

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

WEDNESDAY, 05 APRIL 2006  
2.54 p.m.  
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding
For Chambers:	Ms Roza Salibekova Ms Anna Matas
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr James C Johnson Mr Joseph Kamara
For the Principal Defender:	NO APPEARANCE
For the accused Sam Hinga Norman:	Dr Bu-Buakei Jabbi Mr Aluseine Sesay Mr Kingsley Belle (legal assistant)
For the accused Moinina Fofana:	Mr Lansana Dumbuya
For the accused Allieu Kondewa:	Mr Charles Margai Mr Yada Williams Mr Martin Michael (legal assistant)

1 [CDF05APR06A - SV]  
2 Wednesday, 05 April 2006  
3 [Status conference]  
4 [Open session]  
14:54:19 5 [The accused not present]  
6 [Upon commencing at 2.54 p.m.]  
7 PRESIDING JUDGE: Good afternoon, counsel. Can I ask first  
8 for representation. First accused.  
9 MR JABBI: Yes, My Lord, good afternoon. For the first  
14:55:33 10 accused, Dr Bu-Buakei Jabbi and Mr Aluseine Sesay.  
11 PRESIDING JUDGE: Thank you. For the second accused?  
12 MR DUMBUYA: Your Honour, for the second accused, Lansana  
13 Dumbuya, duty counsel for the CDF, acting under the instruction  
14 of Mr Bockarie.  
14:55:56 15 PRESIDING JUDGE: So you're in court today as the  
16 representative of the second accused having been requested by  
17 counsel for the second accused?  
18 MR DUMBUYA: Yes, Your Honour.  
19 PRESIDING JUDGE: Thank you. Mr Margai.  
14:56:11 20 MR MARGAI: May it please you My Lord. Good afternoon.  
21 Margai, Williams and Michael for the third accused.  
22 PRESIDING JUDGE: For the Prosecution.  
23 MR KAMARA: Good afternoon, My Lord. Jim Johnson, Joseph  
24 Kamara and Miatta Samba.  
14:56:34 25 PRESIDING JUDGE: Thank you. The purpose of this  
26 conference this afternoon is follow-up to the last status  
27 conference that was held on 22nd March 2006 where I did discuss  
28 with the parties a number of witness-related issues. In  
29 particular, Witness lists of the first accused. Thereafter on



1 the 23rd March 2006 the Chamber issued its consequential order to  
2 the status conference of 22 March ordering the parties to file a  
3 number of materials by 3rd April 2006. This status conference is  
4 held this afternoon pursuant to Rule 65bis of the Rules of  
14:57:40 5 Procedure and Evidence, considering that it is in the interests  
6 of justice to hold such a status conference before the start of  
7 the April recess which is to begin on 10th April 2006. And this  
8 in order to review the materials filed by court-appointed counsel  
9 for the first accused and by other parties on 3rd April 2006 for  
14:58:00 10 their compliance with the Chamber's order of 23rd March 2006 and  
11 to discuss issues which may contribute to the timely start and  
12 expeditious running of the seventh trial session and other  
13 matters as may be brought by the parties.

14 So I propose to go through the list of its orders to note  
14:58:25 15 the parties compliance or part compliance, as the case may be.

16 Again, Mr Jabbi, it is not because I have anything special  
17 about you and/or the first accused. It is only that you happen  
18 to be counsel for the first accused. He is the first one to  
19 proceed and I know last time most of my comments were directed to  
14:58:54 20 you and again today will be directed to you. So we have a clear  
21 understanding of where we are at this particular moment and where  
22 we're moving. So if my comments are more often directed to you  
23 than any others, it's simply because of the nature of the  
24 procedure and the fact that you are acting for the first accused  
14:59:13 25 who is the first one to call witnesses.

26 MR JABBI: Indeed, My Lord. That is perfectly understood.

27 PRESIDING JUDGE: Thank you. Looking at the re-filed  
28 witness lists of the first accused, the Chamber ordered  
29 court-appointed counsel for the first accused to "re-file their



1 reduced witness list bearing in mind the considerations of  
2 avoiding repetitive evidence and calling an excessive number of  
3 witnesses to prove the same fact or calling witnesses in relation  
4 to the crimes or events which do not form part of the indictment  
15:00:01 5 or are outside the time frame of the indictment, and this by 3rd  
6 April 2006 at 1.00.

7 The Chamber further ordered that the re-filed reduced  
8 witness list was to include expanded summaries of the  
9 witnesses -- of the witnesses' testimonies which shall contain  
15:00:24 10 detailed summaries of the incidents and/or events which a witness  
11 is called to testify upon, exact location and date, if available,  
12 of these alleged incidents and/or events, position and/or role of  
13 a witness in relation to the crimes charged in the indictment and  
14 the nexus between the accused and the proposed testimony of a  
15:00:48 15 witness. The Chamber also ordered court-appointed counsel for  
16 the first accused that in their process of reducing their witness  
17 list to reassess the estimated length of examination of their  
18 witnesses and include, as appropriate, such changes in the  
19 re-filed, reduced witness list, this by 3rd April 2006 at 1.00.

15:01:18 20 The Chamber acknowledges the receipt of the Norman filing  
21 an application following consequential order to the status  
22 conference of 22 March 2006 referred to as "the Norman filings"  
23 on 3rd April 2006. This filing includes a re-filed witness list  
24 which now consists of a core list filed as annex A and a backup  
15:01:44 25 list filed as annex B. Annex A lists 27 witnesses and annex B  
26 lists 51 witnesses. Both lists incorporate eight additional  
27 witnesses for whom leave was sought from the Chamber which I will  
28 be touching upon later at this conference. Counsel submits that  
29 annex A "now contains that proposed maximum total number of



1 witnesses intended to be called to testify for Norman in all  
2 remaining trial sessions of the CDF subject to further reduction  
3 or application for further extension as may be found strictly  
4 necessary." And this is a quotation from your submission,  
15:02:34 5 Mr Counsel for the first accused.

6 Counsel further submitted that these 27 witnesses are in  
7 addition to the eight witnesses that have already testified,  
8 bringing the intended total number of witnesses to 35 and that is  
9 for the first accused.

15:02:56 10 I must state very clearly here that we note positively  
11 counsel's compliance with the Chamber's orders and wishes to  
12 clarify, however, one point as regards the back-up list as filed  
13 in annex B. Counsel submit that it is considered, and I quote  
14 here again from your submission from your filing, that "it is  
15:03:20 15 considered prudent at this stage to retain a tentative back-up  
16 list of a further 51 witnesses as a pool to which resort may or  
17 may not be made and as may become strictly necessary in the  
18 interests of the Defence of Norman."

19 Counsel further submits that they will endeavour to do its  
15:03:48 20 utmost to dispense with in the actual testimonies for Norman by  
21 the time annex A is exhausted. The Chamber would like to remind  
22 counsel that according to the practice set by this Chamber, a  
23 back-up witness is "designed to make up list for the deficiency  
24 in a core list. That is to say that counsel may call a witness  
15:04:15 25 from the back-up list only if some of the core witnesses are not  
26 available to testify." I would like to know if counsel for the  
27 first accused does have the same understanding as regards the  
28 procedure for calling witnesses from the back-up list. And I  
29 should say when I said this is the understanding of the Court,





1 this is a ruling that we have given in the past in this respect  
2 for witnesses being called by the Prosecution. So it's just to  
3 avoid any possible misunderstanding at this particular time. Any  
4 comment, Dr Jabbi?

15:04:52 5 MR JABBI: Yes, My Lord. That is our basic understanding  
6 for the relevance of the core list and the back-up list.  
7 However, My Lord, we will continue to assess the evidence as  
8 given and we believe that if it is assessed that some relevant  
9 matter needs to be attended to, even as we go through the core,  
15:05:29 10 list and that this may be supplied from the back-up list, we may  
11 make the relevant application to the Court if it is indeed a  
12 necessary aspect of the Defence.

13 PRESIDING JUDGE: This has to be very clearly understood  
14 and I hear what you're saying and obviously we will hear whatever  
15:05:51 15 application you may make at that particular time. As you know,  
16 it is always possible, although we don't invite nor encourage the  
17 addition of new witnesses as we proceed and move along. But,  
18 yes, it's always possible to go that way should it become  
19 necessary.

15:06:07 20 MR JABBI: Thank you very much, My Lord.

21 PRESIDING JUDGE: So the fact that you produce a core list  
22 of witnesses does not mean that, should circumstances dictate,  
23 that you may not seek permission to add to it.

24 MR JABBI: We certainly will, but we hope we don't.

15:06:22 25 PRESIDING JUDGE: We hope you don't have, but it is  
26 possible should the need arise.

27 MR JABBI: Yes, indeed, My Lord.

28 PRESIDING JUDGE: Thank you. So there is a clear and  
29 common understanding of the meaning of the back-up and core list.



1 Thank you.

2 The Chamber notes generally that re-filed summaries do  
3 provide more details in compliance with the Chamber's order.  
4 However, seven out of the 27 summaries have no additional  
15:06:51 5 information. Counsel noted in their submission that the  
6 summaries of the first witness and the one of witness number 21  
7 had not been updated. No explanation was provided for the five  
8 additional witnesses. Those that were on the list that you were  
9 seeking to add to -- five of the witnesses that were on the list  
15:07:28 10 that you had filed with the Court seeking to -- that list to be  
11 added to your list, but for five of these witnesses there is  
12 absolutely no information provided as to what they will be  
13 testifying about. Do you have any comment as to that, Dr Jabbi?

14 MR JABBI: My Lord, we are, of course, dealing with the  
15:07:55 15 statements we have of the various witnesses. We did not consider  
16 that more could be added with respect to those statements and we  
17 were not in a position to access those particular witnesses all  
18 over again to see whether there was material for amplifying the  
19 existing summary. We, however, note that, as in the case of item  
15:08:35 20 number 1 and item 21 on core list A --

21 PRESIDING JUDGE: Yes.

22 MR JABBI: -- that circumstances may well make it possible  
23 for us to supply further expanded summaries as may become  
24 necessary and when indeed we do -- even with those that we have  
15:08:59 25 had amplified evidence for, if there is further material we will  
26 still try and inform the Court accordingly. But we thought, in  
27 view of the statements that we do have, the expanded summaries or  
28 all the summaries given are as much as we could give from the  
29 material available.



1           PRESIDING JUDGE: But again, this is -- I mean, you will  
2 have between now obviously and the end of the Easter recess to  
3 complete that data because this is quite essential and  
4 fundamental that this information be provided the soonest. I  
15:09:48 5 understand that you may still be running into some difficulties,  
6 but to avoid any difficulties when we proceed to hear your next  
7 list of witnesses, Dr Jabbi, I can only ask that you do the  
8 utmost to provide additional information, all that additional  
9 information that is missing for these witnesses. Some of them,  
15:10:09 10 in fact, from these witnesses where we have statements  
11 information is missing, five of them were already on your  
12 previous list and it was limited information, and now, when we  
13 look at the core witness list - and we'll go to that in a short  
14 while - I mean, there's still information that is completely  
15:10:26 15 missing. And, for example, the third witness Mustapha Lumeh and  
16 he's now listed as number 3 on your list and presumably you must  
17 have been in touch with him or you should be in touch with him if  
18 you intend to call him as your third witness on your list, now on  
19 your new list not your old list. But we will get to that part in  
15:10:54 20 a short while because I want to review that with you and get some  
21 additional information from you if I can. Thank you, Dr Jabbi.

22           MR JABBI: Thank you, My Lord.

23           PRESIDING JUDGE: We have observed certain discrepancies  
24 among the witness summaries that have been submitted by yourself  
15:11:09 25 on behalf of the first accused, that is between 23rd January,  
26 your list submitted, 14th March and 3rd April 2006. For  
27 instance, in some cases information that was deleted from the  
28 summary submitted in January when they were resubmitted in March  
29 has been restored to the summaries submitted in April.



1 Similarly, in some cases information that was added in March has  
2 now been dropped in April. So is it an intentional move on the  
3 part -- on your part for the first accused because you're  
4 intending to reduce substantially the scope of the examination of  
15:11:55 5 some of these witnesses or it's an oversight or it's simply a  
6 misconception of what you're intending to do with these  
7 witnesses? So again it's not to be critical of what has been  
8 done, it's only to make sure that we have a clear understanding  
9 of what it is. Obviously, I can give it the most positive  
15:12:13 10 approach to say that because you have reassessed the evidence of  
11 that witness, the evidence will now testify in a more limited  
12 fashion and therefore the information that was there before is  
13 not all required. But I'd like to hear from you on that,  
14 Dr Jabbi.

15:12:35 15 MR JABBI: My Lord, if you may kindly proceed with the  
16 specific items that your attention is dealing with at present.

17 PRESIDING JUDGE: I can give you some example of that if  
18 you want to.

19 MR JABBI: Yes, My Lord.

15:12:49 20 PRESIDING JUDGE: One is the new witness 15, which was 42  
21 on the previous list, Mohamed Bonie Koroma. So information that  
22 was deleted from the January summary, that was deleted in March,  
23 and now restored to the April summary. These items, the seizure  
24 of a large quantity of arms, ammunition and food from the juntas.  
15:13:15 25 How civilians were treated by Kamajors in Kenema. And for the  
26 same witness again, the following items were added in March, but  
27 now dropped in the April submission: "How he went to  
28 Bo-Waterside in response to the call of Eddie Massallay to report  
29 there, saw office which was full of supplies that the President





1 provided to fight against the AFRC." I mean I am just quoting  
2 from your submission at the time. "How those civilians were  
3 killed (when SS Camp was captured) or any houses burned by the  
4 Kamajors; his participation in the 1998 attack on Kenema that he  
15:13:58 5 witnessed; arrival of AFRC forces on 16th February; arrival of  
6 ECOMOG three days later." This has been dropped from the April  
7 submission. As I say, it may be that you feel that this is not  
8 required and therefore his evidence will be more curtailed in  
9 this respect. But, as it is, because obviously the Prosecution  
15:14:20 10 is entitled to assume that these are matters that this witness  
11 will not testify about any more --

12 MR JABBI: My Lord, in the case of --

13 PRESIDING JUDGE: And we have the status conference to try  
14 to clarify these matters so there is no confusion and no  
15:14:36 15 misunderstanding.

16 MR JABBI: Yes. In the case of this particular witness, I  
17 believe it is an oversight possibly at the time of computerising  
18 the information.

19 PRESIDING JUDGE: So the intent in this case was not to  
15:14:56 20 reduce at all the scope of his evidence.

21 MR JABBI: Not at all, My Lord.

22 PRESIDING JUDGE: So what I have just listed that has been  
23 dropped from April, for all intents and purposes, should be seen  
24 and perceived and considered to be still part of what this  
15:15:10 25 witness will testify about? Am I putting words in your mouth at  
26 this particular moment that you didn't intend to say?

27 MR JABBI: My Lord, you are saying what is the true  
28 reflection of the situation, My Lord.

29 PRESIDING JUDGE: Well, there is the same scenario about



1 now 18, former 51st witness, Chief Lahai Koroma. There is now  
2 additional information in the April summary that was not  
3 contained in either January or March summaries. However, the  
4 following items were added in March but dropped in April: That  
15:15:53 5 he will be talking about testifying about "taking over SS Camp";  
6 he was under command of ECOMOG up to the signing of the Lome  
7 agreement and that they were disarmed. So this is no more part  
8 of his summary.

9 MR JABBI: My Lord, so far as I can remember, it is the  
15:16:21 10 same situation there. It's an oversight. I don't know how it  
11 came about.

12 PRESIDING JUDGE: Well, I can only ask you to look at that  
13 very carefully and provide notices in the coming days on that  
14 because I can highlight to you that I have just mentioned now,  
15:16:40 15 new 15 that we've been through, new 18, new 20, Murray Konneh,  
16 some information was dropped in April and new 23, Hassan Feika  
17 which was 75 in the past.

18 The following items were added in March, but dropped in  
19 April: "A meeting in June 1997 with ECOMOG, Eddie Massallay and  
15:17:07 20 Hinga Norman with ECOMOG providing advice on how best to organise  
21 themselves"; "how he carried a letter to ECOMOG commanders in  
22 Gondema with the message that the Kabbah government was ready to  
23 support the Kamajors; how arms were collected from Bo-Waterside;  
24 and how he went to ECOMOG to tell them that he was ready to take  
15:17:29 25 the Kamajor" and so on; and "how Bandajuma Sowa Chiefdom was  
26 captured and 15 SSD and 22 soldiers were captured in November  
27 '97" and "request from Joe Temidy to assist with the capture of  
28 Koribundo". So, this is not there any more.

29 As I say, maybe it was by oversight, but if it is not the



1 case and it is because you intended not to cover these issues  
2 with these particular witness, again review these matters very  
3 carefully and make a determination of what it is and if is your  
4 intent to maintain it, please notify the parties accordingly.

15:18:10 5 MR JABBI: We will do so accordingly. Hopefully before  
6 Friday, My Lord.

7 PRESIDING JUDGE: Okay. As I say, the witnesses that I  
8 have underlined are those that we clearly observed. That is 15,  
9 18, 20 and 23 on your new witness list.

15:18:43 10 MR JABBI: Thank you, My Lord.

11 PRESIDING JUDGE: We also would like to observe that  
12 summaries of the some of the witnesses listed on the core list,  
13 that is your new list, still contain references to matters of  
14 crimes or events which do not form part of the indictment and are  
15:18:59 15 outside the time frame of the indictment and therefore, Dr Jabbi,  
16 this is evidence that would appear on the face of it not to be  
17 relevant and we had previously ordered that any such information  
18 or evidence be deleted here from your summaries and certainly  
19 from the evidence you intend to lead with these witnesses.

15:19:22 20 MR JABBI: My Lord, the assurance we will give is that  
21 insofar as the testimony in court is concerned, all of those  
22 elements will be eliminated. But there was a question of  
23 cohesiveness that necessitated retaining some of the background  
24 material.

15:19:43 25 PRESIDING JUDGE: Because some of your witnesses, for  
26 example, are speaking about events that have taken place prior to  
27 1996, in '94 and '91. As background information that can be  
28 understood, but as we have discussed at the previous status  
29 conference, I would suggest to you that as background information



1 we have enough now, we don't need to repeat background  
2 information any more. What we need now is that there is focus on  
3 the core issues that are in dispute and not background  
4 information. That's why I say, I mean, anything before 1996  
15:20:17 5 unless it is absolutely essential to give particular meaning to  
6 the evidence of that witness, otherwise it is outside the scope  
7 and we don't need to hear this.

8 MR JABBI: We will take that into due account, but we will  
9 not unduly repeat background material in the testimony.

15:20:36 10 PRESIDING JUDGE: And that's why I say. So you're being  
11 warned if it is does happen, we will not hesitate to intervene.

12 MR JABBI: Indeed, certainly, My Lord.

13 PRESIDING JUDGE: And remind you of our discussion in  
14 particular today.

15:20:49 15 MR JABBI: Thank you, My Lord.

16 PRESIDING JUDGE: Mr Prosecutor, I didn't ask you if you  
17 have any comment. Do you have any comment at this particular  
18 moment? I know normally you are not shy to intervene if you feel  
19 the necessity to do so.

15:21:12 20 MR JOHNSON: Thank you, Your Honour. Yeah, we certainly  
21 could offer a few comments on summaries. I apologise if it's --

22 PRESIDING JUDGE: The first issue that I was to review was  
23 the witness list that has been -- the re-filed witness list and  
24 reduced witnesses and so on and that's why I went through this  
15:21:28 25 exercise with the counsel for the first accused. But before we  
26 move to another matter on my agenda, so I'm just asking you if  
27 you do have comments.

28 MR JOHNSON: Thank you, Your Honour. I don't know if I'll  
29 say anything that we have not said before, but if you would





1 please indulge me I will go through a --

2 PRESIDING JUDGE: If it is to say that you would rather  
3 have statements, we are not prepared to issue this at this  
4 particular moment.

15:21:54 5 MR JOHNSON: Okay, I was going to get to that, but I won't.  
6 Let me then address it from a few other angles, please, Your  
7 Honour and bear with me for just a minute.

8 Of course, you have certainly highlighted the same concerns  
9 that we had with the summaries and this, of course, is the fifth  
10 time I believe that summaries have been ordered or at least the  
11 fourth time that they have been ordered to be improved and they  
12 haven't been. I think that even in the case in this particular  
13 case where they did expand on the summaries over the last filing,  
14 I still think that in most instances they fall far short of what  
15:22:31 15 you have ordered and what in your order you have said and that  
16 detailed summaries of the incidents and/or events which the  
17 witness is called upon to testify upon, exact location and date  
18 and so on. So even where they have expanded, we believe they're  
19 grossly short. You have, of course, pointed out that summaries,  
15:22:50 20 things are dropping off, things are coming back on and what their  
21 witness is really going to testify to and, of course, we just  
22 don't know at this particular time. We often don't know if what  
23 the witness testimony is or is indeed not relevant or if possibly  
24 as we've said before if we could even agree to it and possibly  
15:23:12 25 eliminate the need for the witness to testify at all or at or  
26 even shorten what the witness needs to testify about and I think  
27 you gave a very, very good example on that. One summary  
28 references how civilians were treated. Well, if the next step  
29 was taken and said how the civilians were treated in the summary,



1 maybe we would agree to how the civilians were treated or maybe  
2 we would not. But the point being, based on what we have here,  
3 we are not in a position to agree or disagree with what's in the  
4 summaries in an attempt again to either, if we can agree to what  
15:23:45 5 the witness is testifying, as I said, maybe the witness would not  
6 have to testify at all or at least we could shorten the witness's  
7 testimony. So all I can say again is that the summaries are  
8 still deficient. We still believe that the summaries are in  
9 non-compliance with what you've ordered and as you're  
15:24:07 10 endeavouring to do, please that the summaries be improved upon  
11 and that we have a good indication and that we could indeed save  
12 time -- when we get to the witnesses testifying, we could save  
13 time at trial in needing to call upon the statements at trial or  
14 such as that or to deal with issues on is the witness testifying  
15:24:30 15 outside of the summary, did we have notice that the witness was  
16 going to testify along those lines and avoid the need for  
17 possible short recesses or adjournments at trial.

18 Again, we're just simply looking for ways that we can  
19 shorten the case and move this along as quickly as possible.

15:24:45 20 Thank you, Your Honour.

21 PRESIDING JUDGE: Thank you. Mr Margai, do you wish to  
22 comment? Sorry, I'll go to counsel for the second accused first.  
23 Do you wish to comment at all.

24 MR DUMBUYA: No, Your Honour.

15:24:59 25 PRESIDING JUDGE: Thank you. Mr Margai.

26 MR MARGAI: No comments, My Lord.

27 PRESIDING JUDGE: Thank you. We've taken notes of your  
28 comments, Mr Prosecutor, and we'll pursue the discussion and  
29 we'll see at the end of this exercise where we stand and where we



1 are.

2 The order that the Court issued was to file a list  
3 containing the order of the witnesses, this is the order issued  
4 to the counsel for the first accused, of their witnesses'  
15:25:47 5 appearance for the seventh session and this was to be done by 3rd  
6 April 2006 at 1.00 and further specified that "this list shall  
7 include references to the exhibits which counsel are intending to  
8 tender through a particular witness under order." The Chamber  
9 ordered that any deviation from this order shall be granted upon  
15:26:06 10 showing good cause by counsel and shall be communicated as soon  
11 as possible to all parties. The Chamber notes counsel's  
12 submission in this regard that annex A also proposes as listed  
13 therein the order of appearance of the Norman witnesses during  
14 the seventh trial session. If in actual fact all the said listed  
15:26:34 15 witnesses are not called during the seventh session, then it is  
16 hereby urged that the remaining list be deemed in advance to be  
17 the proposed order of appearance of the Norman witnesses in  
18 subsequent trial sessions subject to any application for  
19 alteration of number or sequence.

15:26:49 20 The Chamber wishes to clarify the submission that has been  
21 made by counsel. What is the exact meaning of that, Dr Jabbi, in  
22 that if the list of witnesses that you have submitted that you  
23 intend to call at this next session is not exhausted and you're  
24 saying, for example, there's five witnesses listed still  
15:27:14 25 remaining on that list, these five witnesses will be on the next  
26 witness list, being the first five of the next witness list for  
27 the next session?

28 MR JABBI: Yes, My Lord. Broadly the intention was not  
29 only to provide the order of appearances for the seventh session,



1 but to provide the order of appearances for all subsequent  
2 sessions so far as we can anticipate. Our core witness list,  
3 which is intended to be the total number of witnesses we may  
4 call, subject to any possible application, is intended to be in  
15:27:57 5 the order in which we wish to call them whenever the time falls  
6 due. We are aware that we were strictly required only to file  
7 the order of appearance in the seventh session and we have done  
8 that. But we think it is not impossible that we might call all  
9 those witnesses in the seventh session. But, of course, since we  
15:28:17 10 are not required to do that, if we do not call all of them, then  
11 our suggestion is that the order of appearance remains the same  
12 for transfer to the subsequent session.

13 PRESIDING JUDGE: What I would like to have some clear  
14 indication on your part is it does happen that a witness that you  
15:28:36 15 intend to call, for whatever reason, may not come any more  
16 because of sickness or whatever and let's say that witness is  
17 number 10 on your witness list, so that witness may or may not be  
18 able to attend the next session, or you may have to reshuffle  
19 your list to comply with the fact that we need to have witnesses  
15:28:58 20 in court. So given what you're proposing as the method that you  
21 would like to follow, if a witness that is on your list is not  
22 available or is not prepared to come to testify any more,  
23 whatever it may be, how do you do that then? Does that mean that  
24 you just go to the next witness on your list and that witness  
15:29:19 25 that has not appeared now may or may not appear for the next  
26 session?

27 MR JABBI: My Lord, it will of course depend upon the  
28 particular reasons why a witness is not appearing according to  
29 the core list. If, let us say, in the case of sickness and the





1 witness will only be available subsequently, then it will have to  
2 depend entirely on that and we'll need to inform the Court and  
3 seek the relevant authorisation. We cannot anticipate all of  
4 these problems as at now, although we can speculate about them  
15:30:04 5 and make the necessary application when the time arises. But we  
6 intend the order to be as we have presented and we hope that  
7 these problems will be very minimal in practice.

8 PRESIDING JUDGE: We hope so and I just want to ask you,  
9 Dr Jabbi, if you are made aware of any possible change in the  
15:30:27 10 order for reasons such as sickness of a witness that will change  
11 the order as such, that you notify the other parties soonest so  
12 they know that their next witness is not this one but will be  
13 another one because, I mean, it all has to do with the proper  
14 preparation of examination of witnesses by the other parties.

15:30:50 15 MR JABBI: There are only two cases in which we can, at  
16 this stage, speculate that possibility.

17 PRESIDING JUDGE: You may be in good health today but have  
18 a problem tomorrow. That's what I mean.

19 MR JABBI: Yes, My Lord. My Lord, we will take that as it  
15:31:06 20 comes, but we will give information to the Prosecution and the  
21 Court well in advance.

22 PRESIDING JUDGE: And the other parties, the other  
23 co-accused as well.

24 MR JABBI: Yes, My Lord.

15:31:17 25 PRESIDING JUDGE: I'm asking you, Dr Jabbi, to make sure  
26 that whenever there is a problem of that nature, as I say it may  
27 happen, somebody may be involved in an accident, whatever it may  
28 be, that you notify all the parties at the soonest that this  
29 witness --



1 MR JABBI: As soon as we know of such an event.

2 PRESIDING JUDGE: Obviously.

3 MR JABBI: Yes, My Lord.

4 PRESIDING JUDGE: Staying with this list of witnesses, you  
15:31:40 5 did not include in the list of witnesses' appearance the  
6 references to the exhibits which you intend to tender through  
7 these particular witnesses and this was requested by the Chamber  
8 in its order number 4. Do you have any explanation for this,  
9 what appears to be a non-compliance with that direction at that  
15:32:04 10 time? I'm talking here of the appearance list, as such, the  
11 order. Normally you asked to include with this whether any of  
12 these witnesses would tender -- if exhibits that you have -- that  
13 you're proposing to introduce, you were to list with that if any  
14 of these exhibits were to be introduced through one or more of  
15:32:30 15 these witnesses.

16 MR JABBI: My Lord, we have made indications in respect of  
17 item number 1 and item number 2 and item 21 -- in the case of  
18 item 21, My Lord, we have explained in the cover note the  
19 difficulty that we have had in contact with that witness. His  
15:33:25 20 state of health did not enable him to go to Abuja where we had  
21 certain materials that were necessary in making his statement.  
22 In fact, he could not move around. So we have not been able to  
23 be definite about the exhibits that will be tendered through him  
24 and we can only hope that the Court will be considerate when we  
15:34:02 25 clarify that situation and we seek to have leave to do so.

26 PRESIDING JUDGE: But you seem to be saying that, if I  
27 follow what you're suggesting, it would appear that exhibits will  
28 be introduced only through the first and the second witness and  
29 the witness number 21 now, but in other cases you will not be



1 tendering any exhibit through the other witnesses.

2 MR JABBI: My Lord, may I defer this particular item to  
3 slightly later on and consult.

4 PRESIDING JUDGE: Very well.

15:34:47 5 MR JABBI: Thank you very much, My Lord.

6 PRESIDING JUDGE: But look at that very closely because it  
7 would appear that there is at least a non-compliance or confusion  
8 as to what was or is required. It would not appear to this  
9 Chamber that from your filing that you have listed the exhibits  
10 that are to -- that you will seek to introduce with any  
11 particular witness other than 1 and 2.

12 MR JABBI: I will just consult briefly and I will make  
13 clarification, My Lord.

14 PRESIDING JUDGE: Yes, Dr Jabbi. Maybe we can proceed with  
15:37:48 15 my agenda and we can come back to that, because we need to know  
16 on this one, as you know, and we still have an outstanding motion  
17 that you've filed to add exhibits to the list of your exhibits,  
18 as such, and if no witness is coming to testify as to those  
19 exhibits, maybe that's not required any more. So there has got  
15:38:09 20 to be some consistency of approach in this if these exhibits are  
21 not required any more than we need to know.

22 MR JABBI: We will give that explanation very soon,  
23 My Lord.

24 PRESIDING JUDGE: Very well. So I want to deal now with  
15:38:24 25 the additional witness list. The Chamber ordered court-appointed  
26 counsel for the first accused to reconsider the necessity of  
27 adding 13 witnesses to their witness list for which leave had  
28 been sought from the Chamber and re-file the list of such  
29 additional witnesses if necessary, including their expanded



1 summaries as directed by our order of 3 April 2006 at 1.00 p.m.  
2 the Chamber notes counsel's submissions in this respect as  
3 follows: On 3rd April 2006 counsel re-filed the first accused's  
4 urgent motion for leave to file additional witnesses and exhibit  
15:39:01 5 lists whereby counsel now seek an addition of eight witnesses to  
6 the witness list as opposed to the 13 witnesses originally sought  
7 to be added. Four of these eight witnesses, namely: Number 8,  
8 James BS Kailie; number 10, Aruna Collier; number 19, Mohamed K  
9 Swaray; and number 26, JA Carpenter are now added to the core  
15:39:37 10 list and the other four are included in the backup list. Am I  
11 reading your submission correctly?

12 MR JABBI: That is correct, My Lord.

13 PRESIDING JUDGE: So we'll hopefully, by the end of the day  
14 today, issue our decision on this application so you will know  
15:39:50 15 where to stand on this by the end of the day. I do have one  
16 question on this list and that question has to do with the  
17 witness number that you have now numbered 26, JA Carpenter. This  
18 is a witness that is to come and testify as to the -- I don't  
19 have the exact quote in front of me, but essentially as to the  
15:40:17 20 legislative process to legitimise the CDF in Parliament, if I  
21 am -- I'm just looking at the list now. The role of Parliament  
22 during conflict, steps taken by the government to legitimise CDF  
23 operations in Parliament, specific issues that Parliament address  
24 concerning the CDF legitimisation.

15:40:41 25 Presumably, if these are matters that were discussed in  
26 Parliament, as such, there's a record of it from Parliament, as  
27 such, and why do we need a witness when you can file these  
28 documents with the Court without having all this? Furthermore,  
29 I'd like to know if this Mr Carpenter happened to be or to have





1 been the clerk at the time that this debate or these matters were  
2 being related in Parliament. Is he coming here as a  
3 Parliamentarian or he's coming here as the clerk of the  
4 Parliament at the time.

15:41:24 5 MR JABBI: He's coming here as a clerk of Parliament at the  
6 time.

7 PRESIDING JUDGE: At the time.

8 MR JABBI: Yes, My Lord.

9 PRESIDING JUDGE: As I say, we don't want to hear a big  
10 debate as to what Parliament has argued and voted about as such.  
11 Obviously if there has been a debate in the Parliament at the  
12 time, it is sufficient for us to be referred to that debate and,  
13 as I say, provide the Court with whatever the transcript of that  
14 debate may be and maybe copy of the legislation that was tabled  
15:41:54 15 or passed by Parliament. I mean, that will suffice for our  
16 purposes.

17 MR JABBI: Yes, My Lord. We will note that and we will  
18 take the appropriate action at the time. But we thought we  
19 should list him so that it is realised that he is a material  
15:42:17 20 witness from that point of view. But we know that filings can be  
21 done in respect of material relating to the evidence he's  
22 supposed to give.

23 PRESIDING JUDGE: Yes. I would suspect that most of that  
24 is of a public nature, as such. These are debates that have  
15:42:39 25 taken place in Parliament at the time.

26 MR JABBI: We also realise that the Court may be in a  
27 position to take judicial notice of certain facts.

28 PRESIDING JUDGE: I didn't go that far but it may be the  
29 case. That's why I say it is of a public nature as such. I



1 don't think there's much dispute as to what may or may not have  
2 been said. But again if you do ask for that, you have to make  
3 submissions. I mean, anything you can do to accelerate the  
4 process. I mean, that's why I say we don't need to hear the  
15:43:10 5 whole debate that has taken place in Parliament at that time  
6 about that. Suffice it to say that there has been debate in  
7 Parliament and it was approved and this is the legislation that  
8 followed and you just table this. I mean, as an example.

9 MR JABBI: Yes, My Lord. We will take the appropriate  
15:43:26 10 action at the time.

11 PRESIDING JUDGE: Thank you. Now we'd like to look with  
12 you at what we consider that is missing in that. We'll go a bit  
13 in line with what I suspect the Prosecution has raised as to  
14 information that is still missing from your witness list. We had  
15:43:57 15 ordered that you were to disclose to the Prosecution and file  
16 with the Court by 3rd April 2006 at 1.00 any identifying  
17 information which is available for all the witnesses on your  
18 re-filed reduced list and the Chamber further specified that such  
19 information shall include family name; first name; nicknames;  
15:44:20 20 date and place of birth, if known; names of parents; religion;  
21 occupation at the time relevant to the indictment; and current  
22 address. The Chamber acknowledges the receipt of such filing and  
23 notes that such information is still missing for 10 witnesses out  
24 of 27 listed on the core list and this is the case for witness  
15:44:40 25 number 1, witness number 3, witness number 7, witness number  
26 16 -- the numbers I'm giving do refer to your new witness list.  
27 So I was saying number 7, number 16, number 19, number 21, number  
28 22, number 24, number 25 and number 26. Any comment as to that  
29 Mr Defence counsel?



1           MR JABBI: Yes, My Lord. My Lord, the first, of course, is  
2 the requirement as spelt out in the order court-appointed counsel  
3 for the first accused shall disclose to the Prosecution and file  
4 with the Court by 3rd April any identifying information which is  
15:45:38 5 available for all the witnesses on their re-filed reduced witness  
6 list, et cetera.

7           My Lord, we have given information which was available in  
8 our hands by the time we filed this paper. Some of that  
9 information had not been obtained in the statement-taking process  
15:46:03 10 from some of the witnesses and when this order was made, we have  
11 not been able to access the particular witnesses in order to  
12 include that information. We are -- in an effort we have  
13 already, in fact, decided to send an investigating team up end of  
14 this week so that some of this information from other witnesses  
15:46:31 15 whom we have not been able to access can be obtained and filed  
16 with the Court.

17           PRESIDING JUDGE: Well, Dr Jabbi, I certainly will ask you  
18 and order you to produce any missing information and that if you  
19 don't have it at this time, that you find the information with  
15:46:48 20 respect to your listed witness number 3 and listed number 7. And  
21 this before the end of this week because such information may be  
22 essential for the Prosecution and the other parties to be able to  
23 make some assessment as to who these witnesses are and if they  
24 want to do some investigation, that will allow them to do that.  
15:47:13 25 The other ones, you'll have to comply with it but I understand in  
26 a short time frame that you may not be able to do that for all of  
27 them, but when we resume after the Easter recess you shall  
28 provide all the other information.

29           As I say, you have to find the means to have this



1 information available before these witnesses are to be called.

2 So certainly by the end of this week you shall provide

3 information for number 3, number 7 as a minimum.

4 MR JABBI: My Lord, we duly comply.

15:47:51 5 PRESIDING JUDGE: This is information that we have just  
6 discussed, the family name and so on. So that's what I refer to.

7 MR JABBI: Order, paragraph 6.

8 PRESIDING JUDGE: That's right.

9 MR JABBI: Yes, My Lord.

15:48:05 10 PRESIDING JUDGE: I know, Mr Prosecutor, that does not  
11 respond entirely to your wishes but we expect with this at least  
12 that that will allow some movement ahead and will allow the  
13 Prosecution to have some information that they can use to  
14 complete investigation, if that's what they want to do, and at  
15:48:23 15 least to be able to properly prepare for the cross-examination of  
16 these witnesses when they come at the next session. So at least  
17 that is -- this is at this particular moment for the first seven  
18 witnesses on that witness list. As I said, the Defence is  
19 ordered to produce the remaining information at the latest by the  
15:48:50 20 end of the Easter recess.

21 MR JOHNSON: Thank you, Your Honour.

22 PRESIDING JUDGE: Thank you. Now, we would like to look at  
23 the issue of common witnesses and that will be of interest to  
24 obviously counsel for the three accused. The Chamber requested  
15:49:15 25 court-appointed counsel for all three accused to discuss their  
26 common witnesses and ordered them to file with the Court their  
27 list of common witnesses including a summary of their respective  
28 testimonies, the points on the indictment to which each witness  
29 will testify, the estimated length of time for each of these





1 witnesses and the language of their testimony by 3rd April 2006

2 at 1.00.

3 On 29th March 2006 court-appointed counsel for Fofana filed  
4 Fofana submissions as to common witnesses whereby counsel submit  
15:49:52 5 that they have made efforts to comply with the Chamber's request  
6 to discuss their common witnesses and submitted that their  
7 communications with the Defence teams for Norman and Kondewa  
8 revealed the following: "The Norman defence team is currently in  
9 the process of bringing its witness summaries into compliance  
15:50:10 10 with the consequential order and, therefore, was not at the time  
11 of filing in a position to share those summaries with the Defence  
12 and that the Kondewa Defence team no longer intends to call any  
13 witnesses common to the Fofana witness list."

14 May I start with that aspect. Is that the exact situation  
15:50:31 15 with you, Mr Margai?

16 MR MARGAI: Yes, that is our position, My Lord.

17 PRESIDING JUDGE: So there is no more common witness  
18 between your list and that of the second accused?

19 MR MARGAI: That is the situation.

15:50:41 20 PRESIDING JUDGE: And this is what you file at this  
21 particular moment?

22 MR MARGAI: We shall, yes.

23 PRESIDING JUDGE: Very well. Thank you. And  
24 court-appointed counsel for Fofana further confirms the Chamber's  
15:50:52 25 understanding of witnesses common to the current Fofana and  
26 Norman witness list and that 13 witnesses are common witnesses to  
27 Norman and Fofana. Among them four witnesses who have already  
28 given their testimony, that is, Dr Joe Demby, Denis Koker, Ismail  
29 Koroma, and MT Collier, and 9 remaining witnesses. Namely, Musa



1 Junisa who was number 57 on your list, Dr Jabbi, and number 10 on  
2 the Fofana list; Dr Ahmad Tejan Kabbah, number 1 on the Norman  
3 list and Number 11 on the Fofana list; Arthur Koroma number 13 on  
4 the Norman list and Fofana; Mustafa Koroma number 19 on the  
15:51:45 5 Norman list and 15 on the Fofana list; Dixon Kosia, number 22 on  
6 Norman and number 16 on Fofana; General Victor Malu, number 7 on  
7 the Norman list and number 19 on Fofana; and Brima Sei or BJK  
8 Sei, presumably we're talking of the same individual, number 14  
9 on Norman list and number 27 on the Fofana list.

15:52:10 10 So is, Dr Jabbi, is Brima Sei and BJK Sei the same person?

11 MR JABBI: Yes, My Lord.

12 PRESIDING JUDGE: And the next one, General Abdu One  
13 Mohamed, or A Mohamed One, or Abdul One Mohamed, we're talking  
14 again of the same individual presumably by a different name.

15:52:32 15 MR JABBI: Again, it's the same individual.

16 PRESIDING JUDGE: Same individual. So this one is number 6  
17 on your list and 31 on the Fofana list. And Kini or Kinny Torma  
18 is number 69 on your list and was number 42 on the Fofana back-up  
19 list.

15:52:50 20 Of these nine remaining witnesses, five witnesses are now  
21 listed on your core witness list, Dr Jabbi. Namely, the  
22 President Dr Tejan Kabbah which is now number 1 on your list and  
23 number 11 on Fofana; Arthur Koroma which is number 2 on your list  
24 and number 2 on Fofana's list; Major-General Abdu One Mohamed who  
15:53:21 25 is number 21 on your list and 31 on the Fofana list; and Dixon  
26 Kosia is now number 4 on your list and number 16 on Fofana' and  
27 Brima Sei is number 11 on your list and 27 on Fofana, and four of  
28 these witnesses are now listed on the back-up list for the first  
29 accused. That is, Musa Junisa, Mustapha Koroma, General Victor



1 Malu and Kinny Torma. Am I --

2 MR JABBI: That's correct, My Lord.

3 PRESIDING JUDGE: Thank you. In this respect, counsel for  
4 Fofana submit that they rely on their previous submissions in  
15:53:59 5 respect of the information requested in the Chamber's  
6 consequential order. That is, a summary of their respective  
7 testimonies, the points of the indictment to which each witness  
8 will testify, the estimated length of time for each of these  
9 witnesses and the language of their testimony. They further  
15:54:18 10 submit that since these common witnesses have been investigated,  
11 interviewed and otherwise handled separately by the Fofana and  
12 Norman teams, counsel for Fofana will explore areas with this  
13 witness which were indicated in their written submissions.  
14 Counsel further state that the same procedure will be followed as  
15:54:40 15 with those common witnesses who have already testified. Counsel  
16 declared therefore that while they will not delegate any portions  
17 of their examination-in-chief to counsel for the first accused,  
18 they will avoid delving into areas which have been covered by  
19 counsel for the first accused.

15:54:59 20 The Chamber is satisfied with this proposed procedure and  
21 it will avoid repetition that is absolutely not needed at this  
22 juncture. So essentially areas that you will be covering,  
23 Dr Jabbi, will not be covered again by the counsel for the second  
24 accused for these common witnesses and, if need be, they will  
15:55:20 25 examine on areas that are of particular interest to their own  
26 client and not repeat any evidence unnecessarily.

27 What I would like to have a clarification upon -- that is  
28 to counsel for the second accused, not you, Dr Jabbi, at this  
29 time. I would like to clarify with you whether counsel for



1 Fofana will still call four witnesses that are now listed as  
2 back-up witnesses on the list for Norman in the event that they  
3 are not called by the first accused. They are not part of the  
4 core list of witnesses, therefore it is quite possible that they  
15:56:06 5 may never be called, and they have been listed as common to both.  
6 So what's the intent of the second accused with respect to these  
7 witnesses?

8 MR DUMBUYA: Your Honour, my instruction is that they would  
9 call those witnesses irrespective of the fact that the first  
15:56:23 10 accused did not call them.

11 PRESIDING JUDGE: So they would become sole witnesses for  
12 the second accused if the first accused does not call them?

13 MR DUMBUYA: Yes, Your Honour.

14 PRESIDING JUDGE: Thank you. Although counsel for Fofana  
15:56:39 15 still seem to be making a distinction between common and joint  
16 witnesses, the Chamber wishes to clarify that such difference  
17 does not exist. The Chamber ordered counsel to produce such list  
18 bearing in mind the consideration of conducting an expeditious  
19 trial in compliance with the rights of the accused and to ensure  
15:56:56 20 that the same witness is not called and recalled on behalf of  
21 each accused separately. The Chamber opines that if a witness  
22 called by the first accused covers areas which are general and  
23 common to the first and second accused, then one counsel can be  
24 assigned to examine that witness on this general area.

15:57:15 25 However, if counsel for the second accused need to elicit  
26 additional evidence from that witness which is pertinent  
27 specifically to their client, counsel can always examine that  
28 witness after the examination-in-chief by the first accused has  
29 been completed. If this common witnesses appears to be an





1 adverse witness to the second accused, which obviously would come  
2 out in examination-in-chief conducted by the first accused, and  
3 therefore counsel for the second accused would want to refute his  
4 evidence or test his credibility, it is always a possibility for  
15:57:47 5 counsel to declare that such witness is no longer a common  
6 witness and choose to cross-examine that witness.

7 In this regard it may be helpful to quote from the  
8 Prosecutor v Bagosora, ICTR case number ICTR-98-41-T, "Decision  
9 on Modalities For Examination of Defence Witnesses", Trial  
15:58:07 10 Chamber, 26 April 2005, at paragraph 6 that stated:

11 "To some extent, Defence teams other than the one calling a  
12 witness will be allowed to elicit evidence in its favour,  
13 even if this is not 'cross-examination' in the narrow sense  
14 of the word. However, such evidence will only be admitted  
15:58:29 15 if it is relevant, contributes to the ascertainment of  
16 truth and does not lead to needless consumption of time as  
17 required by Rule 89(C) and 90(F). It is expected that when  
18 eliciting such evidence, Defence counsel will avoid asking  
19 leading questions to the witness as this will undermine the  
15:58:49 20 credibility of such testimony, and it will avoid repetitive  
21 questions. The exact extent and manner of questionings  
22 permitted by other co-accused will depend on the nature of  
23 the testimony which has been given by the witness and the  
24 purpose of the questioning. This will be decided on a case  
15:59:11 25 by case basis."

26 So I am just quoting that for your [indiscernible]. In the  
27 case where you need to proceed differently on a common witness  
28 that is being called. That applies obviously not to you,  
29 Mr Margai, because you don't have common witnesses any more. So



1 you will always be cross-examining, not examining-in-chief.

2 MR MARGAI: Thank you, My Lord.

3 PRESIDING JUDGE: Thank you. So, Mr Margai, as to your  
4 relationship on the witness list between the list of your client  
16:00:16 5 and those of the first accused and the second accused, you are  
6 not having any more common witnesses with any of those. Am I  
7 misreading the information?

8 MR MARGAI: No. Well, we had some difficulty with the  
9 first accused. We had related to the second accused and we came  
16:00:38 10 to the conclusion that there would no longer be a common witness  
11 or common witnesses between the third and the second accused  
12 persons.

13 PRESIDING JUDGE: Yes.

14 MR MARGAI: At the time we filed our papers, we had not had  
16:00:54 15 knowledge of the witnesses.

16 PRESIDING JUDGE: The 27 core witnesses?

17 MR MARGAI: Yes, My Lord. But now that they have been made  
18 known, the same situation would apply as indeed in the case of  
19 the second accused.

16:01:13 20 PRESIDING JUDGE: Which means that those that you're --

21 MR MARGAI: They would cease to be common to us and we  
22 shall accordingly file papers seeking the leave of the Court to  
23 remove their names from our lists.

24 PRESIDING JUDGE: So they will not be common witnesses and  
16:01:28 25 they will not be witnesses on your list at all.

26 MR MARGAI: No, they wouldn't be.

27 PRESIDING JUDGE: Very well. Thank you very much for this.  
28 And you will make the necessary amendments and file the  
29 documentation in this respect.



1 MR MARGAI: Yes, My Lord, we will.

2 PRESIDING JUDGE: Thank you very much.

3 MR KAMARA: Excuse me, My Lord.

4 PRESIDING JUDGE: Yes.

16:01:49 5 MR KAMARA: Just some clarification here because my list  
6 shows that the third accused do have about five witnesses in  
7 common with the second accused. Is Mr Margai making an  
8 undertaking that they will re-file a new list, not including  
9 those five?

16:02:05 10 PRESIDING JUDGE: This is exactly what I am --

11 MR MARGAI: I'm sure the document speaks for itself.

12 PRESIDING JUDGE: But this is what you will be doing.

13 MR MARGAI: The answer is in the affirmative. We have  
14 indicated that in the clearest of terms in the document.

16:02:19 15 PRESIDING JUDGE: So those common witnesses to Fofana and  
16 those common witnesses to Norman will disappear from your list.

17 MR MARGAI: Indeed, My Lord.

18 PRESIDING JUDGE: And these witnesses, you'll deal with  
19 them as they come, likely in cross-examination if you so wish.

16:02:33 20 MR MARGAI: As My Lord pleases.

21 PRESIDING JUDGE: That's fine.

22 MR KAMARA: Thank you.

23 PRESIDING JUDGE: Mr Margai, if I may once more on this  
24 issue, because you have indeed indicated that you now know the  
16:03:03 25 list filed by the first accused, but, as you know, they have  
26 filed a list of 27 core witnesses and, I don't have a number any  
27 more, but the back-up list, some of your common witnesses have to  
28 do with the core list and some others have to do with the back-up  
29 list. So is your situation the same whether they are core or



1 back-up, because you understand --

2 MR MARGAI: It doesn't really matter whether they are core  
3 or back-up, as long as they bear the commonality the same will be  
4 apply.

16:03:45 5 PRESIDING JUDGE: I'm not trying to put you in difficulties  
6 on that, Mr Margai. I just want to make sure that there is a  
7 clear understanding, because if a witness that is common to the  
8 three of you at this time because he was on the list of the first  
9 accused and now the first accused is putting these witnesses in  
16:04:01 10 their back-up list, but they will not call because it's only a  
11 backup, and therefore it may be that in your case you won't be  
12 able even to cross-examine if that was your intent because the  
13 witness will never appear. So that's why I'm asking you if your  
14 comments as such apply both to the core and the back-up list  
16:04:19 15 because that scenario may differ. You follow me on this?

16 MR MARGAI: Yes. Well, having listened to Your Lordship,  
17 we would at this stage confine what we said only to core  
18 witnesses and we shall deal with the back-up as and when the  
19 situation does arise.

16:04:37 20 PRESIDING JUDGE: So when you reassess your witness list,  
21 make it clear as well that your removing of the witnesses that  
22 are common applies only to those that have been listed as core  
23 witnesses for the first accused.

24 MR MARGAI: That will be done, My Lord.

16:04:50 25 PRESIDING JUDGE: Okay. So does that clarify the issue for  
26 you, Mr Prosecutor, as well?

27 [CDF5APR06B - CR]

28 MR KAMARA: Yes. Thank you very much, My Lord. Just one  
29 more issue, Your Honour. Again, it is clarification, because





1 sometimes when we say things, they do not appear as clear as they  
2 might appear to be. The fact of the expert witness --

3 PRESIDING JUDGE: We're not there yet. We will get there.

4 MR KAMARA: We'll get there. I'll wait for that.

16:04:42 5 PRESIDING JUDGE: Thank you. Your comments will be welcome  
6 when we get there, Mr Kamara.

7 In your review of the list, Mr Margai, I would like to  
8 know precisely because there seems to be, again, different names  
9 that appears on your list for the first accused on your list, and  
16:06:02 10 the same for the Fofana list, that are using a different name and  
11 it would appear that we are talking of the same individuals. So,  
12 the example I gave was Brima Sei and there are two or three  
13 different initials for the same person. So are we talking of the  
14 same? If it is the same, please make it clear that we're talking  
16:06:26 15 of the same individual.

16 MR MARGAI: Very well, My Lord, we shall do that.

17 PRESIDING JUDGE: Very well. I thank you very much.

18 The next issue I would like to discuss is the admission by  
19 the parties and statement of other matters not in dispute. As I  
16:07:06 20 indicated in the previous status conference, this is an issue  
21 that we hope that we are going to see some progress. I know if  
22 I've listened to the comments made by the Prosecution that it  
23 will be difficult for them to make such admission, given the  
24 limited information they have in some instances. I still urge  
16:07:29 25 the parties between now and the time of resuming this trial with  
26 the seventh session, that if there are matters that are not in  
27 dispute any more, and I know there's been some progress in this  
28 respect, that any possible agreement in this respect be clearly  
29 spelled out and that the Court be informed at the earliest.



1           At the status conference on 22nd March, the Prosecutor  
2           stated that he would be ready to make certain admissions and  
3           dispense the Defence with calling the evidence in relation to  
4           these facts which would otherwise prove to be irrelevant. I know  
16:08:12 5           what you have stated, Mr Johnson. I still think that in spite of  
6           the fact that not all the information has been disclosed to your  
7           satisfaction, there is information that has been disclosed and  
8           are certainly certain elements. And this information has been  
9           disclosed, you may readily admit is not in dispute. In fact,  
16:08:36 10          your co-operation is also sought in this respect. All I can do,  
11          again, is encourage all the parties to sit together to try to  
12          find any such agreement where a matter is not in dispute, that it  
13          be clearly spelled out and the Court informed accordingly.

14           In this respect, on 29 March, counsel for Fofana filed a  
16:08:58 15          request for an extension of time to file admissions of fact and  
16          statements of matters not in dispute. Counsel requested for  
17          extension of time until after 10th April, on the basis that the  
18          Defence is currently considering proposed admissions of fact  
19          recently submitted informally by the office of the Prosecutor.  
16:09:17 20          The Defence meetings have been scheduled, they were submitting,  
21          for the week of 3 April 2006 in the Netherlands in order to  
22          discuss the proposed admissions and to take a final decision on  
23          drafts already in preparation. We have granted the request by  
24          its order of 31st March and have allowed counsel for Fofana to  
16:09:40 25          file the admissions by the Prosecution and the second accused and  
26          a statement of other matters, which are not in dispute, by 25th  
27          April at 11 a.m. So you have been informed of that, Mr Johnson.  
28          And presumably, based on that, you still -- maybe these  
29          discussions have been finalised by now. I don't know. But are



1 there still matters being discussed between the Prosecution  
2 counsel and the counsel for Fofana?

3 MR KAMARA: Yes, Your Honour. We have commenced  
4 discussions and they are still underway. We are awaiting  
16:10:11 5 response from them after the meeting in the Netherlands.

6 PRESIDING JUDGE: But that meeting has taken place now?

7 MR KAMARA: We have not been informed as to the meeting  
8 taking place.

9 PRESIDING JUDGE: Okay. As you know, we have set the date  
16:10:28 10 of 25 April as being the date where some conclusions should be  
11 reached on that if this is to be of any meaningful assistance to  
12 the trial when we start the seventh session.

13 MR KAMARA: Yes, Your Honour.

14 PRESIDING JUDGE: So we hope it can only encourage you and  
16:10:42 15 the counsel for the second accused to move in that direction and,  
16 if possible, to extend that to counsel for the third accused and  
17 the first accused. This is an admission that would be only with  
18 respect of an accused, although some assistance would not really  
19 expedite the trial if it is still debated by the other two  
16:11:06 20 accused. So, whatever can be done in this respect - and I'm not  
21 commenting and inviting only you, Mr Kamara, but all counsel to  
22 see if we can move ahead in this respect.

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

24 PRESIDING JUDGE: Dr Jabbi, in your filing on 3rd April,  
16:11:28 25 you have submitted that your Defence team has found it equally  
26 impracticable to file, as at now, the admissions by parties and  
27 the statements of other matters that are not in dispute and  
28 that - and I quote you - "The matter is under active advisement  
29 and consideration for compliance therewith as soon as



1 practicable." Can I hear from you on that matter?

2 MR JABBI: My Lord, what we do mean is that we will prepare  
3 a list of those matters we consider not to be in dispute and file  
4 it soonest, My Lord.

16:12:17 5 PRESIDING JUDGE: Well, can I propose, Dr Jabbi -- let me  
6 first ask you one question: Have you received a copy of what has  
7 been discussed between the second accused and the Prosecution as  
8 to the admissions of fact?

9 MR JABBI: Not yet, My Lord.

16:12:33 10 PRESIDING JUDGE: So, if I may, maybe it would be a good  
11 suggestion to see if what has been discussed with the second  
12 accused can also be provided to the first accused to see if they  
13 are prepared to make any such admissions. Mr Kamara.

14 MR KAMARA: Yes, Your Honour. It seems like we initially  
16:12:50 15 at the start of the trial, we kind of put together a list, a  
16 catalogue of facts that we believed would come into agreement  
17 with the first accused. We had a total denial, then if you could  
18 recall, Your Honour, we had a box against each fact to be checked  
19 and all that. We had a blanket denial. We got stuck. We have  
16:13:13 20 not been able to progress from that point. So, with the order of  
21 the Court, we approached the second accused and opened  
22 discussions. We made certain suggestions to the second accused  
23 and that is why we are proceeding along those lines.

24 PRESIDING JUDGE: May I suggest and propose that you  
16:13:30 25 re-open discussion with the first accused again on this matter  
26 and see if there is a possibility of progress? You can see that  
27 the witness list has been reduced quite substantially in this  
28 respect and it may be now they have a different vision on what  
29 they may or may not admit at this particular juncture.





1 MR KAMARA: We will re-open discussions, Your Honour.

2 Thank you.

3 PRESIDING JUDGE: Dr Jabbi, you were saying that you are  
4 looking at some facts and matters that you might be prepared to  
16:14:00 5 concede that are not in dispute. May I ask you to do that the  
6 soonest and provide copies of that to all parties, the first  
7 accused, second accused and the Prosecution to see, again, if  
8 there is a commonality on this? That may indeed help a lot in  
9 trying to reduce the time of -- and the time spent in avoiding  
16:14:22 10 all of these unnecessary repetitions.

11 MR JABBI: Yes, My Lord, we will do that accordingly.

12 PRESIDING JUDGE: Thank you very much. In their submission  
13 of 3rd April, counsel for the third accused filed a statement of  
14 admissions and facts not in dispute, listing four facts which are  
16:14:41 15 not disputed by counsel for the third accused. Counsel for  
16 Kondewa further states that they have approached the Office of  
17 the Prosecutor for discussion to be held on the issue of joint  
18 admissions on points of law and fact, but such meetings have not  
19 materialised yet. Mr Margai, can you enlighten the --

16:15:04 20 MR MARGAI: It is still the state of affairs, My Lord.

21 PRESIDING JUDGE: It is still the state of affairs?

22 MR MARGAI: It is, yes.

23 PRESIDING JUDGE: Is it proposed to have a meeting soon,  
24 can I ask that?

16:15:10 25 MR MARGAI: We are leaving our options open.

26 PRESIDING JUDGE: Can you help me to understand what it  
27 means, the options open? I know they are all open because --

28 MR MARGAI: We are talking, which is a very good move in  
29 the right direction.



1           PRESIDING JUDGE: Indeed. Absolutely. If our

2 discussions --

3           MR MARGAI: But it seems that we seem to be playing our

4 cards very close to the chest, if not closest to the chest. But

16:15:34 5 I believe that, as the days progress, we shall definitely

6 disagree to agree on issues that are not fundamentally in

7 dispute.

8           PRESIDING JUDGE: Well, obviously, I'm not asking that

9 anybody concedes matters that they consider to be in dispute, as

16:15:54 10 such.

11           MR MARGAI: We have begun and that's a very good sign.

12           PRESIDING JUDGE: Thank you very much, Mr Margai. I can

13 only ask you to please pursue in that endeavour.

14           MR MARGAI: Well, as you can see, My Lord, we have moved

16:16:06 15 from a negative position --

16           PRESIDING JUDGE: Absolutely.

17           MR MARGAI: -- to a positive one by accepting or admitting

18 four salient points.

19           PRESIDING JUDGE: It is a very important first step.

16:16:18 20           MR MARGAI: Thank you, My Lord. We expect reciprocity from

21 the other side.

22           PRESIDING JUDGE: I hope so as well. It may be that as a

23 result of such agreements, admissions and so on that there might

24 be a need to review your witness list. I don't know. Not in

16:16:53 25 total, obviously, but it may reduce some if some witnesses -- it

26 is not addressed only to you, Mr Margai, it is addressed to all,

27 if, as a result of these admissions, some witnesses were there to

28 establish one particular issue, it is not required obviously, I'm

29 just asking your co-operation to inform the Court that you need



1 not to apply to the Court to reduce --

2 MR MARGAI: Admissions notwithstanding, it is very probable  
3 that we would reduce our witness list, because, I mean, we are  
4 presenting our case through the witnesses called by the other  
16:17:29 5 side. So, at the end of the day, we probably would even halve  
6 the list.

7 PRESIDING JUDGE: Yes, because you are in the good position  
8 to be the last one.

9 MR MARGAI: I am here doing damage repair. So we may not  
16:17:48 10 call all of the witnesses.

11 PRESIDING JUDGE: Thank you, Mr Margai. I would like to  
12 reiterate what I had said at the previous status conference, that  
13 at the end of each trial session the Prosecution and Defence  
14 shall file with the Court a status report on agreed points of law  
16:18:10 15 or facts reached by them, and that such report shall be signed by  
16 all parties. This was a comment before. It may have been  
17 forgotten for a while, but I would like to remind all parties  
18 that this is a requirement and we expect such status report to be  
19 filed with the Court in due course.

16:18:37 20 Just a reminder on the exhibits, the Chamber ordered  
21 court-appointed counsel for all three accused persons to disclose  
22 as soon as possible, or at least two days prior to the  
23 commencement of the testimony of a witness, to the other parties,  
24 as the case may be, a copy of the exhibit which counsel intended  
16:18:55 25 to tender through such witness.

26 You will recall, Dr Jabbi, there were comments by the  
27 Prosecution at that time that two days may not be sufficient, but  
28 let's say the order is that you shall disclose that to the other  
29 parties as soon as you can, but certainly before any such witness



1 is to be heard. Any comment in this respect, Dr Jabbi?

2 MR JABBI: My Lord, so far as this is concerned, we will  
3 probably surprise the Prosecution as to the timing of the  
4 disclosure of exhibits for each testifying witness, barring  
16:19:39 5 number one on our list.

6 PRESIDING JUDGE: Very well.

7 MR MARGAI: May I just seek a clarification here. Whether  
8 in amending the witness list, as has been discussed here, leave  
9 ought to be sought?

16:20:05 10 PRESIDING JUDGE: To augment, yes; to reduce, no. In other  
11 words, if you're to increase your witnesses on your witness list,  
12 leave must be sought from the Court, but if you are to reduce,  
13 all you need to do is inform all parties, including the Chamber,  
14 that you have reduced the number of witnesses to be called.

16:20:25 15 MR MARGAI: Much obliged.

16 PRESIDING JUDGE: Standby witnesses, that applies, for the  
17 time being, more to you, Dr Jabbi. We just want to remind you  
18 that it applies to you at this stage because you're the one  
19 calling witnesses at this particular moment. That you shall  
16:20:43 20 ensure at all times that witnesses are available and that two  
21 standby witnesses will be available at any given time to testify  
22 in order to avoid any delay. By this, we mean they should be  
23 available here within the Court compound.

24 MR JABBI: By submission of our core witness list, we are  
16:21:10 25 quite sure that the WVS will need to do the rest of it, My Lord.

26 PRESIDING JUDGE: Thank you.

27 MR JOHNSON: Your Honour, if we can back up one again to  
28 number 10 on disclosure of copies of the exhibits. Perhaps the  
29 Prosecution is defining "as soon as possible" a little different





1 from Defence, and maybe differently from you. That's why I want  
2 to ask. We take "as soon as possible" to mean as soon as they  
3 possibly can, which means if they have it in their possession by  
4 now, we would like to think as soon as possible would be right  
16:21:52 5 now, and no later than two days before, meaning they probably  
6 didn't get it until two days before. As of this point in time,  
7 we haven't had anything. From our perception, if they have it in  
8 their possession at this time, we've meant as soon as possible,  
9 and we should have a copy of it. Thank you, Your Honour.

16:22:15 10 PRESIDING JUDGE: I agree with your understanding. The  
11 object is to disclose as not to disclose. The purpose is to  
12 disclose. We have qualified that "as soon as possible", again,  
13 bearing in mind that if they have information, they shall  
14 disclose it, and, if they don't have it, as soon as they have it,  
16:22:36 15 they shall disclose it. Under any circumstances, it shall be no  
16 later than two days before. Indeed, if you need clarification on  
17 that, I subscribe to your description what "as soon as possible"  
18 means. Maybe there was a misunderstanding. I hope with this  
19 clarification we will assist.

16:22:54 20 MR JOHNSON: Based on that, Your Honour, I can only assume,  
21 and you get in trouble for assuming, I appreciate that, but I can  
22 only assume they don't, at this time, have copies of any of these  
23 exhibits in their possession.

24 PRESIDING JUDGE: I don't know and I won't make any  
16:23:08 25 judgment on that. All I can say is that, given that  
26 clarification, I can only expect if that is the case, from now on  
27 it will be clearly understood to mean the same thing for all  
28 concerned.

29 MR JOHNSON: Thank you, Your Honour.



1           PRESIDING JUDGE: The next item on the agenda is expert  
2 witnesses. Dr Jabbi, again, at the last status conference, you  
3 indicated the possibility of inviting one expert witness. Any  
4 new matter to report in this respect?

16:23:44 5           MR JABBI: My Lord, as of now, we are not able to confirm  
6 whether the witness we have been intending to call as an expert  
7 witness will be available. Knowing what the requirements are in  
8 that regard, we'll probably discard that possibility but we have  
9 not yet done so.

16:24:11 10          PRESIDING JUDGE: It is quite possible, given what you are  
11 saying, you may not call an expert witness?

12           MR JABBI: Very likely, My Lord.

13           PRESIDING JUDGE: As we are progressing, and we are  
14 progressing with your witness list, presumably, we want to see  
16:24:26 15 more clearly on this, so as soon as you have come to a firm  
16 decision on this, I will ask you to inform all parties, including  
17 the Chamber, of your decision not to call, if that is the case,  
18 any such expert.

19           MR JABBI: We will do so, My Lord.

16:24:46 20          PRESIDING JUDGE: Thank you. Counsel for the second  
21 accused, I know you are not counsel on record. Maybe you have  
22 been briefed. They had indicated at the last status conference  
23 that counsel for Fofana expected and anticipated they would be  
24 able to file the report of their experts in the early weeks of  
16:25:07 25 the next trial session. Any new information you may provide in  
26 this respect?

27           MR DUMBUYA: My Lord, no new information in respect of  
28 that, but only because they are not in a position to produce the  
29 report as of now. They are in the process of bringing the expert



1 to town within the next few days to undertake some study as  
2 regards issues in the provinces. He started his studies, but he  
3 wants to come and complete here.

4 PRESIDING JUDGE: Very well. Thank you. Mr Margai, you  
16:25:44 5 had indicated at the last status conference, at least counsel for  
6 Kondewa, you were the one speaking at that time that you would  
7 probably not proceed with a military expert.

8 MR MARGAI: We do not intend to call a military expert but  
9 we are in discussion with an anthropologist, who may likely be  
16:26:18 10 called as a witness. We are still in discussion.

11 PRESIDING JUDGE: But at that last status conference you  
12 had indicated you had received a preliminary report from this  
13 anthropologist expert and that you were assessing that report and  
14 having more discussions. Any progress in this respect?

16:26:36 15 MR MARGAI: Yes, in fact, as recent as yesterday we held a  
16 45-minute discussion with him. We have scheduled another meeting  
17 a fortnight from yesterday.

18 PRESIDING JUDGE: As far as the third accused is concerned,  
19 we can assume there will be only one expert, if there is one  
16:27:01 20 called, and it will be the anthropologist?

21 MR MARGAI: That is correct.

22 PRESIDING JUDGE: There was caution of commonality of  
23 expertise with an expert called by the second accused. Is this  
24 out of the way, so along the lines of no more common witnesses?

16:27:15 25 MR MARGAI: No more common witnesses. In fact, we were  
26 under the mistaken belief that this witness may have been  
27 approached by the second accused, but that was dispelled  
28 yesterday.

29 PRESIDING JUDGE: Very well. So that witness is called



1 solely on behalf of the third accused?

2 MR MARGAI: Yes, My Lord, if at all.

3 PRESIDING JUDGE: If at all. Thank you. So that covers  
4 the items I had on my agenda. May I ask you, Dr Jabbi, if you  
16:27:50 5 wish to raise any other matter at this particular moment?

6 MR JABBI: My Lord, the main matter is item one on our  
7 list.

8 PRESIDING JUDGE: Yes. It is still a very important item  
9 on our list as well. We have no decision to communicate to you  
16:28:07 10 at this moment.

11 MR JABBI: We wish to indicate that we, by all means, want  
12 to retain the order of appearances we have proposed in our list,  
13 and by the time the seventh session opens, we're hoping we would  
14 have been given enough time by the decision to be able to meet  
16:28:32 15 with this witness and prepare him to appear as the first witness.

16 PRESIDING JUDGE: Thank you.

17 MR MARGAI: My Lord, by way of a rejoinder, we are also  
18 interested in, perhaps, this Chamber indicating to us their  
19 disposition, vis-a-vis the application by the first and second  
16:29:02 20 accused calling President Kabbah as a witness. Our interest is  
21 that we intend -- we had in fact intended to tender a vital  
22 document here which Your Lordships advised that we perhaps ought  
23 to wait.

24 PRESIDING JUDGE: Yes.

16:29:23 25 MR MARGAI: And we're still waiting. In the unlikely event  
26 of the Chamber deciding otherwise, that may necessitate calling  
27 an additional witness who will tender that all-important  
28 document. So that is our interest.

29 PRESIDING JUDGE: That's fine.





1 MR MARGAI: We have not joined the application to call him  
2 as a witness because we want to reserve the right to  
3 cross-examination. As My Lord pleases.

4 PRESIDING JUDGE: Thank you very much, Mr Margai. Any new  
16:29:55 5 matter you wish to raise, counsel for the second accused? You  
6 have no instructions?

7 MR DUMBUYA: No, Your Honour. I am under limited  
8 instructions.

9 PRESIDING JUDGE: Very well. Mr Margai, other than this  
16:30:05 10 comment, you wish to raise any other matter?

11 MR MARGAI: No, My Lord.

12 PRESIDING JUDGE: Mr Prosecutor?

13 MR JOHNSON: Your Honour, I will resist the almost  
14 irresistible urge to bring up statements again and merely --

16:30:19 15 PRESIDING JUDGE: I've disposed of it.

16 MR JOHNSON: -- thank you for calling this status  
17 conference. I hope you agree; we believe it has been worthwhile.  
18 Thank you.

19 PRESIDING JUDGE: I think so, too. I think it is in the  
16:30:30 20 interest of all parties that there is a clear understanding of  
21 where we are and, if there has been progress, that it be noted  
22 and that there is still a requirement for more progress. There  
23 has been a very remarkable effort made and we have not reached  
24 yet the final disposition of it, but we can only invite counsel  
16:30:52 25 concerned to keep moving in that direction. Having said that,  
26 that concludes this status conference. We'll see you in the next  
27 session. Thank you very much.

28 [Whereupon the status conference adjourned  
29 at 4.30 p.m.]

