

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

THURSDAY, 27 OCTOBER 2005
9.36 A.M.
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Sharelle Aitchison Ms Roza Salibekova
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr James C Johnson Mr Mohamed Bangura Ms Nina Jorgensen Ms Marco Bundi Mr Mohamed Stevens Ms Lynn Hintz (intern)
For the Principal Defender:	No appearance
For the accused Sam Hinga Norman: assistant)	Dr Bu-Buakei Jabbi Ms Claire da Silva (legal
For the accused Moinina Fofana:	Mr Arrow Bockarie
For the accused Allieu Kondewa: assistant)	Mr Charles Margai Mr Yada Williams Mr Martin Michael (legal

1 Thursday, 27 October 2005

2 [CDF27OCT05A - CR]

3 [Status Conference]

4 [Open session]

5 [Accused Fofana and Kondewa present]

6 [Upon commencing at 9.36 a.m.]

May

7 PRESIDING JUDGE: Good morning, ladies and gentlemen.

8 I ask for representation for the first accused.

9 MR JABBI: Dr Bu-Buakei Jabbi and Claire da Silva.

10 MR BOCKARIE: For the second accused, Mr Arrow Bockarie.

11 MR MARGAI: For the third accused, Margai, Williams and
12 Michael.

13 MR BANGURA: To my left, Marco Bundi, Nina Jorgensen,
14 Jim Johnson and myself, Mohamed Bangura.

provided

15 PRESIDING JUDGE: I understand you have all been

16 with the agenda items for the status conference. It is not a
17 detailed one, but you know the subject matter to be discussed
18 this morning. You have also been served by the order of the
19 Chamber of 22 October. The status conference this morning is
20 held pursuant to that order and the purpose is to consider the
21 preparation and presentation of the defence case in this CDF
22 trial. Having stated the purpose of this status conference

this

23 morning, I would like to move into the trial preparation and

defence

24 logistics and remind all of you that there will be a pre-

on

25 conference held on 11 January. That will be just before the

26 succession of the CDF trial which is, hopefully, to commence

assist

27 17 January 2006. I may come back to these dates later, but we

28 will proceed with the next item on the agenda, which will

29 in making some further assessment as to the duration of that

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number

1 session.

accused

2 Witnesses are the other item on the agenda. Would
3 court-appointed counsel for the first accused indicate the

defence

4 of witnesses they intend to call on behalf of the first

when

5 and whether they will call any joint witness with other

6 teams? Obviously it will apply to the other defence teams

witnesses

7 we get there. Dr Jabbi, you're first. I repeat my question:

8 The Court would like some indication of the number of

9 you intend to call on behalf of the first accused.

calling

10 MR JABBI: My Lords, we are working on the basis of

11 around 80 witnesses.

12 PRESIDING JUDGE: Eighty, 8-0?

13 MR JABBI: Yes, My Lord, but that could be scaled down
14 according to circumstances.

15 PRESIDING JUDGE: Well, I hope you will be working hard
to
16 reduce that number in discussions with your colleagues from
the
17 other defence teams. I would certainly appreciate it if there
18 are common witnesses that they be called, whether it is by the
19 first accused, second accused or third accused. I can only
ask
20 for cooperation and consultation between the teams to try to
21 reduce the number as much as possible, without making any
22 pronouncement or decision at this stage as to the number of
23 witnesses you feel may be called. I hear you to say at this
24 stage that you are still at the 80 witness mark?

25 MR JABBI: Yes, My Lord. That takes us to the second
26 question; that is, the points you have just made about whether
27 joint witnesses will be called by the defence teams. We will,
of
28 course, endeavour to scale down the number of witnesses as
much
29 as possible. There is already a common understanding among
the

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joint

1 three defence teams that there will have to be a number of
2 witnesses. We haven't clarified that situation, but we hope
3 be in a position to do so before the end of November, My Lord.

to

4 PRESIDING JUDGE: Very well. We will proceed with the
5 second accused. Before you sit down, do my learned brothers
6 questions? Justice Itoe?

have

7 JUDGE ITOE: Just a simple question to help us to
8 the logistics. Is the accused testifying as a witness

envisage

himself?

9 MR JABBI: My Lord, that is question D. I don't know
10 whether I can safely defer an answer to that until --

11 JUDGE ITOE: All right.

Jabbi.

12 PRESIDING JUDGE: Justice Thompson? Thank you, Dr
13 Mr Bockarie for the second accused?

14 MR BOCKARIE: Yes, at the moment we are contemplating at
15 most 30 witnesses. It is very likely between 30, at the most,
16 and at least 25.

17 PRESIDING JUDGE: Somewhere in between 25 and 30?

18 MR BOCKARIE: Yes, My Lord.

that

19 PRESIDING JUDGE: Would that include common witnesses
20 could be called, or is it specific to the second accused?

planned

21 MR BOCKARIE: My Lord, for now, meetings have been

that

22 to discuss with the respective defence teams the witnesses

for 23 will be of common interest to all the accused persons. So,
24 now, I cannot give a specific answer as to whether that 25 to
30 26 will include the joint witnesses, but it is highly probable it
27 will.

28 PRESIDING JUDGE: Mr Margai for the third accused?

29 MR MARGAI: Not more than 30, 35.

35 30 PRESIDING JUDGE: I take it that as part of this 30 to

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1 you still have to make an assessment about the joint witnesses
2 that will be called?

3 MR MARGAI: That is correct.

any 4 PRESIDING JUDGE: Thank you. Justice Itoe, do you have
5 questions? Justice Thompson?

6 JUDGE THOMPSON: No.

issue, 7 PRESIDING JUDGE: Before we proceed with some other

8 on the witness issue I would like to inquire with each defence
9 team, once again, in the preparation of your case, whether any
10 accused will be calling character witnesses. If you do, we
would

sequence
11 like to be informed if only because to follow the proper
12 at that particular moment. Presumably if a team calls a
13 character witness or more than one character witness, it will
be
14 done not in a joint fashion normally, but it will be for one
15 specific accused. If you do intend to call more than one
16 character witness, may I suggest that you consider as well
using
17 Rule 92 bis. In other words, you can produce one and maybe
two,
18 but if you have the intention to produce more than one or two,
19 unless you feel that it is absolutely necessary that the Court
20 hear and see these witnesses, that you consider using 92 bis
as a
21 possible avenue.

22 So is there any question as a result of my comments
about
23 character witnesses? Again this is, at this time, just an
24 inquiry from the Bench as to what it is. We are not
necessarily
25 suggesting you should call character witnesses, but if you do
26 call them we would like that it be done in an orderly fashion
27 and, if at all possible, as I say, that you think of using
28 Rule 92 bis.

29 So there is another issue that we would like to raise
with

1 you as to the order of calling witnesses. I will ask
2 Justice Thompson to get into this issue with you.

we

3 JUDGE THOMPSON: Learned counsel for the first accused,
4 will start with you as to how you intend to call witnesses for
5 the first accused. In other words, do we intend to stick by
6 normal order or are there any arrangements among the defence
7 teams to varying the standard procedure? Dr Jabbi?

the

early

this

up

8 MR JABBI: My Lords, on this issue it may well be too
9 for us to be definite about how to proceed. We will discuss
10 among ourselves, the defence teams, and the decisions we come
11 with will be communicated to the Court and to Prosecution.

expedition

to

12 JUDGE THOMPSON: Would you like to inject some
13 into that whatever conference or deliberations you might want
14 hold in respect of that?

15 MR JABBI: We will endeavour to do so, My Lord.

16 JUDGE THOMPSON: Counsel for the second accused, is your
17 position the same as Dr Jabbi?

18 MR BOCKARIE: Yes, My Lord.

the

19 JUDGE THOMPSON: And I'm assuming, I hope safely,
20 Mr Margai, your position is consistent with what counsel for
21 first accused has said.

adopt
lead
examine,

22 MR MARGAI: My Lord, we would appreciate if we could
23 the common law practice, the first accused to open his case,
24 his witnesses, if need be, second and third will cross-
25 and at the end of the case for the first accused, the second
26 steps in and then the third.

or

27 JUDGE THOMPSON: Are you throwing that as an option now,
28 would you like to --

what

29 MR MARGAI: That is what we would prefer, subject to

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for
for
want

1 Your Lordships would direct.
2 JUDGE THOMPSON: It would be the same as if the counsel
3 the first accused would like to reserve that kind of proffer
4 probably deliberations among the Defence teams, but do you
5 to --
6 MR MARGAI: Well, we have no objection. We are
definitely
7 going to have meetings, and we hope we will thrash out those

8 issues.

9 JUDGE THOMPSON: So we don't want to take what you've
10 suggested as fact.

11 MR MARGAI: As My Lord pleases.

12 PRESIDING JUDGE: But we accept the suggestion at this
13 particular moment.

14 MR MARGAI: It is just a preference.

15 JUDGE THOMPSON: Quite. I understand. That was why I
said
16 the standard procedure. Counsel for the third accused, you
fall
17 in line. That's it, okay, nobody else. Mr Presiding Judge,
over
18 to you.

19 PRESIDING JUDGE: Thank you. Justice Itoe has a
question
20 to come back to the character witness.

21 JUDGE ITOE: The question was put to learned counsel as
to
22 whether they have any character witnesses to be called. When
the
23 Presiding Judge made a preliminary observation on this, I do
not
24 think that there was a reply to this question. What would be
the
25 reply to this question, Dr Jabbi, for the first accused? We
26 would like to have the records complete on this.

27 MR JABBI: My Lords, my understanding of the Presiding
28 Judge's observations on that was a series of options and
29 considerations expected of the Defence.

have
to,
intend,

1 PRESIDING JUDGE: You're quite right, Dr Jabbi. I may
2 omitted to be quite precise in my question as to, in addition
3 there would be any intention on the part of the first accused,
4 talking to you, to call any character witness. If you do
5 would that be part of your proposed plan of 80 witnesses?

6 MR JABBI: Yes, indeed, My Lord.

call

7 PRESIDING JUDGE: So you are intending at this time to
8 character witnesses on behalf of the first accused?

of

9 MR JABBI: My Lord, I should make comments on the side
10 caution to say that indeed we are contemplating it, but we
11 say at this time definitely whether we will do so, but it is
12 within our consideration.

cannot

13 PRESIDING JUDGE: Thank you. Mr Bockarie?

Lord.

14 MR BOCKARIE: Yes, My Lord. I hold the same view, My

15 All these issues are under contemplation.

further

16 PRESIDING JUDGE: We will not press the issue any

17 at this moment. And Mr Margai --

18 MR MARGAI: Character witnesses are envisaged within the
19 number given, My Lord.

20 PRESIDING JUDGE: You are intending to call character
21 witnesses?

22 MR MARGAI: Yes, we are.

23 MR JOHNSON: Excuse me, Your Honour. Your Honour, if I
can
topic
for
the
just
the
24 just inject one thought before we get too far away from the
25 of the order of the defence case. Obviously it's premature
26 the Prosecution to state any position on this and, of course,
27 Defence teams are going to get together and discuss this. I
28 wanted to interject that in your discussions please include
29 thought on common witnesses or joint witnesses that all three

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joint
things
Thank
1 teams are calling together and plan for who would interview
2 witnesses and where they would come in the whole scheme of
3 and in order of things, so when it comes time to fully discuss
4 that issue that is something that has been contemplated.
5 you.

6 PRESIDING JUDGE: Thank you, Mr Johnson.

7 MR BOCKARIE: Still on the question of witnesses, before
we
8 come to the expert witnesses, we intend calling hostile
witnesses
9 and we would like the Chamber to issue subpoena orders to the
10 effect when we get to that stage. We just want the assurance
of
11 the Chamber that subpoenas will be issued to the effect,
12 Your Honour. One or two hostile witnesses.

13 JUDGE THOMPSON: Hostile to which side, Mr Bockarie?
That
14 would be my first question.

15 MR BOCKARIE: Probably they might not be willing to
testify
16 for the Defence.

17 JUDGE THOMPSON: I see.

18 PRESIDING JUDGE: Not to be willing to testify for the
19 Defence is quite different than being hostile.

20 JUDGE THOMPSON: Quite right.

21 MR BOCKARIE: Okay. Well, may I say that we would like
to
22 get the assurance of the Chambers that subpoenas will be
issued
23 to certain witnesses.

24 JUDGE THOMPSON: Who might be reluctant.

25 MR BOCKARIE: Correct, Your Honour.

26 JUDGE THOMPSON: Because the word "hostile" is a legal
27 concept now in the context of witnesses..

28 MR BOCKARIE: Yes. Who might be reluctant to testify on
29 behalf for the Defence.

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1 JUDGE THOMPSON: I thought I understood hostile in its
2 extremely precise legal context.

hostile,

3 PRESIDING JUDGE: Because they may indeed become
4 but I don't think we can assume they are hostile before they
are
5 sworn in and begin to give their evidence.

6 MR BOCKARIE: I agree with you, Your Honour.

decides

7 JUDGE THOMPSON: And usually it is the Court that
8 whether a witness is hostile or not.

comes

9 PRESIDING JUDGE: We will consider the matter as it
10 and then hopefully you will provide sufficient information for
11 the Court to make a proper decision.

12 MR BOCKARIE: As Your Honour pleases.

maybe

13 JUDGE ITOE: You may wish to review and reassess your
14 strategy on this, because you may only be calling them and
15 disadvantaging your client. Maybe you may be calling them to
16 reinforce the case of your adversary. You have you to be very
17 careful.

18 MR BOCKARIE: Yes, we are, Mr Lord. I mean, it is all

My 19 within contemplation. We just want to be on the safer side,
20 Lord.

issue 21 PRESIDING JUDGE: Thank you, Mr Bockarie. Any other
22 or comments on witnesses on the part of the first accused?
We'll 23 get to expert witnesses after that, Dr Jabbi. Any question
you 24 would like to raise at this particular moment?

25 MR JABBI: None, My Lord.

question 26 PRESIDING JUDGE: Mr Margai, do you have any other
27 you want to raise?

28 MR MARGAI: No, I am satisfied, My Lord.

29 PRESIDING JUDGE: So expert witnesses. Dr Jabbi, again,

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accused 1 for the first accused, is it the intention of the first
2 to call expert witnesses?

about 3 MR JABBI: Yes, indeed, My Lord. We are not definite
4 the number, but it will be between three and possibly five, at
5 most.

6 PRESIDING JUDGE: May I ask you as well if you are

their

7 intending to call three to five expert witnesses, when will
8 identity be known and when will you inform the Prosecution and
9 the other Defence teams of the name and the identity of these
10 witnesses and when do you expect that these reports will be
11 disclosed?

2

the

12 MR JABBI: My Lord, we would want to refer here to order
13 of the Order Concerning the Preparation and Presentation of
14 Defence Case and to say that the answer to that question would
15 most likely be available by 17th November.

asking

to

the

for

that

16 PRESIDING JUDGE: That's fine. I'm not necessarily
17 that you give us this morning a precise answer. I just want
18 know if you're calling and reminding you, essentially, that
19 sooner you are able to disclose the identity the better it is
20 all concerned. The same with the disclosure of any report
21 these experts might prepare. By 17th November, this is
22 essentially your statement at this time, you should be in a
23 position to provide that information?

24 MR JABBI: Yes, My Lord.

25 PRESIDING JUDGE: Thank you. Mr Bockarie?

military

26 MR BOCKARIE: We probably intend calling two, one
27 expert and one cultural anthropologist.

28 PRESIDING JUDGE: When will you be able to provide the
29 identity of your experts and any report?

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1 MR BOCKARIE: Yes, it will be communicated very soon, My
2 Lord. We are in communication with them, in line with Dr
3 date.

Jabbi's

4 PRESIDING JUDGE: Counsel for the third accused?

5 MR MARGAI: My Lord, it is not more than three expert
6 witnesses forming part of the total number of 35, maximum.
7 Particulars will be submitted before the date mentioned in
8 paragraph 2 of Your Lordships' order, the Chamber order.

9 PRESIDING JUDGE: May I ask all of you if there is any
10 intent at this time as well to have a common expert as part of
11 the common witnesses, or it doesn't appear to be the case?

to

12 Dr Jabbi, you are talking three to five, I've heard the second
13 accused to say they are planning to call two experts, one
14 military and one anthropologist. Are these part of your three

distinct

15 five or are these three to five separate and apart and
16 from?

of

17 MR JABBI: My Lord, I can only say at this stage that we
18 have to confer amongst ourselves. It may be that one or two
19 them may be common.

Bockarie,

agenda

20 PRESIDING JUDGE: Fine. I'm just inquiring at this
21 particular moment. We are not ordering anything; we are just
22 trying to see how best to assess what is coming and how to
23 proceed as diligently we can with regard to the disclosure of
24 information so that we can proceed in due course. Mr
25 presumably you have the same type of answer?

26 MR BOCKARIE: Yes, Your Honour.

27 PRESIDING JUDGE: And Mr Margai, the same?

28 MR MARGAI: Yes, My Lord.

29 PRESIDING JUDGE: Thank you. The next issue on the

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if

be

1 is the accused's testimony. It is just a reminder. Again, I
2 will not ask you to give a definite answer this morning, but I
3 remind you of Rule 35(C), which provides that the accused may,
4 he so desires, appear as a witness in his own defence. If he
5 chooses to do so, he will give evidence under oath or
6 affirmation, as the case may be, and thereafter call his
7 witnesses. In other words, if the accused is intending to
8 testify, he shall testify first and then other witnesses can

9 called. It's just a reminder of that rule so that in your
10 planning and preparation, if it is indeed your intent, you
should
11 bear that particular rule in mind. I will not ask if any of
12 these accused will testify at trial, but you will certainly be
held
13 asked that question at the pre-trial conference that will be
14 later.
15 Special Defences: We note that court-appointed counsel
for
16 the first accused in their pre-trial brief noted that the
accused
17 would rely on the defence of self-defence - collective
18 self-defence - and indicated that they reserve the right to
plead
19 special defence pursuant to Rule 67 of the rules.
Furthermore,
20 court-appointed counsel for the second accused in their pre-
trial
21 brief said that they reserve the right to enter a special
defence
22 on behalf of the second accused and were not able to notify
the
23 Prosecution at that time of their intent to file a defence of
24 alibi or any other special defence. Can the court-appointed
25 counsel for each accused, beginning with you, Dr Jabbi, for
the
26 first accused, please advise whether they intend to rely on
any
27 such defences and whether or not they have notified the
28 Prosecution of this detail at this stage? As I said, my
29 reference is to the pre-trial brief filed by your teams.
That's

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1 where this information is coming from.

essentially

2 MR JABBI: My Lord, as at this stage, we have not
3 communicated with the Prosecution in respect of that,

we

4 because we have not made a final decision on that issue. But

5 will certainly communicate with the Prosecution as soon as

6 possible when we have taken that decision.

7 PRESIDING JUDGE: So you have made no decision at this
8 stage whether or not you are going to be calling any special
9 defence?

10 MR JABBI: We have not taken a final decision on it.

do

11 JUDGE THOMPSON: So you're still reserving the right to

12 so?

13 MR JABBI: Yes, My Lord.

obligation

14 JUDGE THOMPSON: You are very much aware of the

15 under Rule 67(A)(ii), which states that once that decision is

16 taken it is mandatory that you notify the Prosecution?

17 MR JABBI: Certainly, My Lord.

18 JUDGE THOMPSON: I'm sure that the rule was intended to

19 prevent any kind of surprises or an ambush-type situation.

20 MR JABBI: Yes.

21 JUDGE THOMPSON: I want to sensitise you to the
22 requirements of the rule.

23 MR JABBI: Thank you very much.

24 PRESIDING JUDGE: I can only urge you to assess that
issue

25 as soon as possible because, again, as Justice Thompson has
just

26 mentioned, under Rule 67 there is an obligation as to the
names

27 and addresses of these witnesses and so on. We would like to

28 ensure that if you are proceeding along these lines that this

29 will not delay the proceedings. We are reminding you that
this

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1 was part of your pre-trial brief, which was quite a while ago.

2 MR JABBI: Yes.

3 PRESIDING JUDGE: I can only urge you to look into this
4 issue as soon as possible so that the Chamber, and especially
the

5 Prosecution, is informed so it will not cause an unnecessary
6 delay.

7 MR JABBI: My Lord, we will endeavour to rise

8 [indiscernible] to that responsibility.

9 PRESIDING JUDGE: Thank you, Dr Jabbi. Yes, Mr
Bockarie?

10 MR BOCKARIE: We have not taken a definite position as
to
11 the special defences. Everything has been contemplated, My
Lord,
12 but the Prosecution will be duly informed when we have taken a
13 definite stance on this issue.

14 PRESIDING JUDGE: Again, we are reminding you of the
15 content of Rule 67 in this respect and the time prescribed.
16 Mr Margai, I didn't observe any such comment in your pre-trial
17 brief on behalf of the third accused. It does not mean you
may
18 not, but I would like to know if you intend to make any such
19 special defence. If you do intend to or you are not in a
20 position to do so, I would appreciate knowing this. Again, I
21 would like to see where we are moving with this.

22 MR MARGAI: We did not so indicate because at the time
we
23 did not see the need. But that is not to say that we shall
not
24 revisit the issue. If so, we would definitely comply with the
25 provisions of Rule 67 as mentioned by Justice Thompson.

26 PRESIDING JUDGE: Again, I urge you to look into this
issue
27 on behalf of your client as soon as possible. If you are
28 intending to proceed with the special defence because you have
29 concluded that would be an avenue to pursue on the behalf of
the

1 accused, you should do that soonest.

2 MR MARGAI: We will do that soonest, My Lord.

be

3 PRESIDING JUDGE: Starting with you, Dr Jabbi, will you
4 applying for protective measures for any of your witnesses?

time,

5 MR JABBI: It is likely in the case of some. But as to
6 most of our witnesses, there will be no need for protective
7 measures. We will make the necessary applications in good
8 My Lord.

9 PRESIDING JUDGE: Thank you. Mr Bockarie?

10 MR BOCKARIE: At this point, none of the witnesses
11 interviewed so far has expressed any desire for protective
12 measures.

13 PRESIDING JUDGE: Including those reluctant witnesses?

to

14 MR BOCKARIE: We don't know yet. But, without prejudice
15 the rights of our accused, we may ask for protective measures
16 the need arises. But at this stage, no.

if

17 PRESIDING JUDGE: You are not contemplating having any?

18 MR BOCKARIE: No.

19 PRESIDING JUDGE: Thank you. Mr Margai?

20 MR MARGAI: Yes, My Lords, we most certainly would be
21 applying for protective measures for the witnesses.

22 PRESIDING JUDGE: For all of them?

spheres
23 MR MARGAI: Yes, for all of them. Not with a view to
24 concealing their identity, but to protect them in other
25 to ensure that justice is done. We will elucidate at the
26 appropriate time.

know,
27 PRESIDING JUDGE: Fine. The appropriate time, as you
28 will be when you file your application for the protective
29 measures.

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1 MR MARGAI: Yes, My Lord.

be
2 PRESIDING JUDGE: I know my next question may appear to
3 premature, but for planning purposes I would like to know what
is
4 the anticipated length of the defence case. Starting again
with
5 you, Dr Jabbi.

this
6 MR JABBI: My Lord, to be on the safe side, given that
7 is the anticipatory stage of reacting to that question, one
would
8 say four trial sessions at most and possibly a lot less.

9 PRESIDING JUDGE: When you say this, this is only for
the
10 first accused?

11 MR JABBI: I can talk authoritatively only about the
first
12 accused. But I believe that time frame will be acceptable to
the
13 other teams.

14 PRESIDING JUDGE: Mr Bockarie?

15 MR BOCKARIE: We envisage two six-week trial sessions.

16 PRESIDING JUDGE: If the sessions are of six weeks
17 duration, you think that?

18 MR BOCKARIE: Yes.

19 PRESIDING JUDGE: But when you speak of two sessions,
are
20 you speaking only for the second accused?

21 MR BOCKARIE: Yes, My Lord.

22 PRESIDING JUDGE: Mr Margai, for the third accused?

23 MR MARGAI: My Lords, for the third accused, we
anticipate
24 two trial sessions, exclusive of the first and second accused.

25 PRESIDING JUDGE: I would now like to deal with the
order
26 for filings. I remind you of the order of 21 October 2005,
which
27 orders each defence team to provide the Chamber with the
28 following materials no later than 17 November 2005. The order
29 refers to a list of witnesses that each defence team intends

1 calling, including the name of each witness and a summary of
2 their respective testimony. I indicate here that a summary
3 should be descriptive enough so that the Chamber understands
the
4 nature of the evidence of that particular witness, not only
that
5 the witness will talk about Moyamba District. It should
contain
6 a little more detail than that kind of summary description.
It
7 should also refer to the points of the indictment to which
each
8 witness will testify, the estimated length of time for each
testify
9 witness to testify, and indicate whether a witness will
10 in person or through the use of Rule 92 bis. This is just a
11 reminder of what is contained in the order that this Chamber
12 issued on 21 October. Mr Jabbi, do you have any questions?

13 MR JABBI: Just a clarification on item A1, the name of
14 each witness which has to be filed by 17 November 2005. My
Lord,
15 may we understand that the name here refers to the pseudonym?

16 PRESIDING JUDGE: Well, yes, if these are protected
17 witnesses, obviously. But if they are not protected
witnesses,
18 there is no need to have a pseudonym.

19 MR JABBI: It is just the question of premature
disclosure.

whether

20 We are a bit concerned about it. We want clarification

21 at this stage we can proceed with the pseudonym process.

how

22 JUDGE THOMPSON: Learned counsel, my understanding of

of

23 the regime works is that the assignment of pseudonyms is part

the

24 the protective measures process. If the witness is not to be

25 subject of protection perhaps the issue of a pseudonym doesn't

26 arise. Would you agree with that reasoning? It seems to be

that

27 implicit in the Court's regime of protected witnesses that

28 in itself is a protection, or am I missing it?

safely

29 MR JABBI: My Lord, it is a question of what we can

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1 do at this stage.

previous

2 JUDGE THOMPSON: That's why we bounce back to your

stage,

3 question regarding whether you are contemplating at this

4 or in the immediate foreseeable future, seeking protection for

5 any of your witnesses.

6 MR JABBI: Since we may not be definite in our answer to

they

7 that question at this stage, it may be safer to assume that
8 will need protection and, therefore, operate using a pseudonym
9 process at the November 17 stage.

10 JUDGE THOMPSON: The Court may not want to proceed on
11 assumptions but on definite positions stated by you.

want?

12 JUDGE ITOE: Dr Jabbi, you have to choose an option. Do
13 you want all your witnesses protected or what? What do you

put

14 We can't be speculating; we have to move. If you want some
15 witnesses to be protected then they will be subjected to the
16 regime of pseudonyms, and others will just have their names

to

17 as witnesses. It is a question of your choosing the option to
18 seek protection for the entirety of the witnesses you intend
19 call. This would help us move forward.

you

20 PRESIDING JUDGE: Bear in mind that in your application

simply

21 will have to justify the need for protection. It is not

this

22 because we would like their identity not to be revealed at

time.

23 time; you have to say why it should not be revealed at this

the

24 MR JABBI: My Lord, we are trying to clarify this with

clear,

25 respective witnesses. As I say, at this stage we are not

then,

26 but if we have to supply that information by 17 November,

and

27 perhaps, it may be safe to assume that they need protection

do

28 so we proceed by the pseudonym process, even if ultimately we

29 not insist on their protection. It is just a form in which we

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1 respond to that question as at 17 November 2005, My Lord.

2 PRESIDING JUDGE: Well, you will have to respond by

3 17 November, absolutely, yes. Which means that between now

and

4 then, presumably, if you are intending to have these witnesses

5 protected, you will apply for protective measures for these

6 witnesses - before 17 November.

7 MR JABBI: As your Lordship pleases. We do understand.

8 PRESIDING JUDGE: Thank you. Mr Bockarie, do you have

any

9 questions?

10 MR BOCKARIE: No, Your Honour. Work is well under way

in

11 order to fulfil the order, My Lord.

12 PRESIDING JUDGE: Thank you. Mr Margai, do you have any

13 questions?

14 MR MARGAI: No, My Lord.

15 PRESIDING JUDGE: Thank you. Now dealing with opening

16 statements. This question is directed to the second and third

17 accused. Will the Defence for the second and third accused

make

18 any opening statements?

do

19 MR BOCKARIE: My Lord, we would say probably yes, but we

20 not want to commit ourself at this particular stage.

stage

21 PRESIDING JUDGE: That's fine. If you are prepared to
22 inform the Court, that's fine. We will not insist at this

is

23 that you commit yourself to say we will or we will not, but it

being

24 a possibility in your case at this particular moment; it is

25 contemplated?

26 MR BOCKARIE: It is.

27 PRESIDING JUDGE: Thank you. Mr Margai?

28 MR MARGAI: Yes, My Lord.

an

29 PRESIDING JUDGE: Is it the intent of your team to make

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calling

1 opening statement on behalf of the third accused before

2 the evidence?

3 MR MARGAI: Yes, My Lord.

4 PRESIDING JUDGE: You will?

5 MR MARGAI: We will.

6 PRESIDING JUDGE: Thank you.

7 MR JABBI: My Lord, if I may just inquire, on behalf of
the
8 first accused, the question has not been posed.

9 PRESIDING JUDGE: Well, for the obvious reason: he has
do
10 been afforded the opportunity and has taken the opportunity to
11 so at the beginning of the trial. You may recall there was a
he
12 long debate on this issue and he was allowed to. Therefore,
he
13 had the option and we gave him the option, but made it clear
14 was exercising his option then and he would not be able to do
15 that later on in the process. That's the reason why I didn't
ask
16 you. As far as this Court understands the procedure, he has
17 exercised his option already.

18 MR JABBI: We will get back to the Court on that issue,
My
19 Lord.

20 PRESIDING JUDGE: Very well.

21 MR WILLIAMS: May I be heard, My Lords?

22 PRESIDING JUDGE: Yes. On what issue are you talking
about
23 now?

24 MR WILLIAMS: On the filings that are required by
25 17 November 2005. Under (a)(i), (ii), (iii), I just want to
know
26 if these filings will be confidential filings?

27 PRESIDING JUDGE: In what sense confidential? Why are
you
28 asking the question? I have some difficulties following you.
If

with

29 it is confidential because you think there might be problems

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to

1 their security or this kind of issue, maybe, but you will have
2 give justification not just to say, "I would like to have that
3 file made confidential." The practice, as you know, it shall
4 public unless - it's not the other way around.

be

5 MR WILLIAMS: I'm contemplating the protective measures
6 that we will be seeking, that's why I'm asking for
7 clarifications, My Lord.

if

8 JUDGE THOMPSON: Can we give that answer at this stage
9 we don't know whether you will be requesting confidentiality?

seeking

10 MR WILLIAMS: We have already indicated we will be
11 protective measures.

12 JUDGE THOMPSON: For all of them?

13 MR WILLIAMS: Well, yes, My Lord, and we make the
14 applications as the witnesses come forth, My Lord, as was the
15 case for the Prosecution.

16 PRESIDING JUDGE: We're not making any difference. The
17 Prosecution has had to meet a certain burden to say it was

18 required and say why it was required. The same test will be
19 applicable to you and your witnesses. If you meet that test,
we
20 will grant whatever you are asking if we feel it is
appropriate
21 and commensurate with what you are asking. As my brother
Justice
22 Thompson just said, it is difficult to answer your question in
a
23 very hypothetical way at this time. If you have the
24 justification --

25 MR WILLIAMS: The purpose of seeking protective measures
26 will be defeated if the filings that I have mentioned are not
27 done confidentially.

28 PRESIDING JUDGE: Well, presumably you will file a
motion
29 to seek protective measures for a number of witnesses,
presumably

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1 that's the way you will be intending to do that. In that
2 application, you will not name the witnesses per se, but you
will
3 give us a number and information and if it is at that time
4 important that we know the names of these witnesses, well,
make

at
not
because,
5 an application for that to be filed confidentially. We cannot
6 this stage tell you, yes, it will be confidential. We cannot
7 make that decision. We need to have information that we do
8 have at this moment. I'm telling you, it is possible, but we
9 will have to see what it is you're applying for and then make
10 that determination. If it is to protect their identity
11 and that's why you are going to be asking for protective
12 measures, we will be conscious of that aspect and look into it
13 attentively.

14 MR WILLIAMS: Most grateful, Your Honour.

measures
measures
a
case
be
15 JUDGE ITOE: I think what we are saying is that the
16 reasons, which you will advance, to seek the protective
17 will rise up to the standard that is required for these
18 to be granted by the Court, because it isn't automatic. It's
19 question of examining the protective measures on a case-by-
20 basis and depending, of course, on the reasons which you will
21 advancing to justify the granting of those measures.

the
equality
22 JUDGE THOMPSON: And perhaps to add, we will not vary
23 standards from what we have applied in the case of the
24 Prosecution, because that will defeat the principle of
25 of arms.

ways.
26 PRESIDING JUDGE: To add to that, there are different
27 You may make your application and have attached a list of

28 witnesses that the list will be confidential when you file it.
29 This is one. I don't know, there may be different groups of

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1 witnesses, some that will require this type of protection. I
2 will use the example, as you know, with the Prosecution when
3 there was a child or some witnesses, there was a special
category
4 of protection and protective measures were different than the
5 other ones. This is the kind of information we will need from
6 you to make that determination and make what protective
measures,
7 indeed, the Court shall grant. That's as best as we can say
at
8 this moment.

9 MR WILLIAMS: Thank you.

10 PRESIDING JUDGE: We still have a few pending motions
and
11 decisions. I think they are all leave to appeal; all
12 applications for leave to appeal filed by the Prosecution.
One
13 is a motion for a ruling on the admissibility of evidence, and
14 the other one is leave to appeal confidential decision on
Defence

application

15 application regarding witness TF2-218. The third is
16 for leave that has been filed two days ago, I think, with
17 reference to the Court's decision on the motions for judgment
of 18 acquittal. This last one, the delays for filing response and
19 reply have not expired yet. We will look into it in due
course 20 and the other ones shall be out shortly, certainly before we
21 proceed further with the CDF.

this

22 Is there any other matter you wish to raise at this
23 particular moment, Dr Jabbi, which should be looked into at
24 status conference now?

matter

25 MR JABBI: At this stage, My Lord, we don't have any
26 to raise.

27 MR BOCKARIE: None.

28 PRESIDING JUDGE: Thank you, Mr Bockarie. Mr Margai?

29 MR MARGAI: None.

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wish

1 PRESIDING JUDGE: Turning to the Prosecution, do you
2 to raise any issue; any matter you would like to raise at this

3 moment?

4 MR JOHNSON: Yes, Your Honour, if I could raise a few
5 issues, please. The first one just being with some general
6 concerns on the start date of 17 January. The Prosecution
7 doesn't want to see anything that could possibly delay that
start
8 date. We really would hope that we can indeed get started on
9 17 January. I would like to raise some issues now or concerns
10 that we have that I can foresee might be some concerns with
that.

11 The Defence, if you look at their estimates on their
trial,
12 they have given a total of eight trial sessions based on, for
13 planning purposes, six weeks each, which puts us up to 48
weeks
14 of trial on the Defence case alone. We are hoping that as
things
15 progress, witness lists will be reduced and things like that,
but
16 we don't know anything on that at this point.

17 My point is we are putting off a lot of decisions until
18 11 January, only six days before the Defence case is scheduled
to
19 start: decisions such as the number of witnesses they're
going
20 to call; decisions such as the order that the Defence case
will
21 proceed with, will they go second, third accused; when will
the
22 accused testify; where will joint witnesses fit into this
23 process, and all of these things. I'm quite concerned that
24 depending on some of the decisions that are made on 11
January,
25 which is where you have set aside time to deal with many of
these

effect 26 issues, depending on those decisions, could that have an
27 on us being able to start the trial on 17 January?
28 What I'm proposing is that, if possible, we can have
29 another status conference shortly after 17 November for the

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have 1 Defence filings. 17 November is even another issue. Do we
2 applications for protective measures that will be made between
whether 3 now and 17 November? It is very difficult for us to say
don't 4 we would oppose those applications at this time, because we
5 know what the justification will be for them. I'm suggesting
6 possibly a status conference shortly after 17 November, but
sort 7 certainly before the recess might be appropriate so we can
Prosecution 8 out some of these issues so the Defence teams and the
9 would have time to react to some of those decisions before
That 10 17 January, the scheduled start date for the Defence case.
bring 11 is my first issue. I have one or two more I would like to
12 up. Go ahead?

13 PRESIDING JUDGE: Yes.

14 MR JOHNSON: Another issue, there is nothing in your
order

15 dealing with your option under Rule 73 ter (B) order the
Defence

16 to disclose witness statements to either the Chamber or to the
17 Prosecution. You've discussed a little bit about the content
of

18 the witness summaries that Defence are required to file on
19 17 November. Perhaps if you're not going to go down -- this
20 certainly is not an issue that anybody is prepared to argue
now.

21 Basically, I'm just looking for an indication from you if you
are

22 not considering ordering Defence to disclose to the
Prosecution

23 witness statements, then we may come forward with an
application

24 for that and then it can be properly argued.

25 PRESIDING JUDGE: I think I can answer your question on
26 this very easily. This is part of the pre-Defence conference
and

27 the pre-Defence conference, as you know, is scheduled for

28 11 January. Obviously it will form part of that conference at

29 that particular moment. I can only suggest to you that it may
be

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have

1 premature, as an observation at this moment. That's why we
2 not issued any direction in this respect.

so

3 MR JOHNSON: That might reinforce my suggestion that we
4 move the pre-Defence conference up before the holidays again
5 we can react to that and, if we do go down the road of
6 of disclosure, they can be disclosed before the start of the
7 Defence case.

statement

the

8 PRESIDING JUDGE: On your first observation, I can say
9 we've taken note of that. Certainly, we are concerned about

as

10 timings of all of this as well, and we would like in as much

to

11 it is possible to proceed, as we have said, on 17 January and

pause.

12 start to move ahead and not start one day and then have to

think

13 Come 17 November, we will examine what is happening and if we
14 feel it might be necessary, we will take whatever action we

this

15 is appropriate and, maybe, as you have suggested, a status
16 conference. But we are not prepared to commit ourselves at

it

17 moment, except to say we will look at the picture and make a
18 determination. If we feel, in the interests of justice, we do

are

19 sooner or have a status conference prior to the pre-trial, we

20 not necessarily adverse to that at this moment.

21 MR JOHNSON: Thank you, Your Honour. I have one more

On

22 issue. I hope this is the appropriate place to bring it up,
23 although not necessarily related to the start of the trial.

your

24 Friday, the Defence teams for the first and second accused, I
25 believe it was, filed a letter asking for clarification of

prepared

26 decision on motion for acquittal. We, of course, have

here

27 and I can file within 15 minutes of the time we walk out of

saying

28 or bring to you our letter in response to that, of course

of

29 there is no need for clarification of that decision in respect

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curious

1 the letter that Defence counsel sent to you. I was just

2 if a letter is really the appropriate way to deal with the

3 question of this --

4 PRESIDING JUDGE: Mr Johnson, I will cut you short. We
5 have responded. I think it may have been delivered yesterday,
6 I'm not sure. Action has been taken in that respect.

with

7 MR JOHNSON: Thank you, Your Honour, if you can bear

8 me for just 10 seconds.

9

[CDF27OCT05B - SV]

10

PRESIDING JUDGE: Yes.

11

MR JOHNSON: Okay. Thank you very much, Your Honour.

12

concludes

PRESIDING JUDGE: Thank you, Mr Johnson. So that

13

all

this status conference. I can again invite, at this stage,

14

some

the Defence teams to speak to each other and to seek to find

15

if

solution as to the witnesses cooperation in sharing witnesses

16

it is possible and feasible without obviously hindering the

17

able

defence of your particular client. We hope and expect to be

18

first

to proceed as was stated on 17th January to start with the

19

accused and proceed as expeditiously as we can. But I do

20

given

understand that and I do accept that the numbers you have

21

at this time is really an estimate because as we move closer

22

it

hopefully you'll be able to advise more precisely as to what

23

this

is to expect. So I thank you very much for your attendance

24

morning and that concludes this status conference.

25

[Whereupon the Status Conference adjourned at

26

10.35 a.m.]

27

28

29