chamber  
16 is seeking for these witnesses and will then invite the parties  
17 to make their respective submission in this respect.

18 You have in front of you a table that we have described as  
19 examples of the lack of specificity in the witness summaries of  
15:08:22 20 the first accused in terms of identifying particular incidents  
21 and/or events which a witness is called to testify upon. You  
22 have on that document on the left column, Witness, direct  
23 quotation from the summary. Dr Jabbi, this is taken from your  
24 own witness list with the name of the witness and what the  
15:08:45 25 summary does describe. With the next column being the location  
26 of these alleged incidents, the next one being the exact dates of  
27 these alleged incidents and/or events. Next column, position and  
28 role of the witness in relation to the crimes. Finally, the last  
29 column, nexus between the accused and the proposed testimony of



1 the witness.

2 This is in a schematic way and forms the information that  
3 we requested in the order to the first accused to refile  
4 summaries of witness testimonies of 2 March 2006.

15:09:24 5 Looking at the first witness, which is witness number 6 on  
6 that list here, as the example, General Abdu One Mohamed, there  
7 is no information about location, no information about the  
8 incidents he will be testifying about. The position that he may  
9 have had is simply a reference that he was in the Nigerian Army,  
15:09:53 10 ECOMOG, and what's the nexus and what the proposed testimony is  
11 in relation to the first accused is unknown.

12 The description, and it refers to the first part of your  
13 summary, Dr Jabbi, was: "How troops were assembled after the  
14 coup of May 1997 with support weapons, vehicles, food, POL and  
15:10:17 15 other logistic necessities ready for Freetown using the troop  
16 carrier NNS AMBE."

17 We have prepared this list. I will not go through all of  
18 it unless you want me to review each and every part of them. You  
19 can see from that listing what we consider as missing.

15:10:37 20 Again, I wish to re-emphasise, Dr Jabbi, that it is --  
21 unless you provide us with some additional information, it is  
22 almost impossible for us, the Chamber, to assess if these  
23 witnesses are repetitive or not in order for us to be able to  
24 properly manage the conduct of the trial. And when you come with  
15:10:58 25 such a vast number of witnesses, unless we have additional  
26 information, we can't.

27 You are asking the Chamber to grant a motion that you filed  
28 to add witnesses to that list. We are unable to do so at this  
29 time because we don't have enough information, and the



1 information is information of that nature, because unless you  
2 provide the Chamber with the information with reference to the  
3 seven witnesses, less those that have testified, it is impossible  
4 for us to make an assessment of the witnesses you wish to add to  
15:11:33 5 that list, as to how they are supplemental to, additional to  
6 other than in number. In other words, what's the quality of  
7 these witnesses and how will that, in the view of the Chamber,  
8 not be repetitive and really assist in some material way to what  
9 you have already there. This is really the big problem we are  
15:11:55 10 having at this particular moment and this is why I'm giving you  
11 this example.

12 Obviously if the witness is unable, because this is not the  
13 evidence of this witness to give a specific date and so on, we do  
14 appreciate that. But a lot of the information, the key  
15:12:10 15 information that we would need to make a proper assessment, is  
16 missing. Therefore, it makes our situation very, very difficult.  
17 As I say, we are absolutely unable at this time to determine the  
18 motion you have filed for additional witnesses because we don't  
19 have enough information. This is the simplest answer to that  
15:12:33 20 particular scenario.

21 I'm talking of the additional witnesses, not the exhibits,  
22 Dr Jabbi. The exhibits are a different issue and I can tell you,  
23 for your information, that that motion to file additional  
24 exhibits will be granted. But we were toying with the  
15:12:49 25 difficulties of granting, in part, that because we can grant that  
26 one, but it is the witness part of it that we have difficulties  
27 with.

28 So you have heard my comments. I would like to hear from  
29 you at this particular moment in this respect, Dr Jabbi. Again,





1 don't take my comments to be critical. We're just trying to see  
2 how we can move ahead and see a way that will satisfy everybody's  
3 requirement.

4 MR JABBI: Thank you very much, My Lord. First of all, may  
15:13:24 5 we say we do greatly appreciate the observations you have just  
6 made and more particularly, the analysis that has been tabulated.

7 My Lord, just by way of explanation, we would like just  
8 once more to remind the Chamber and all our colleagues of the  
9 particular problems that our team had. As you all know, we  
15:14:01 10 didn't have an opportunity to interact with our client in the  
11 field of selection of witnesses for a very long time until we  
12 started giving evidence, and he gave evidence for quite a time  
13 when we were unable to get in touch with him, and we were not  
14 able to finalise some of these issues until he completed giving  
15:14:27 15 evidence. That has been said, he has been back into the field to  
16 try to complete the information.

17 My Lord, an example of that is the very first item that you  
18 have just indicated, witness number 6.

19 PRESIDING JUDGE: Yes.

15:14:51 20 MR JABBI: General Abdu One Mohamed. In fact, the summary  
21 that we have here is what we have been able to garner from  
22 telephone conversations and it is only last week that we were  
23 able to send a legal assistant to ensure that there is direct  
24 face-to-face communication with this particular witness. The  
15:15:20 25 legal assistant is not yet back. We expect him by the end of the  
26 week if the census in Nigeria has not posed any problems of  
27 movement to him. We are very sure that as soon as he comes,  
28 especially in respect of this particular witness - and we  
29 consider him a very, very crucial witness - as soon as he comes,



1 he will be able to supply all this information, we are aware that  
2 it is needed, but we were working more or less speculatively when  
3 we put down some of the summaries.

4 The same also applies, My Lord, to the second on page 2,  
15:16:07 5 General Victor Malu. He also is in Nigeria and we have not had  
6 the opportunity to talk in fact as much with him, even over the  
7 telephone, as we would have liked. But he is also another one  
8 who is being contacted by the legal assistant and by the end of  
9 the week, hopefully, we'll be back and we'll be in a position to  
15:16:25 10 supply all these essential details that the Court very rightly  
11 insists on pointing out to us. We are very sorry it has caused  
12 some inconvenience, I am sure, and perhaps some delay, in  
13 assessments by certain teams, but we hope that we'll be able to  
14 rectify this situation as soon as possible.

15:16:49 15 My Lord, in respect of the application for additional  
16 witnesses, we do appreciate, indeed, that it will be very  
17 difficult to decide whether to grant that application if certain  
18 pieces of information have not been supplied and assessments made  
19 as to the relevance of certain bits of evidence and whether or  
15:17:17 20 not an additional may not be a repetition, et cetera. We  
21 appreciate that.

22 My Lord, I should also reveal that we are in the process of  
23 doing a very drastic reduction in the number of our witnesses.  
24 We have not completed the exercise, but we are looking at the two  
15:17:44 25 sets of lists: The list of witnesses first filed and the one for  
26 the additional witnesses. We are looking at those two sets. We  
27 have done an initial exercise in that direction. We have done  
28 some selections. We just want to review. We need to use the two  
29 lists, My Lord, in order to settle on the core witnesses, at



1 least, and to work on all of them together to supply all this  
2 information that is required in the analysis that has been  
3 submitted this morning.

4 On that issue, therefore, My Lord, sorry, My Lord.

15:18:22 5 PRESIDING JUDGE: Yes, go ahead.

6 MR JABBI: On that issue, therefore, My Lord, we would like  
7 to crave the indulgence of the Court to grant the application for  
8 the additional witnesses. Because, certainly, we are not going  
9 to use all those witnesses, but it enables us to look at the  
10 entire list in order to do a selection that will enable us to  
11 identify core witnesses, and also be a bit economical in use of  
12 time in analysing the various elements and details that are  
13 required.

14 We would want to save the time, not to first of all do a  
15:19:04 15 comprehensive analysis on the basis of the extensive list, only  
16 then to get the approved -- I mean, the additional list, and then  
17 to do the same exercise there before we do a final selection. We  
18 would want to be allowed to look at the complete list and do that  
19 analysis so that the Court is able to get the information  
15:19:30 20 required from us against each witness as soon as possible.

21 So, My Lord, we really want to urge the Court to grant the  
22 application for the additional witnesses with the assurance that  
23 we are not remotely likely to use all those witnesses. Even the  
24 issue of possible repetitive evidence can only be avoided if we  
15:20:02 25 can look at the comprehensive list of both sets of witnesses so  
26 that the analysis we do will be focused on the core set that we  
27 select from the two, rather than do that sort of analysis on both  
28 lists before we can be sure of approval of the additional  
29 witnesses application.



1           PRESIDING JUDGE: Dr Jabbi, on that very issue, maybe you  
2 can assist me in this because there is an aspect of it that I  
3 failed to appreciate. Why do you need the decision about these  
4 additional witnesses prior to making your assessment? If you are  
15:20:48 5 making an assessment as to how many witnesses you intend to call  
6 and to reduce with the aim of reducing the number of witnesses,  
7 and in doing this exercise and this analysis and review you  
8 consider these witnesses to be part of your list and at the end  
9 of this review process, you come to the conclusion that they will  
15:21:11 10 not be -- I may be misquoting the numbers, but your first witness  
11 list was 77 plus 13, so that puts us to 90 witnesses roughly at  
12 this particular moment. So we are starting from a potential list  
13 of 90 witnesses.

14           MR JABBI: Yes, My Lord.

15:21:32 15           PRESIDING JUDGE: If of these 90 witnesses - and I know  
16 seven have been heard up to now - but looking at the full picture  
17 of 90 witnesses, you say, it will be 40 witnesses. Of these 40  
18 witnesses, maybe of the additional witness that you're asking to  
19 be added to your list, only five of them will now be on your  
15:21:54 20 final list. So why should we grant this when you know that you  
21 will know at some given time that only five of them may be  
22 required. Do you understand what I'm saying?

23           MR JABBI: My Lord, that is the presupposition. It could  
24 also be that perhaps out of the 13 ten could be on the --

15:22:12 25           PRESIDING JUDGE: It could be, I know I used the number of  
26 five, it could be ten, it could indeed be 11. I don't know. But  
27 why should we say, "Yes, you are authorised to add 11 to your  
28 witness list," and at the end of your own analysis, you come with  
29 the result that it could be ten, it could be 11, it could also be





1 two. So why would we go through this exercise of saying yes,  
2 when at the end of that you say, "Well, we don't need all of  
3 that"?

4 MR JABBI: My Lord --

15:22:43 5 PRESIDING JUDGE: In doing your analysis, I have difficulty  
6 in seeing why, in doing your analysis, you need that decision  
7 from the Chamber before you make that analysis. That is really  
8 what I -- [overlapping speakers]

9 MR JABBI: My Lord, as a matter of fact, the analysis is  
15:22:55 10 ongoing. We are not waiting for the decision before we do the  
11 analysis. But if we are doing the analysis before the decision,  
12 then we would be unsure to what extent we can include the set of  
13 the additional. My Lord --

14 PRESIDING JUDGE: My suggestion to you, Dr Jabbi, would be  
15:23:22 15 that for this exercise, you consider these witnesses as being  
16 part of your list. I mean your total list of 90 witnesses,  
17 whatever it is.

18 MR JABBI: That is how we have proceeded so far.

19 PRESIDING JUDGE: Then when you get to make the final  
15:23:32 20 decision, if you say, "Well, now we are going to be calling  
21 whatever number," let's say 42 witnesses, you determine of these  
22 that are still of the 11, if the 11 of them are required, or  
23 five, or whatever number, as such, then we'll make that decision.  
24 This is really what I suggest you do.

15:23:51 25 MR JABBI: My Lord, that is exactly how we are proceeding  
26 already. But we just wanted to be on the completely safe side in  
27 making the suggestion I've just made. But we are already  
28 analysing the complete 90 exactly from that point of view and  
29 with that strategy.



1           PRESIDING JUDGE: The difficulties from the Chamber's  
2 perspective at this moment, as I mentioned to you, we do not have  
3 enough information to determine in a fair manner your motion for  
4 additional witnesses. Some of the information we require is not  
15:24:26 5 there for us to be able to do a comparative analysis as to what  
6 it is that these witnesses will add. That is my difficulty.  
7 That's why I am asking you to assist us to assist you.

8           MR JABBI: Yes, My Lord, with the indication that the Bench  
9 has just made, we will proceed to do the analysis and do the  
15:24:47 10 selection which will be, as I say, make a substantial reduction  
11 of core witnesses, taking both lists into account, and let the  
12 Court know as soon as possible that decision so as to enable the  
13 Court to take the decision on the application for --

14           PRESIDING JUDGE: In this respect, before I do and ask  
15:25:09 15 counsel for the Prosecution, they have said they have some  
16 comments to make in respect of these issues, that I have been  
17 informed this morning, unofficially, I must say, that there were  
18 some numbers that had been indicated at a meeting held by the  
19 Registrar, where the number of 35 witnesses was relayed as being  
15:25:34 20 the number of witnesses that you intend to call.

21           MR JABBI: My Lord, that is not a conclusive decision at  
22 this stage. As I said earlier on, we are considering that issue  
23 very actively, and even that specific suggestion, even at this  
24 stage, it is a suggestion of how actively we have been looking at  
15:26:04 25 it, but, My Lord, we have not concluded the review that we  
26 settled the number. We intend to complete as soon as possible,  
27 My Lord. And the number, I'm sure, will not vary too far from  
28 that. We would not want, at this stage, to state categorically  
29 that that is the number.



1           PRESIDING JUDGE: I will not ask you to do so at this  
2 particular moment either, Dr Jabbi.

3           MR JABBI: Thank you, My Lord.

4           PRESIDING JUDGE: Yes, Mr Principal Defender.

15:26:38 5           MR NMEHIELLE: Your Honour, I just feel a bit obliged to  
6 jump in here based on the last information that came from the  
7 Bench with particular reference to the number as to the meeting  
8 held with the Registrar. I mean, usually in the chief of  
9 sections and divisions meeting, the Registrar will want to know  
15:26:58 10 the status of things, or staff would love to know. I know that I  
11 had indicated there would be a status conference today and that  
12 one of the issues from my understanding, in consulting with some  
13 of the members of the team of the first accused, there may be a  
14 tendency that there will be a reduction in witnesses. I don't  
15:27:22 15 think it was a definitive statement that ought to have been  
16 reported as coming from the team. I was giving the state of  
17 affairs to the chiefs of section. I'm not sure that is an  
18 absolute indication in either way. But based on the  
19 consultations I had, I needed to inform the Court -- I mean, the  
15:27:46 20 management of the Court that that is the thinking in this  
21 direction. So I just wanted to clear that up.

22           PRESIDING JUDGE: I thank you for that, Mr Principal  
23 Defender, but based on that information, I can only say that I am  
24 really concerned that matters of that nature are discussed in the  
15:28:00 25 administration of the Court when the Chamber is not even informed  
26 of these matters. If there is anything to happen, this Chamber  
27 shall be in control of the process, not the administration. It  
28 is only once the decision has been made by the Court that the  
29 administration shall be informed and that these matters could be



1 and should be discussed, not the other way round. I take great  
2 issue with the fact that these kind of matters are discussed  
3 without the knowledge of the Chamber about matters that are to be  
4 discussed at the trial or in respect of a trial. Having said  
15:28:34 5 that, I understand what the purpose of these meetings may be, but  
6 at some given time, there must be a need to appreciate that  
7 management of affairs is not to interfere with the proper conduct  
8 of the trial. Therefore, that's why I'm mentioning this because  
9 we are concerned that, at times, the administration may take such  
15:28:58 10 a direction that it may have an impact on the conduct of the  
11 trial. It shall not be that way.

12 MR NMEHIELLE: Your Honour, I do --

13 PRESIDING JUDGE: -- it is not a blame to you necessarily,  
14 Mr Principal Defender.

15:29:11 15 MR NMEHIELLE: I do appreciate your concern, but this is an  
16 issue with regard to not that a particular decision has been  
17 taken, neither would management take a decision for the Court.  
18 But, rather, in terms of a process that could allow for what the  
19 management considers to be finding -- you know, trying to find  
15:29:34 20 out in terms of how far things are proceeding. Every section  
21 would be required to be hands on deck in the process of making  
22 sure things are proceeding effectively. Again, it was a hint as  
23 to what, from my office, the information is, that there may be  
24 that tendency, it is not that anything has happened particularly.

15:30:05 25 PRESIDING JUDGE: Even from your office, Mr Principal  
26 Defender, I am concerned about that, because, to my knowledge,  
27 each and every accused in this Court is now properly represented  
28 by a defence counsel and a defence team. Therefore, anything to  
29 be spoken on behalf of any accused person shall be done by those





1 counsel. I do not recognise to you, Mr Principal Defender, that  
2 authority to speak on behalf of accused person unless they have  
3 delegated authority to you specifically on an issue. They are  
4 properly represented by their own counsel and they're the ones  
15:30:42 5 who should be speaking on behalf of them, not anybody else.

6 MR NMEHIELLE: Your Honour, I'm obliged to make a reply on  
7 that, because accused person's counsel have no audience before  
8 the chief of sections meeting, and the chiefs of sections meeting  
9 is with regard to how the status of things that happen in that  
15:31:06 10 area. Again, it is not in anybody's -- I'm not sure that the  
11 administration, at least from my point of view, with regard to  
12 the issue on the ground, was there to give any directive.

13 Rather, a report is required -- I mean, it's the judicial  
14 management of the process from the point of view of  
15:31:27 15 administration is that reports be given from time to time.

16 Again, this report is not that a decision has been made, but,  
17 rather, an information which is necessary from the point of view  
18 of planning. With all due respect, there is no way my office  
19 would in any way do something that I believe is contrary to the  
15:31:53 20 smooth running of the process, or that removes from the right of  
21 a particular accused person, and in this particular case that is  
22 what I thought the situation is.

23 PRESIDING JUDGE: I will just restate my position. It is  
24 not the reports and the need for this report that shall govern  
15:32:13 25 the conduct of the trial. It shall be the other way around.  
26 Once matters do happen in Court and are produced in Court, then  
27 reports can be made, not the other way around. Therefore, I  
28 express my concerns about the administration's direction in this  
29 respect. In any event --



1 MR NMEHIELLE: Well noted.

2 PRESIDING JUDGE: Mr Prosecutor, you intended to speak on  
3 the issue of number of witnesses. You have heard some of the  
4 comments by your learned friend Dr Jabbi on this matter. It may  
15:32:48 5 enlighten some of your concerns, but we'll see what they are.

6 MR De SILVA: My Lord, firstly, the concerns and  
7 frustrations expressed by the Court, as Your Lordship knows, are  
8 shared keenly by the Prosecution. We are extremely grateful for  
9 this schedule that has been prepared, and indeed, the schedule  
15:33:16 10 Your Lordship referred to dealing with a number of witnesses,  
11 where the relevance of the witness' evidence is plainly not  
12 shown. On the face of it, in our respectful submission, not one  
13 single one of these witnesses is relevant - not one of them - in  
14 relation to the issues in this case.

15:33:42 15 One of our problems, My Lord, has been since the very  
16 outset of this case - and I can express it in this way - the need  
17 to call witnesses either for the Prosecution or the Defence turns  
18 on what issues are relevant. Issues can sometimes be dealt with  
19 by way of admissions. Your Lordship, I know it is at another  
15:34:19 20 point in the agenda for this afternoon, but it is a point which I  
21 think I can properly make now as a part of my argument.

22 Your Lordship knows that this trial began in June of 2004.  
23 Prior to the trial, the Prosecution supplied the Defence with a  
24 list of admissions to be led. It came as no surprise to the  
15:34:48 25 Prosecution that not one single admission was made, not even to  
26 the fact that Chief Norman was national co-ordinator of the CDF.  
27 Yet one of the first things he said when he went into the witness  
28 box was that he was. Now, this demonstrates, in the eyes of the  
29 Prosecution, a complete unwillingness, and I regret to say this,



1 a complete unwillingness to face reality and a complete absence  
2 of a willingness to co-operate with the expeditious trial that we  
3 all seek.

4 Your Lordship knows that when the first few witnesses were  
15:35:59 5 called on behalf of Chief Norman, I cross-examined Peter Penfold  
6 and I recall saying to him that 99.9 per cent of his evidence was  
7 not in dispute. If we'd had a witness statement, we'd have  
8 agreed that. As for General Richards, Your Lordship knows I  
9 called for his witness statement. If his witness statement had  
15:36:35 10 been served on the Prosecution, he wouldn't have had to come  
11 here. The Court would have saved a great deal of money. There  
12 was nothing in dispute. These two witnesses are demonstrations  
13 of the fact that witnesses are being called whose evidence is not  
14 in dispute.

15:36:59 15 My Lord, I can't say it often enough, but perhaps I should  
16 state the position quite clearly so that the attitude of the  
17 Prosecution is well understood.

18 The burden of proof we all know. We all know that there is  
19 no burden on the defendant. There is no burden on the defendant  
15:37:27 20 to give evidence or to call evidence, and a defendant can remain  
21 silent to the very end. We all know that. But, if a defendant  
22 chooses to give evidence, or if a defendant chooses to call  
23 evidence, that evidence is bound by the same rules as any other  
24 evidence. In other words, it can only be called if it is  
15:37:58 25 relevant. There is no special category of defence witness for  
26 this purpose, because once a defence witness is called, that  
27 witness becomes a witness of the Court and subject to all the  
28 usual tests that apply to any witness.

29 Now, Your Lordships in this Court, from time to time, have



1 indicated how important it was that an expeditious trial is  
2 conducted. If the Prosecution had the witness statements of  
3 defence witnesses, and there is now provision for Your Lordships  
4 to actually order that under Rule 73ter, the "Chamber or the said  
15:39:05 5 judge may order the Defence to provide the Trial Chamber and the  
6 Prosecutor with copies of the written statements of each  
7 witness," and so on.

8 My Lord, if that is done, we on behalf of the Prosecution  
9 are more than willing to admit evidence, making it highly  
15:39:29 10 unnecessary for this laborious process of witnesses to be called,  
11 their witness evidence to be interpreted and so on and so forth.  
12 My Lord, we are totally in the hands of the Court. Your Lordship  
13 has the power to make that order that all witness statements be  
14 provided to the Prosecution. This does not cut across the burden  
15:40:01 15 of proof or the presumption of innocence, or that a defendant  
16 does not have to provide any evidence. It doesn't cut across any  
17 of those principles. As I've indicated, the defendant can do  
18 nothing. But once a defendant chooses to call a witness, that  
19 witness is a witness like any other. So, it's nothing to do with  
15:40:25 20 the burden of proof or the presumption of innocence.

21 My Lord, we, on behalf of the Prosecution, are most anxious  
22 that the Court is proactive in this regard. As I've indicated,  
23 there is nothing that I can see summarised in that schedule of  
24 witnesses, to which Your Lordship has referred, that renders any  
15:40:57 25 of those witnesses relevant. If I might start with witness  
26 number 6, General Abdul Mohamed. "How troops were assembled  
27 after the coup of May 1997 with support weapons, vehicles, food,"  
28 and so on. Now, we don't dispute that weaponry and food and so  
29 on and so forth was supplied to the CDF. We don't dispute any of





1 that. Well, what is the relevance of all of this evidence?

2 If one goes to the next part of it, that a Nigerian  
3 contingent under ECOMOG collaborated with the CDF in a variety of  
4 ways, we don't dispute any of that. My Lord, we keep going

15:41:59 5 around and around in a way that --

6 PRESIDING JUDGE: Mr Prosecutor, you're not arguing that  
7 this is not relevant. You're saying that information, as  
8 contained in that summary, are matters that you're not disputing,  
9 you're quite prepared to make admissions. We're not dealing here  
15:42:19 10 with possible relevancy, but, rather, the kind of admissions that  
11 your office would be prepared to make and dispense with the  
12 calling of at least that evidence.

13 MR De SILVA: Yes, indeed, My Lord. The next witness,  
14 witness number 7, General Victor Malu, "negotiations between  
15:42:42 15 Sierra Leone and the Nigerian government to remove the junta from  
16 power and reinstate the democratically elected government." What  
17 on earth has that got to do with this trial?

18 My Lord, it is for these reasons that we submit it has been  
19 demonstrated beyond doubt, we would submit, that the summaries  
15:43:06 20 given to the Prosecution so far are so woefully inadequate that  
21 hereinafter, before any witness is called by the Defence, a  
22 proper statement of evidence due from that witness, or expected  
23 from that witness, should be served on the Prosecution, so that  
24 the Prosecution can appeal to the Court on the basis of such a  
15:43:41 25 statement as to whether or not that evidence is relevant,  
26 repetitive or irrelevant.

27 My Lord, this is the only way in which, it seems to us,  
28 that some degree of control can be maintained over a trial  
29 process which is beginning to prolong itself, particularly when



1 we are told in open Court that in a trial that began in June  
2 2004, for some reason, till the first defendant gave evidence,  
3 there seems to have been no real thought that went into how many  
4 witnesses should be called on his behalf, or who there should be.  
15:44:27 5 In most trials I'm familiar with, by the time the Prosecution  
6 ends, the number of defence witnesses are already ready and the  
7 Defence know exactly who they are to call and for what purpose.  
8 It is quite astonishing, My Lord, that we get an explanation from  
9 my learned friend Dr Jabbi that, through some lack of  
15:44:52 10 communication, or the exact words were, "through a lack of  
11 interaction", whatever that means, they're in some difficulty.

12 I invite this Court to take decisive measures, and the only  
13 decisive measures that can be taken on the material we have in  
14 front of us, is to exclude all their witnesses in relation to  
15:45:37 15 whom a list has been prepared on the basis that they are totally  
16 irrelevant, on the face of it. I would invite similar measures  
17 to be taken in relation to all other witnesses whose summaries  
18 are not shown to be relevant.

19 My Lord, it is really -- I'm going from memory here. I  
15:46:11 20 remember when I was cross-examining the witness Mr Penfold, in  
21 the documents prepared for this Court by the Defence, it was set  
22 out what counts in the indictment his evidence went to. I notice  
23 that his evidence didn't go to a single one of those counts by  
24 the time he'd finished his examination-in-chief. However, I was  
15:46:37 25 going to point that out at the time, but I didn't and thought  
26 perhaps I should wait until this conference. I think I made some  
27 comment at that time during the currency of the trial. Your  
28 Lordship, I think it was, said that my comment should be reserved  
29 for a status conference. That's one reason why I'm here.



1 My Lord, to a large extent, of course, we are all in the  
2 hands of the Court. Your Lordship and your brother judges hold  
3 the balance. There can come a point when overindulgence towards  
4 the Defence can simply mean an unconscionable prolongation of the  
15:47:35 5 trial. It seems to me that the time has come, and I say this  
6 with great respect, that with regard to all future defence  
7 witnesses, that the power is exercised by this Court that we be  
8 supplied with full statements. There is no reason why that  
9 should not be so, so that a proper determination can be made. I  
15:48:01 10 have no doubt it will save months of trial.

11 My Lord, that is all I really wish to say at this stage on  
12 that matter. Obviously, if Your Lordship has detected a tone of  
13 indignation in my voice, it is not accidental. That's all I wish  
14 to say.

15:48:31 15 PRESIDING JUDGE: I should add to your comments,  
16 Mr de Silva, that I do not think that this Chamber has moved in  
17 being overindulgent with the Defence. All we've been doing up to  
18 this moment is try to act as fairly as we could, given the nature  
19 of the charges that you have proffered against these accused  
15:48:54 20 persons. As you know, this is always a very difficult exercise  
21 to maintain a proper balance, as such. I think what we have been  
22 doing until this moment is trying to hold that balance at the  
23 right place at this stage. I would certainly say to you that  
24 comments about overindulgence to the Defence are not appropriate,  
15:49:22 25 certainly not at this stage.

26 MR De SILVA: If Your Lordship pleases. It was perhaps  
27 that when I said I adopted a particular tone, it might have been  
28 the product of the tone I'd adopted.

29 PRESIDING JUDGE: It may be.



1 MR De SILVA: I hope Your Lordship sees it that way. Your  
2 Lordship knows our position quite clearly, I hope, because we  
3 feel that --

4 PRESIDING JUDGE: Let me ask a few more questions. We also  
15:49:53 5 have made some tabulation of examination-in-chief and this is  
6 information provided and supplied by Court Management about times  
7 taken in examination-in-chief and times taken in  
8 cross-examination. In almost all cases where we had been given  
9 some times, the cross-examination has taken, in some cases, about  
15:50:14 10 twice the time as the examination-in-chief and, yet, you're  
11 saying that you're quite prepared to make admissions. But, on  
12 the one hand, you -- and I'm not criticising the fact that you're  
13 doing the cross-examination of a witness, because this is your  
14 duty as such and you shall discharge that duty to the best of  
15:50:34 15 your ability, but, again, you're using your right to  
16 cross-examine a witness to the maximum possible and which uses a  
17 lot of the time of the Court. When you're trying to make an  
18 estimate of time to be taken, it appears that the  
19 cross-examination is taking more time than the  
15:50:55 20 examination-in-chief.

21 MR De SILVA: Is Your Lordship talking about  
22 cross-examination by the Prosecution?

23 PRESIDING JUDGE: Cross-examination by the Prosecution of  
24 witnesses called by the Defence in this CDF trial.

15:51:11 25 MR De SILVA: Your Lordship will certainly recall me  
26 cross-examining Mr Penfold. It didn't take all that much time.

27 PRESIDING JUDGE: It took three hours for the  
28 examination-in-chief and it took two hours and 40 minutes,  
29 according to the numbers given here by the Court Management.





1 These are not my numbers, I hasten to add.

2 MR De SILVA: Your Lordship, it would be a great pity if he  
3 came all this way and I didn't exchange a word or two with him.  
4 However, the same, of course, goes for the General. The point is  
15:51:44 5 this, with respect: those witnesses, as far as I can gather, I  
6 never saw Peter Penfold's witness statement, I certainly saw the  
7 General's, but that could have been agreed if I had that  
8 beforehand, but I didn't.

9 PRESIDING JUDGE: I understand. We'll talk about that,  
15:52:07 10 Mr de Silva, because I think there should be some direct  
11 co-operation and communication between the Defence and the  
12 Prosecution on matters that are and can be admitted. This is not  
13 the first time you've made that statement. You did so when  
14 Mr Penfold was giving evidence. I remember you did so on one  
15:52:25 15 other occasion that you would have admitted that fact, because  
16 this is not disputed. Obviously any matter that is not disputed  
17 should not be the subject of any further evidence, as such.

18 While on this subject matter, and this is, Dr Jabbi, to you  
19 and all accused persons as well, the question of re-establishing  
15:52:49 20 the democratically elected government of President Tejan Kabbah.  
21 I don't think it is disputed any more. We have heard that.  
22 Every single witness called here has said that. It is not even  
23 disputed by the Prosecution, so this is an issue we shouldn't be  
24 dealing with any more. This is not an issue. This is clearly  
15:53:10 25 established, undisputed and, therefore, we should move away and  
26 move ahead in this respect and leave that issue aside. Witnesses  
27 who may be called to raise and bring this kind of evidence, we  
28 should dispense with. If you are calling witnesses who are to  
29 talk about that, I'm just warning you to tell them not to speak



1 about that. Because, when you call these witnesses, we will tell  
2 you, "We don't want to hear about that." I'm just warning you of  
3 these particular matters, Dr Jabbi, because we will certainly  
4 intervene to save that time, because this is not required any  
15:53:44 5 more.

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

7 PRESIDING JUDGE: This is the first time I have raised that  
8 with you. This may be novel with you. I'm just warning you.

9 MR JABBI: It is certainly not novel, My Lord. As I said  
15:54:01 10 earlier on, we are reviewing our witness list from very many  
11 points of view.

12 PRESIDING JUDGE: And that one included.

13 MR JABBI: Certainly, My Lord. The Prosecutor made a very  
14 significant concession, if I may call it so. I don't want to  
15:54:24 15 call it confession, when he said a tone of indignation tends to  
16 enter his utterances, and it may produce some of those things  
17 that the Court adversely commented on after his speech. We will  
18 endeavour that that tone never enters our Defence calculations  
19 about various things and we take into good part comments made by  
15:54:59 20 both the Prosecutor and the Bench, and we can give assurance to  
21 the Bench that all those issues are under review and the end  
22 product we prove that, indeed, we have done them in a very  
23 dispassionate manner.

24 PRESIDING JUDGE: Thank you, Dr Jabbi. The next issue in  
15:55:22 25 fact on my list for today was to talk more specifically on the  
26 reduction of the number of witnesses being called by the Defence,  
27 certainly for the first accused. Given the discussions that have  
28 taken place and your very clear commitment to look at this matter  
29 and to proceed to, indeed, reduce the witness list, I will not go



1 into this matter any longer because the matter is under serious  
2 consideration. I can only ask that you do that as expeditiously  
3 as you can because we need to be informed of that soon and so  
4 does the Prosecution so they can prepare their cross-examination  
15:56:07 5 accordingly. Again, as you have heard, I am not making any  
6 decision this afternoon about statements or no statements, as I  
7 have been urged to do by the Prosecutor. But this is certainly a  
8 matter that is still under serious consideration if circumstances  
9 dictate. At this stage, we'll wait to see what is coming out of  
15:56:28 10 your assessment, how you're going to do it, and how much  
11 information will come out of this review and reassessment.

12 I should ask you, Dr Jabbi, when you proceed to do this, to  
13 bear in mind my comments as to what is the minimum requirement as  
14 to the content of the summaries that we would need so we can make  
15:56:50 15 our own assessment of what it is you're about to do.

16 [CDF22MAR06B - SV]

17 MR JABBI: Yes, indeed, My Lord. However, My Lord -- I  
18 mean, we have already said that we are considering the reduction.  
19 But the controlling condition is necessity. If necessary. We  
15:57:13 20 will bear that in mind and we will try and ensure that we stay  
21 strictly within it so as to ensure expeditiousness. Thank you.

22 PRESIDING JUDGE: It is likely that after I review this  
23 discussion and this information later on this afternoon that I  
24 may, or the Chamber may issue a direction and an order for you to  
15:57:44 25 produce this renewed witness list by a certain date that may not  
26 be too far away.

27 MR JABBI: Yes, My Lord. We will venture to propose a date  
28 when you are about to deal with it, My Lord.

29 PRESIDING JUDGE: Well, we have in mind 29th March.



1 MR JABBI: My Lord --

2 PRESIDING JUDGE: Which is --

3 MR JABBI: 29th March is just a week.

4 PRESIDING JUDGE: In a week's time, indeed.

15:58:11 5 MR JABBI: My Lord, as I said earlier on --

6 PRESIDING JUDGE: It would be next Wednesday.

7 MR JABBI: As I said earlier on, My Lord, our legal  
8 assistant is out in Nigeria. We need him back before we can take  
9 final decision on those matters. We're not exactly sure when  
10 he's coming back but we hope he comes back by this weekend. So,  
11 My Lord, almost unavoidably we would need longer than 29th March.

12 PRESIDING JUDGE: How much longer? I will give you some  
13 time to think about it and we'll come back to it, Dr Jabbi. But  
14 we are not prepared to overextend these delays because once you  
15 do that there's more work to be done. That's why I say I  
16 understand what you're say, but -- we'll wait. Discuss that, if  
17 you wish, with your colleagues and see what it is. But not much  
18 more than a very limited period of time past 29 March.

19 MR JOHNSON: Your Honour, if I may, I would just encourage  
15:59:29 20 certainly no later than 29th March. Of course, members of the  
21 Prosecution would like to take advantage of the recess coming up  
22 in April as well and --

23 PRESIDING JUDGE: We want to do that too.

24 MR JOHNSON: [Overlapping speakers] large portion of April  
15:59:43 25 and we would thank you as soon as that could be --

26 PRESIDING JUDGE: Yes. You have been also supplied and  
27 provided with a review and sort of categorisation of your  
28 witnesses, the 77 witnesses, that has been prepared, Dr Jabbi.  
29 This list here, which has 12 pages, 13 pages, 14 pages.





1 MR JABBI: Yes, My Lord.

2 PRESIDING JUDGE: Which is, again, work that we have done  
3 in chambers to try to see how the witnesses you're proposing to  
4 call, just on the basis of the very limited information you have  
16:01:16 5 provided, are dealing with issues that are and appear to be  
6 repetitive in many respects. And, again, this is part of the  
7 work we've been going through to try to make an assessment as to  
8 what it is. So this is with you at this particular time.

9 You'll see that, for example, just to talk about Base Zero,  
16:01:39 10 Talia Yawbeko and so on you have a huge number of witnesses that  
11 after a while it becomes absolutely unnecessary because unless --  
12 I'm not saying it shall be only one witness, you may have more  
13 than one witness, but there's a limit to come to talk about the  
14 same issue and the same incident and the same event. This is  
16:02:02 15 there again as an illustration.

16 This is the work that we were doing in chambers to try to  
17 assist us to make an assessment of your witness list and the  
18 proposed additional witnesses. It's just to give you an example  
19 of what it is. So you can use this as well, as a guidance for  
16:02:21 20 your own reassessment and review to see what it is. And to use  
21 some of the comments made by the learned Prosecutor about the  
22 relevance and some of these matters that are absolutely not  
23 disputed any more. Maybe some of these witnesses are not  
24 required any more. So I'm leaving it with you to make that  
16:02:45 25 assessment when you do make that review.

26 MR JABBI: Yes, My Lord, as I have said earlier on, we will  
27 take all that into account. My Lord, this is actually the  
28 document we appreciate most. It will be seen that the impression  
29 of repetitiveness arises from the superimposition of the two



1 lists, and, as I said earlier on, it is not being planned to  
2 insist on all of those witnesses coming in fact. But they are  
3 separate lists and we will look at them and do the selection that  
4 we consider reasonable.

16:03:30 5 PRESIDING JUDGE: Very well. Thank you.

6 Now I would like to say a few words on the additional  
7 exhibits. I mentioned to you, Dr Jabbi, that that should not be  
8 an issue. We will dispose of that very shortly and issue  
9 separate decision on the exhibits, separate and apart from the  
16:05:13 10 application for additional witnesses. That should be dealt with  
11 fairly shortly. You may assume for the preparation of your  
12 defence that the additional exhibits will be granted.

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

14 PRESIDING JUDGE: We will issue an order accordingly in the  
16:05:38 15 coming days. Although your application, your motion, dealt with  
16 witnesses and exhibits, our decision at this stage will deal only  
17 with the portion related to exhibits, to enable you to make these  
18 assessments. Because I remember during the trials and in order  
19 for you to make a decision as to who was to be called next as a  
16:06:04 20 witness you were indicating that a decision on the additional  
21 exhibits was essential.

22 MR JABBI: Yes, My Lord.

23 PRESIDING JUDGE: So to assist you again in this respect,  
24 be aware that that will be disposed of shortly.

16:06:16 25 MR JABBI: Thank you very much, My Lord.

26 MR JOHNSON: Your Honour, while we're on the exhibits, of  
27 course you have placed an obligation on the Prosecution to  
28 indicate where we object to the exhibits and object to the  
29 authenticity of the exhibits. We're more than willing to comply



1 to that but we would like to see a copy of them first. I think  
2 in the first session some time was lost because we did not have a  
3 copy before they were offered for admission. So we again seek to  
4 have copies of those beyond just having a list of them.

16:06:55 5 PRESIDING JUDGE: I was to speak about that but you have  
6 preceded me on this issue. Certainly I can again urge counsel  
7 the fact that you are listing exhibits at this time is an  
8 indication that you intend to use those exhibits, but when you  
9 are to use them you should give a copy to all parties. To the  
16:07:15 10 co-accused, to counsel for the other accused as well as the  
11 Prosecution ahead of your intention to use that in court. That  
12 has caused some delays and I would ask your assistance and  
13 co-operation to make sure that these exhibits are indeed copied  
14 and distributed and served on the other parties before they are  
16:07:35 15 to be tabled in court.

16 MR JABBI: My Lord, that factor will be brought under  
17 effective control.

18 PRESIDING JUDGE: Thank you, Dr Jabbi.

19 MR JOHNSON: Your Honour, if I could just add to that, and  
16:07:49 20 please some time before if at all possible, because again, before  
21 we can determine if we have an objection to authenticity, we may  
22 need to do a little checking or a little investigation into it.  
23 So simply a day or two before trial may not help us.

24 PRESIDING JUDGE: On the exhibits, Dr Jabbi, I have one  
16:08:08 25 question. It would appear that - and I need a clarification on  
26 the exhibits you have refiled - the list now in the refiling --  
27 because you have done a refiling as a result of our order, and  
28 looking at the exhibits it appears that has gone from 16 to 17.  
29 So are we miscalculating or there is an additional exhibit that



1 appears there that was not there before? Can you enlighten us on  
2 this issue?

3 MR JABBI: My Lord, I believe that is the same.

4 PRESIDING JUDGE: Because the exhibit listed filed on  
16:08:49 5 1st February contains 16 exhibits, that's the motion to add  
6 exhibits. So you had 16. And the refiling of the motion on  
7 14th March includes now 17 exhibits. So what is it we should be  
8 looking at, 16 or 17?

9 MR JABBI: My Lord, it's 17.

16:09:32 10 PRESIDING JUDGE: It is 17?

11 MR JABBI: Yes, My Lord.

12 PRESIDING JUDGE: Because the first time you filed that you  
13 had listed these exhibits as being 16 and not 17. The last one,  
14 as I say, your refiling is 17 and this is 17 exhibits that you're  
16:09:48 15 seeking to be added to the exhibit list. So this is what I want  
16 to ascertain.

17 MR JABBI: The current list is 17, My Lord. I believe that  
18 number 17, the present 17, is an addition which was notified  
19 after our first filing, item 17. As a matter of fact, it is one  
16:10:34 20 of those documents that we believe will be obtained by our legal  
21 assistant on his present trip. But it is very crucial, My Lord.

22 PRESIDING JUDGE: So again I can only repeat what I have  
23 stated. So if these exhibits are to be added to the list, you  
24 should endeavour to disclose these exhibits as soon as possible,  
16:11:09 25 certainly not the day or a few days before, because it is of  
26 importance to all parties that they know what these exhibits are.  
27 As I say, if they want to make admissions, challenge them, and so  
28 on, they need to know and everybody needs to know ahead of time,  
29 Dr Jabbi.





1 MR JABBI: My Lord, we will do exactly that.

2 PRESIDING JUDGE: I do have one note. I said these  
3 exhibits we would be dealing with, but I have a note in my file  
4 here that there are two exceptions to it. The exhibit that you  
16:11:40 5 listed as 12, "Request for shotguns dated 1-9-00," it appears to  
6 be outside the time frame of the exhibits, so I wonder why this  
7 is relevant? That's your exhibit that you have listed as number  
8 12.

9 DR JABBI: We will watch the time frame factor but I cannot  
16:12:16 10 say right away to what extent that request is likely to refer to  
11 the relevant time frame. I cannot say that right away, My Lord.

12 PRESIDING JUDGE: The exhibit that you've listed as 16  
13 called "Certificate of Recognition" has no date on it and would  
14 appear not to be relevant either.

16:12:42 15 MR JABBI: Number what, My Lord?

16 PRESIDING JUDGE: Sixteen, 1-6.

17 MR JABBI: This one, My Lord, is a generally applicable  
18 certificate that was used at various stages and only particular  
19 ones for particular persons would turn out to be dated, but it  
16:13:18 20 falls within the time frame. It is an illustrative piece of  
21 evidence, My Lord.

22 PRESIDING JUDGE: Thank you. So given the information I  
23 have given you, as I say, our ruling on this will be in the next  
24 few days about these exhibits. Dr Jabbi and your team, you're  
16:13:54 25 invited to reconsider the order of witnesses that you intend to  
26 call at the next session, which will be the seventh session, and  
27 to disclose - I'm not only talking here of the witnesses you  
28 intend to call at the next session, but the totality of these  
29 witnesses, and I will ask you to file this with the Court as soon



1 as possible. The Court will issue an order that you file these  
2 by, at the latest, 3 April 2006, which is not the coming Monday  
3 but the next Monday.

4 MR JABBI: My Lord, I don't know if we have now come to the  
16:14:58 5 point of determining when we are to file our comprehensive list,  
6 but I would have thought, My Lord, it would be best if those can  
7 be done together. The 3rd might be too early because by then we  
8 would not have decided the comprehensive list. My Lord, may I  
9 ask for 10 April for all the lists in question? That, we'll  
16:15:48 10 endeavour to meet as a deadline on all fronts, My Lord.

11 MR JOHNSON: Your Honour, if I may point out, I believe 10  
12 April is already in the recess period.

13 PRESIDING JUDGE: No, it's not. The recess, if I'm not  
14 mistaken, starts -- if you're talking of the Court recess -- on  
16:16:20 15 12 April.

16 MR JOHNSON: 12 April is a Wednesday, Your Honour. I  
17 believe it was starting the weekend before that. Again,  
18 Your Honour, we would ask to have this some time before that.  
19 Obviously we have personnel that needs some leave time as well  
16:16:41 20 and we need to react to this, Your Honour. We implore you that  
21 you stick to the dates that you originally had.

22 PRESIDING JUDGE: I will take that under advisement and  
23 we'll issue an order accordingly. I'm not prepared to say it  
24 will be the 10th or the 3rd today, but we'll issue an order in  
16:17:07 25 the next day.

26 MR JABBI: My Lord, we really would want to be sure that we  
27 comply with what date the Court chooses for any of these  
28 exercises, and it is in the light of the problems and the  
29 difficulties that we are proposing 10th. We hope, My Lord, that



1 will be acceptable.

2 PRESIDING JUDGE: But, you see, 10th - I am looking at my  
3 calendar - is the start of the recess and therefore during that  
4 recess there's no more filing. So you cannot even file on the  
16:17:44 5 10th.

6 MR JABBI: The 10th, My Lord, is --

7 PRESIDING JUDGE: Is Monday, 10 April. The recess is from  
8 10 April to 24 April. This is the Easter recess.

9 MR JABBI: My Lord, as Your Lordship said, you take all the  
16:18:14 10 observations we have made on advisement when you make the  
11 appropriate decision. We are entirely in your hands, My Lord.

12 PRESIDING JUDGE: Thank you, Dr Jabbi. I know my next  
13 question may be a bit premature, as you are looking at your  
14 witness list, Dr Jabbi, but in the last session you had to  
16:19:35 15 reorganise - and with the leave of the Court - the order of  
16 appearance of your witnesses to meet certain requirements. One  
17 applied for General Richards, the other one for Mr Penfold. The  
18 order of appearance of witnesses had to be changed, in some  
19 respect, quite substantially. I would like to know if the Court  
16:20:03 20 can expect some difficulties of that nature for the next session?

21 MR JABBI: My Lord, the only possible sources of that  
22 difficulty would be the witnesses we expect from outside. In  
23 particular --

24 PRESIDING JUDGE: There might be some on your witness list?

16:20:29 25 MR JABBI: Yes, one or two, or two or three. But this  
26 time, My Lord, we are in much earlier contact with those  
27 witnesses than we were able to have with the others that created  
28 that problem at the beginning. So we would be able to assess  
29 their availability when the legal assistant comes back and we



1 will fix an order that, by our present knowledge, is likely to  
2 be, in fact, effected and not disrupted.

3 PRESIDING JUDGE: Should there be changes in the order of  
4 witnesses, I would ask you to ensure that you inform the other  
16:21:23 5 counsel, as well as the Prosecution, well in advance of any such  
6 change because they need to know ahead of time for their own  
7 preparation, and it's a question of simple fairness and equality  
8 that everybody should be informed if there is a change because  
9 their own preparation may differ based on that information. I  
16:21:46 10 can only ask you that you do that as soon as possible. If you  
11 know that there will be changes, you shall endeavour to notify  
12 all other parties that have an interest, that is, other defence  
13 counsel and the Prosecution, of these changes well ahead of time.

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

16:22:07 15 MR JOHNSON: Your Honour, if I could, or possibly to  
16 suggest, if you recall, I think the Prosecution was required to  
17 basically pretty much keep a running order of witnesses in the  
18 order we intended to call them at least 14 days before we  
19 intended to call them to the Court and to Defence. Granted, we  
16:22:27 20 appreciate that there were times when the Defence and the Court  
21 indulged us and we would do some rearranging of witnesses, but  
22 still there was at least --

23 PRESIDING JUDGE: We still do on a continuous basis.

24 MR JOHNSON: We still do. But possibly if we could have a  
16:22:41 25 proposed order 14 days before the witness is expected to testify  
26 or something along those lines, that would be of great  
27 assistance.

28 PRESIDING JUDGE: I hope it will be even sooner than that.  
29 But you are taking note of that, Dr Jabbi.





1 MR JABBI: Yes, My Lord.

2 PRESIDING JUDGE: For the moment, Dr Jabbi, one last  
3 question for you. At the last status conference on 18 January,  
4 you had expressed some fear about potential -- that some  
16:23:22 5 potential witnesses for the first accused Norman might have  
6 expressed. At that time, you -- and there was a possibility of  
7 intimidation, as such, alleged intimidation caused by the Special  
8 Court Outreach team that would have gone upcountry. There was a  
9 perception, in your own words, that there might have been some  
16:23:49 10 intimidation conveyed to some potential witnesses. But you were  
11 to look into this matter and I know when you mentioned that at  
12 that time, you said this was an issue that he had not been able  
13 to check at that particular moment. Is this matter resolved for  
14 now?

16:24:06 15 MR JABBI: Yes, indeed, My Lord. It was true that various  
16 people made allegations of Outreach performances tending to imply  
17 that there might be some consequences for people coming to give  
18 evidence for the Defence. But we have allayed those fears and at  
19 least witnesses selected will not be open to that fear.

16:24:37 20 PRESIDING JUDGE: So this is not an issue any more?

21 MR JABBI: It is no longer an issue, My Lord.

22 PRESIDING JUDGE: Thank you. So now looking at the common  
23 witnesses issue, and that is obviously being addressed to counsel  
24 for the first accused, second accused and third accused as well.  
16:25:00 25 So Court appointed counsel for Fofana have filed their list of 35  
26 core witnesses and seven back-up witnesses. Court appointed  
27 counsel for Kondewa have filed their list of 39 witnesses,  
28 including a summary of their proposed testimony.

29 The sixth trial session of the CDF concluding on 23



1 February had heard eight witnesses, having heard witnesses on  
2 behalf of the first accused and two of these witnesses, namely  
3 witness number 6, Koker, and witness number 8, Koroma, being  
4 common to the first and second accused, and witness number 4, MT  
16:25:45 5 Collier, common witness to all three accused. The Chamber wishes  
6 to note that witness Dr Demby, who testified as number 3 in the  
7 Defence case, is also listed at number 5 on the Fofana witness  
8 list. So at the time this witness testified, counsel for Fofana  
9 had neither indicated that this is a common witness but instead  
16:26:13 10 chose to cross-examine him. I would like to clarify that  
11 situation with counsel for Mr Fofana and whether or not you still  
12 have the intention to call Dr Demby as a separate, distinct  
13 witness now?

14 MR BOCKARIE: Your Honour, indication was made that  
16:26:35 15 Dr Demby is listed as a witness for the Fofana defence team and,  
16 based on that, we went ahead to present our case through him as  
17 we deemed fit. Now that it has become an issue, we still  
18 maintain a stance that he's still our witness and we presented  
19 our case through him as we considered it necessary.

16:27:05 20 PRESIDING JUDGE: So you still intend to call him?

21 MR BOCKARIE: We do not.

22 PRESIDING JUDGE: You do not.

23 MR BOCKARIE: Yes.

24 PRESIDING JUDGE: Because whatever the position that you  
16:27:14 25 had and the matters you wished to raise with him, you've done  
26 that while he was here as a witness?

27 MR BOCKARIE: Yes, Your Honour.

28 PRESIDING JUDGE: Therefore he is no more on your witness  
29 list or proposed witness to be called?



1 MR BOCKARIE: Yes, Your Honour.

2 PRESIDING JUDGE: Okay. So may I take it, Mr Bockarie,  
3 that you will remove him from your witness list now?

4 MR BOCKARIE: Indeed, Your Honour.

16:27:39 5 PRESIDING JUDGE: Thank you. At the last status conference  
6 the Chamber gave notice to each defence team that it appears that  
7 there be at least 18 witnesses that are common to either defence  
8 team. For example, the witness Musa Junisa appears as witness  
9 number 57 on the witness list for Norman, as number 10 on

16:28:18 10 Fofana's list and as number 19 of Kondewa's list. Kamoh Lahai  
11 Bangura appears as witness number 1 on Fofana's list and as  
12 number 5 as Kondewa's list.

13 There seems to be a lot of these witnesses that are common  
14 but there doesn't seem to be a co-ordination between the various  
16:28:41 15 teams as to what it is. I'll take the example, if your witness  
16 Lahai Bangura is number 1 on your list, Mr Bockarie, obviously  
17 you're likely to call him as being your first witness?

18 MR BOCKARIE: Yes, Your Honour.

19 PRESIDING JUDGE: Therefore he appears, as well, as witness  
16:29:03 20 number 5 on Kondewa's list. So, Mr Margai, all I'm suggesting,  
21 there should be some discussion and co-ordination because if he's  
22 number 1 there, presumably, when it comes to you, that witness  
23 should not be there any more on your list because he will have  
24 produced whatever evidence you need to call him for at that  
16:29:22 25 particular moment. Am I right, or it is still your intent to  
26 call him regardless?

27 MR MARGAI: Well, perhaps at this stage, My Lord, all I  
28 could say is that, depending on his testimony and questions  
29 emanating from us, the need to call him as a witness may not be



1 necessary.

2 PRESIDING JUDGE: Thank you. On this, Mr Margai and  
3 Mr Bockarie, as we move along with these witnesses, obviously it  
4 is the first witness calling their witnesses first. So these  
16:29:57 5 witnesses that are common to all of you, whether it's to you or  
6 to the three of you, if they have been called, I would appreciate  
7 that you proceed to amend your witness list accordingly whenever  
8 it's done so there is a clear indication, not only of progress,  
9 but there will not be duplication of witnesses so there is a  
16:30:16 10 clear understanding by all concerned.

11 MR BOCKARIE: We shall do that, Your Honour.

12 PRESIDING JUDGE: Thank you. So that will apply to you,  
13 Mr Margai, as well.

14 MR MARGAI: Indeed.

16:30:25 15 PRESIDING JUDGE: If that can be done, it will achieve, as  
16 I say, to clarify what appears to be some confusion on these  
17 witnesses. Thank you.

18 Dr Jabbi, I come back to you again with some other remarks  
19 having to do with the filing of identifying information. We have  
16:31:59 20 reviewed the information that you have supplied in response to  
21 the order that we issued, the consequential order to the status  
22 conference of 18 January. We were asking at that time that each  
23 defence team were to disclose to the Prosecution and file with  
24 the Court any identifying information which is available, and we  
16:32:22 25 went through the list, describing what needs and must be there,  
26 and this information, we stated, shall include family name, first  
27 name, nicknames, date and place of birth, name of parents,  
28 religion, occupation at the relevant time and so on. All of that  
29 was in the order at the time.





1           On 23 January, counsel for Fofana filed such information  
2 for all of their witnesses on the same date Court appointed  
3 counsel for Kondewa filed that information for only 10 of their  
4 proposed witnesses. On 14 March, pursuant to the Chamber's  
16:33:07 5 sitting order of 3 March, they filed such information for the  
6 rest of their witnesses. Court appointed counsel for Norman have  
7 filed such information for their first 16 witnesses only and not  
8 for the remaining proposed witnesses and indicated on their list  
9 that they would subsequently file the identifying information for  
16:33:26 10 the rest of the witnesses as soon as the information becomes  
11 available. This is a long time ago.

12           Despite the initial order of 18 January 2006 and the  
13 subsequent order of 3 March, reiterating counsel's obligation to  
14 ensure that timely compliance with the Chamber's order in order  
16:33:43 15 to avoid any further delays, none of such requested information  
16 for the rest of your witnesses has been filed with the Court to  
17 date. I wish to remind you, Mr Jabbi, that court orders must be  
18 complied with. It's not a question of choice, it's an order and  
19 must be complied with unless you seek leave of non-compliance for  
16:34:07 20 any specific reason. As I say, the order of January 2006 has not  
21 been complied with, nor -- not fully complied with, nor the order  
22 of 3 March. So this is information that is requested to be  
23 provided to the Prosecution and to the Chamber as well.

24           MR JABBI: Yes, My Lord. We're sorry that we have not  
16:34:35 25 fully complied with this order. It is not a deliberate  
26 oversight. It's because of the difficulties of contact with the  
27 respective witnesses in their respective homes. However, a lot  
28 of that information has already been collected and will be filed  
29 very soon.



1           PRESIDING JUDGE: How soon?

2           MR JABBI: Within a few days, My Lord.

3           PRESIDING JUDGE: Thank you. Now I would like to look into  
4 the issue of agreed facts and admissions. As was noted again by  
16:35:27 5 the Prosecutor Mr de Silva, and as was stated as well when  
6 witnesses were giving evidence in that last session, there is  
7 information that there are now facts and issues that seem to be  
8 of no dispute at all. The Prosecution has repeated that they are  
9 prepared to admit some of these issues or matters or facts,  
16:35:56 10 whatever it may be. I can only ask that there be discussions and  
11 co-operation between the parties.

12           I urge you, Dr Jabbi, to meet with the Prosecution and try  
13 to see with them what it is there is agreement upon so we can  
14 dispense with, not only unnecessary repetition, but simply with  
16:36:21 15 information that is of no issue any more. Therefore, it can only  
16 assist the Court in coming to an expeditious decision on all of  
17 these matters in the future. Unnecessary repetition or evidence  
18 that is absolutely of no dispute and admitted, as such, should be  
19 dispensed with. I will come to you, Mr Prosecutor.

16:36:45 20           I will not issue any order on that in this respect but  
21 simply ask that there shall be greater co-operation. The  
22 Prosecution has clearly stated they're prepared to make these  
23 admissions, but there's got to be negotiations and discussions  
24 between the two parties. It cannot be coming only from the  
16:37:09 25 Prosecution. If you have issues that you intend to call  
26 witnesses to establish and it is not disputed, Dr Jabbi, then the  
27 Court should not be asked to listen to this evidence when the  
28 Prosecution is prepared to make admissions about that. You wish  
29 to comment on that before I ask the Prosecution? I'll come to



1 you. Dr Jabbi?

2 MR JABBI: My Lord, I can only say that our previous  
3 inability to supply or notify any agreed facts or issues arose  
4 from the general problem with witnesses and we are trying to  
16:38:02 5 resolve that issue. We will be in a much better position to  
6 anticipate some of those issues and we would discuss with the  
7 Prosecution and other defence teams from time to time those  
8 issues that we may need to agree upon.

9 PRESIDING JUDGE: Thank you, Dr Jabbi. I would like to  
16:38:30 10 remind the parties that the Chamber has issued an order and it's  
11 called an order on co-operation between the parties. We issued  
12 that order on 3 November 2004. The parties were ordered "to  
13 submit a status report to the Trial Chamber on the progress made  
14 at least on the last day of every trial session and this until  
16:38:55 15 further notice by the Trial Chamber."

16 The Chamber notes that the last status report submitted by  
17 the parties was at the end of the third session of the CDF trial  
18 on 15 March 2005 and that since then no other status report was  
19 ever filed by any of the parties. Simply because that so far the  
16:39:18 20 parties have failed to achieve any agreement on any points of law  
21 or fact, the Chamber also recalls that the Prosecution again, as  
22 I have stated on several occasions, that they would not dispute  
23 one or more of the issues or the fact that the Defence is raising  
24 in their case. I would like to know first why this order has not  
16:39:42 25 been complied with by all parties since, as I said, the session  
26 of 15 March is the last time we have seen any such report.

27 MR MARGAI: My Lord, may I be heard on that?

28 PRESIDING JUDGE: Yes, Mr Margai.

29 MR MARGAI: Admission of facts is reciprocal and I would



1 say more so from the Prosecution's point of view. We would  
2 expect that the Defence is merely reacting to allegations brought  
3 forward by the Prosecution and, that being so, I would have  
4 thought that the Prosecution, being in control of their case, to  
16:40:34 5 which we as a defence team react, should take the initiative to  
6 let us know in writing what facts as contained within their  
7 knowledge affecting the accused persons are admitted. I might  
8 here say that admissions of fact are not just confined to  
9 out-of-court admissions. Even in court admissions of facts could  
16:41:02 10 be made, i.e., when the Chief Prosecutor told this Court after  
11 Peter Penfold testified that he agreed with 99 per cent of what  
12 Peter Penfold said and, according to the Court record, he  
13 cross-examined for two hours plus. I wonder how long he would  
14 have cross-examined if he had not admitted 99.9 percent of what  
16:41:31 15 was said.

16 In other words, what I'm saying is that where he himself  
17 listening to the evidence convinces himself of the truthfulness  
18 of what is said by that witness, I could easily get up and say  
19 that, My Lord, I am not going to cross-examine that witness  
16:41:53 20 because I agree with all what he has said. I mean, that is the  
21 sort of candour we would expect from both sides. But where I  
22 have said that I agree 99.9 percent and I take two hours plus to  
23 cross-examine, obviously if I do not agree with what was said, I  
24 would take perhaps a week or more to cross-examine. That's all I  
16:42:19 25 wish to say.

26 PRESIDING JUDGE: I will come to you, Mr Prosecutor, now.

27 MR De SILVA: The answer to my learned friend Mr Margai's  
28 riposte is very easy. Your Lordships know that Your Lordships  
29 had to intervene at a certain moment when Mr Penfold went over





1 the top. I never saw Mr Penfold's witness statement. I don't  
2 know whether what he said in the witness box corresponded to his  
3 statement. All I am suggesting is that if we saw his statement,  
4 we would probably have admitted it. But there were certain  
16:43:00 5 things he said which we took the view did not indicate that he  
6 was a wholly unbiased witness. It was for that purpose that that  
7 cross-examination was embarked upon.

8 Indeed, when I indicated to Your Lordship that so far as  
9 General Richards's evidence was concerned, we accept that. Had  
16:43:25 10 we seen his statement -- the reason why I cross-examined him was  
11 that it turned out that his evidence was not entirely consistent  
12 with the statement he made, and that's why I asked for his  
13 statement and that is why the cross-examination took place.

14 So, My Lord, so far as the matter raised by my learned  
16:43:43 15 friend Mr Margai is concerned that the onus is all on the  
16 Prosecution, I'm afraid that is not so. Your Lordships have  
17 found that there is a prima facie case for these defendants to  
18 answer. These defendants know what their defence is. We don't  
19 know with certainty till they give evidence in some cases what  
16:44:10 20 their defence is. We now know what Chief Norman's evidence is  
21 and what his defence is. If the Defence do as the Prosecution  
22 did and supply us with a written list of admissions as to whether  
23 we could make them in whole, or in part, or whether we disagree,  
24 we will do that. We will do that.

16:44:39 25 I'm afraid, My Lord, leaving it for discussions to take  
26 place on a friendly basis so that some sort of consensus can be  
27 achieved at the end of the day has not worked and it is for that  
28 reason that I submit in the same way as the Prosecution was, I  
29 hope, responsible enough to supply the Defence with a written



1 list of admissions, that the Defence can be asked to do so.  
2 Because this Court, at some point, can look at what the Defence  
3 were seeking admitted and can judge whether the response of the  
4 Prosecution was reasonable or not.

16:45:30 5 My Lord, it is most essential that these matters be in  
6 writing and, in our respectful submission, should not be left to  
7 discussions. However appealing that may seem, we would submit  
8 that there is no reason why, in the interests of clarity, and in  
9 the interests of proceeding in a businesslike manner, that the  
16:46:03 10 admissions sought by the Defence should not be in writing and  
11 accompanied by the witness statements. Because both taken  
12 together would enable the Prosecution to make the necessary  
13 admissions and, no doubt, it would lead to the lack of necessity  
14 to call live witnesses.

16:46:40 15 PRESIDING JUDGE: Thank you, Mr Prosecutor. Under  
16 Rule 73ter (b), the Chamber or a judge, as designated among its  
17 members, may order the Defence before the commencement of its  
18 case but after the close of the case for the Prosecution, to file  
19 the following:

16:47:45 20 "(i) admissions by the parties and a statement of other  
21 matters which are not in dispute."

22 I just want to remind counsel for the three accused that  
23 this is provided for in the Rules of Procedure and Evidence and  
24 that we will issue such an order that it be done as soon as  
16:48:12 25 possible because we need to see what it is that is being admitted  
26 and the matters that are not in dispute by the parties.  
27 Therefore, we'll ask that this be done as soon as possible.

28 I only have a few more issues on my agenda. The other one  
29 is expert reports. At the pre-defence conference on 11 January



1 2006, counsel for the first accused reported that no expert  
2 witness will be called on behalf of the first accused and that  
3 should the first accused change his position in this respect, he  
4 would seek leave to add such a witness to their witness list. So  
16:49:12 5 we've not been informed of any such changes. Can we take it that  
6 there's been no changes and there is no intent on the part of the  
7 first accused to call any expert? Dr Jabbi.

8 MR JABBI: My Lord, there is likely to be a change in this  
9 regard. However, communication with the person intended to be so  
16:49:37 10 considered has not yet been completed. I do not want, at this  
11 stage, to make a definitive statement in that regard but we are  
12 looking at the possibility of inviting somebody as an expert  
13 witness.

14 PRESIDING JUDGE: Thank you. Counsel for the second  
16:50:05 15 accused, you have filed a list of expert witnesses containing the  
16 names of one military expert and one anthropologist and there was  
17 some preliminary indication of when their reports would be ready  
18 and made available to the Prosecution. At the pre-defence  
19 conference you had indicated, or your team had indicated, that  
16:50:28 20 that should be done fairly quickly. Are the reports ready; have  
21 they been filed; and have copies been provided to the other  
22 parties?

23 MR BOCKARIE: No, Your Honour. We're still working on it,  
24 Your Honour.

16:50:44 25 PRESIDING JUDGE: When are these reports expected to be  
26 completed?

27 MR BOCKARIE: Your Honour, as I said, we're still working  
28 on it. I will make them available when they're completed. The  
29 experts are still working on it.



1           PRESIDING JUDGE: In early January when we talked about  
2 that, there was indication that these reports were almost ready  
3 at the time and we are now --

4           MR BOCKARIE: As I'm speaking now, we are in the final  
16:51:17 5 stages of those reports.

6           PRESIDING JUDGE: I just want to remind you again that this  
7 is a matter that I know we had the same difficulties with the  
8 Prosecution when they were trying to produce their reports as  
9 well. It's always difficult to get this in a timely way, but I  
16:51:38 10 can only urge upon you as well to seek to have these reports  
11 completed as soon as possible and feasible, and that you are to  
12 file these reports and certainly serve copies of these reports on  
13 the Prosecution as well.

14           MR BOCKARIE: We will, Your Honour.

16:51:53 15           PRESIDING JUDGE: Thank you, Mr Bockarie.

16           MR BOCKARIE: Thank you.

17           PRESIDING JUDGE: Mr Margai.

18           MR MARGAI: My Lord, with regard to the military expert who  
19 is common to the second and third accused, we probably may not  
16:52:14 20 proceed with having him as a witness, depending on what happens  
21 in the case of the second accused.

22           PRESIDING JUDGE: Meaning you would not use that expert as  
23 an expert for the third accused?

24           MR MARGAI: No, not calling him as an expert. We may just  
16:52:35 25 put our case across in --

26           PRESIDING JUDGE: In cross-examination.

27           MR MARGAI: In cross-examination. With regard to the  
28 anthropologist, we are in discussion with him. He has submitted  
29 a preliminary report and we need to have one more discussion with





1 him to finalise our position as to the need to call him or not.

2 PRESIDING JUDGE: I see.

3 MR MARGAI: We expect to do that hopefully by some time  
4 next week.

16:53:03 5 PRESIDING JUDGE: When you say to do that, Mr Margai, to  
6 have examined and discussed his preliminary report and, from  
7 that, you'll determine if you are to call him or not?

8 MR MARGAI: That is correct, My Lord.

9 PRESIDING JUDGE: If you are to call him, how soon after  
16:53:18 10 that can we expect a report from him or her?

11 MR MARGAI: Well, we expect that after our final discussion  
12 with him next week, should we decide to call him as a witness,  
13 days after that, that will be communicated to the Court as well  
14 as to our colleagues.

16:53:41 15 PRESIDING JUDGE: Good. Thank you very much, Mr Margai.  
16 That concludes my list for the time being of the items and issues  
17 that I wanted to discuss today. I would like to ask you,  
18 Dr Jabbi, if you have any other matter that you would like to  
19 raise at this particular moment?

16:54:05 20 MR JABBI: My Lord, the question of the subpoena for our  
21 second witness on the original list still needs to be --

22 PRESIDING JUDGE: Is still outstanding.

23 MR JABBI: Yes, My Lord. I don't know if the Court would  
24 like to give any indication in that regard.

16:54:33 25 PRESIDING JUDGE: It's very difficult at this moment to  
26 give you any indication. As you know, we are immersed in trial  
27 with RUF these days, so there's little time available to us at  
28 this moment to deal with that. We're dealing as best as we can  
29 to dispose of that and, hopefully, that will be done before we



1 embark into the next session. That's the best estimate I can  
2 give you at this moment.

3 MR JABBI: My Lord, our order of witnesses is likely to be  
4 affected by that and that is one of the issues that may lead to  
16:55:09 5 re-ordering or seeking leave to re-order depending on the time we  
6 get specific information. And of course also those particulars  
7 about the nature of the evidence he's likely to give.

8 PRESIDING JUDGE: Very well. Mr Bockarie?

9 MR BOCKARIE: None, Your Honour.

16:55:29 10 PRESIDING JUDGE: Mr Margai?

11 MR MARGAI: None, My Lord.

12 PRESIDING JUDGE: Mr Prosecutor?

13 MR De SILVA: No, My Lord.

14 PRESIDING JUDGE: Thank you. So before concluding,  
16:55:47 15 Dr Jabbi, I can only ask you again to give serious consideration  
16 to the reduction of your witness list. I will look very  
17 cautiously and seriously as to the dates that we'll be  
18 prescribing for some of the documentation to be filed. But, as I  
19 said, one of the difficulties at this time as well is the time  
16:56:11 20 available. The whole Court is in recess as of 12th April, which  
21 is the Monday, which means in practical terms from the Friday  
22 preceding this. Therefore it gives us little leeway in this  
23 respect because essentially recess means that there's no filing  
24 of documents. Therefore it means between 10th and 24th April  
16:56:39 25 there's little judicial activities taking place.

26 So, having said that, we will bear that in mind when we  
27 give these directions and these orders and I ask you to bear that  
28 in mind as well, because our decision should not come as a full  
29 and complete surprise to you.



1           MR JABBI: Thank you, My Lord. As we said earlier on, we  
2 are entirely in your hands but we thank you to consider the  
3 submissions we have made. Thank you.

4           PRESIDING JUDGE: Thank you very much. So that concludes  
16:57:09 5 this status conference. Thank you very much.

6                           [Whereupon the status conference adjourned at  
7                           4.57 p.m.]

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