

**SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

Before: Hon. Justice Bankole Thompson, Presiding Judge
Hon. Justice Pierre Boutet
Hon. Justice Benjamin Mutanga Itoe

Registrar: Mr. Lovemore G. Munlo, SC

Date: 20th of July 2006

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

Public Document

**SCHEDULING ORDER CONCERNING THE PREPARATION AND PRESENTATION
OF THE DEFENCE CASE FOR THE SECOND AND THIRD ACCUSED**

Office of the Prosecutor:

Christopher Staker
James Johnson
Joseph Kamara

Court Appointed Counsel for Sam Hinga
Norman:

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
Arrow Bockarie
Michiel Pestman

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansú Lansana

TRIAL CHAMBER I (“The Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet and Hon. Justice Benjamin Mutanga Itoe;

NOTING the “Fofana Defence Case Management Proposals for the Eighth Trial Session”, filed by Court Appointed Counsel for the Second Accused (“Counsel for Fofana”) on the 28th of June 2006 (“Fofana Proposals”), proposing to file the remaining Defence case materials by the 21st of August 2006;

NOTING the “Prosecution Response to ‘Fofana Defence Case Management Proposals for the Eighth Trial Session’”, filed by the Office of the Prosecutor (“Prosecution”) on the 30th of June 2006, not objecting in principle to the Fofana Proposals;

MINDFUL OF the “Order Concerning the Preparation and Presentation of the Defence Case”, delivered by The Chamber on the 21st of October 2005 (“Order of the 21st of October 2005”);[\[1\]](#) and the “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case”, delivered by The Chamber on the 28th of November 2005 (“Order of the 28th of November 2005”);[\[2\]](#)

NOTING the “Fofana Materials Filed Pursuant to the Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of Defence Case”, filed by Counsel for Fofana on the 5th of December 2005;[\[3\]](#)

NOTING the “Materials Filed by Third Accused Allieu Kondewa Pursuant to Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of Defence Case”, filed by Court Appointed Counsel for the Third Accused (“Counsel for Kondewa”) on the 5th of December 2005 (“Kondewa Witness List of the 5th of December 2005”);[\[4\]](#)

NOTING the “Materials Re-Filed by Third Accused Allieu Kondewa Pursuant to Order for Non-Confidential Filing of Materials in Compliance with Order Concerning the Preparation and Presentation of the Defence Case”, filed by Counsel for Kondewa on the 11th of January 2006 (“Kondewa Witness List of the 11th of January 2006”);[\[5\]](#)

NOTING the “Revised Fofana Witness List”, filed by Counsel for Fofana on the 13th of January 2006;[\[6\]](#)

RECALLING the “Consequential Order to the Status Conference of 18 January 2006”, delivered by The Chamber on the 18th of January 2006 (“Order of the 18th of January 2006”),[\[7\]](#) ordering, *inter alia*, Court Appointed Counsel for all three Accused “to disclose to the Prosecution and file with the Court any identifying information which is available for all the witnesses they are intending to call; This information shall include family name, first name and nicknames, date and place of birth (if known), names of parents, religion, occupation at the time relevant to the Indictment and current address, no later than Monday, the 23rd of January, 2006, 4 p.m.”;

NOTING the “Fofana Materials Filed Pursuant to the Consequential Order to the Status Conference of 18 January 2006”, filed by Counsel for Fofana on the 23rd of January 2006 (“Fofana Witness List of the 23rd of January 2006”);[\[8\]](#)

NOTING the “Materials Filed by Third Accused Allieu Kondewa Pursuant to Consequential Order to the Status Conference of 18th January 2006”, filed by Counsel for Kondewa on the 23rd of January 2006 (“Kondewa Witness List of the 23rd of January 2006”);[\[9\]](#)

NOTING the “Materials Filed by Third Accused Allieu Kondewa Pursuant to the Scheduling Order of the 3rd Day of March 2006”, filed by Counsel for Kondewa on the 14th of March 2006 (“Kondewa Witness List of the 14th of March 2006”);[\[10\]](#)

NOTING the “Consequential Order to the Status Conference of 22 March 2006”, delivered by The Chamber on the 23rd of March 2006 (“Order of the 23rd of March 2006”);[\[11\]](#)

NOTING the “Fofana Notice of Reduction of Witnesses”, filed by Counsel for Fofana on the 5th of May 2006;[\[12\]](#)

NOTING the “Updated Witness List of the Third Accused Allieu Kondewa”, filed by Counsel for Kondewa on the 8th of May 2006 (“Kondewa Witness List of the 8th of May 2006”);[\[13\]](#)

NOTING the “Additional Fofana Notice of Reduction of Witnesses”, filed by Counsel for Fofana on the 27th of June 2006 (“Fofana Witness List of the 27th of June 2006”);[\[14\]](#)

MINDFUL OF the “Decision on Fofana Application for Leave to Call Additional Witnesses”, delivered on the 17th of July 2006 (“Decision of the 17th of July 2006”), whereby The Chamber granted Counsel for Fofana’s leave to add seven witnesses to the Fofana Witness List of the 27th of June 2006 and ordered to re-file, as soon as possible but no later than the 21st of August 2006, the renewed witness list, which would include the expanded summaries of their proposed testimonies, the points of the Indictment to which they will testify, the estimated length of time for their testimony, the mode of their testimony, the language of their testimony and all their identifying information;[\[15\]](#)

NOTING that the complete set of identifying information is still missing for the following witnesses, who are intended to be called by the Second Accused, namely, No. 1 Simon Arthy,[\[16\]](#) No. 5 Frances Fortune, No. 7 Tommy Jabbi, No. 12 Major-General Abdul One Mohammed, No. 13 Dema Moseray and No. 16 Foday Sesay;[\[17\]](#)

NOTING that Counsel for Fofana do not intend to call witnesses No. 1 Simon Arthy, No. 5 Frances Fortune, No.7 Tommy Jabbi and No. 13 Dema Moseray to give *viva voice* evidence but submit their witness statements through Rule 92bis procedure;[\[18\]](#)

NOTING that Rule 92bis “Alternative Proof of Facts” of the Rules of Procedure and Evidence of the Special Court (“Rules”) provides that:

(A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.

(B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.

(C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

NOTING Counsel for Fofana's submissions that “[t]he report of Dr Daniel Hoffman should be ready for disclosure by 21 August 2006, and in any event, twenty-one days prior to the date of Dr Hoffman's proposed testimony”;[\[19\]](#)

NOTING that Rule 94bis “Testimony of Expert Witnesses” of the Rules states that:

(A) Notwithstanding the provisions of Rule 66(A), Rule 73 *bis* (B)(iv)(b) and Rule 73 *ter* (B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.

(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:

(i) It accepts the expert witness statement; or

(ii) It wishes to cross-examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

NOTING that the reference to the language of the testimony for some of the witnesses to be called by the Second Accused appears to include multiple languages,[\[20\]](#) and, therefore, it would be helpful for the interpreters to know prior to the date of the testimony of a witness the actual language of his or her testimony;

NOTING that the complete set of identifying information is still missing for the following witnesses, who are intended to be called by the Third Accused, namely, No. 25 Regent Chief J.D. Murana,[\[21\]](#) No. 26 Doris Keifala, No. 27 Abibu Brima and No. 28 Chief Gaima;[\[22\]](#)

NOTING that sub-Rule 73*ter*(E) of the Rules provides as follows:

After the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

RECALLING The Chamber’s Order of the 28th of November 2005 stating that “[s]hould the Defence seek to add any witnesses to this list after the 5th of December, 2005 it may be permitted to do so only upon good cause being shown”;

NOTING that witnesses Momoh Bockarie Moiwa and Joe Kpana Lewis, listed as witnesses No. 22 and No. 23, respectively on the Kondewa Witness List of the 8th of May 2006, have not been previously listed as witnesses on the Kondewa Witness List of the 5th of December 2005, nor on the Kondewa Witness List of the 11th of January 2006, but appeared for the first time as witnesses No. 28 and No. 30, respectively, on the Kondewa Witness List of the 14th of March 2006, without leave having been sought from The Chamber to add them to the list of witnesses to be called by the Third Accused;[\[23\]](#)

NOTING that some of the summaries of the witnesses’ testimonies as submitted in the Kondewa Witness List of the 11th of January 2006, are not “sufficiently descriptive to allow The Chamber to appreciate and understand the nature of the proposed testimony”, as directed by The Chamber in its Order of the 28th of November 2005;[\[24\]](#)

RECALLING that the Order of the 23rd of March 2006 ordered, *inter alia*, Court Appointed Counsel for the First Accused (“Counsel for Norman”) to “file a list containing the order of their witnesses’ appearance” and that “[t]his list shall include references to the Exhibits, which Counsel are intending to tender through a particular witness on that order; Any deviation from this order shall be granted upon showing good cause by Counsel and shall be communicated as soon as possible to all Parties”;[\[25\]](#)

RECALLING that the Order of the 23rd of March 2006 further stated that “Court Appointed Counsel for all three Accused persons shall disclose, as soon as possible or at least two days prior to the commencement of the testimony of a witness, to the other Parties, as the case may be, a copy of the Exhibit, which Counsel intend to tender through such witness”[\[26\]](#) and that “Court Appointed Counsel for all three Accused persons shall ensure at all times the availability of at least two standby witnesses in court to testify in order to avoid any delays”;[\[27\]](#)

NOTING that the Special Court will observe a judicial recess from Monday, the 7th of August 2006 until Friday, the 18th of August 2006, “during which period the Court Management Section of the Registry will not accept any documents for filing”;[\[28\]](#)

NOTING that the eighth trial session in this case is scheduled to commence on the 13th of September 2006 with a preceding Status Conference on the 12th of September 2006;[\[29\]](#)

RECALLING that The Chamber granted the request of Counsel for Norman to defer the calling of witness Major-General Abdul One Mohammed, a common witness to the Second Accused, to the eighth trial session and ordered them to call this witness as the first witness in that session with the presentation of his evidence starting on the 13th of September 2006;[\[30\]](#)

NOTING that upon the completion of the testimony of Major-General Abdul One Mohammed, the Second Accused will commence the presentation of his Defence case, which would reportedly take not more than three to four weeks;[\[31\]](#)

CONSIDERING that Article 17(4)(C) of the Statute of the Special Court for Sierra Leone provides that the Accused shall be entitled “to be tried without undue delay” and that in accordance with Rule 26bis of the Rules The Chamber “shall ensure that a trial is fair and expeditious”;

CONSIDERING further that the Prosecution and Court Appointed Counsel for all three Accused persons are entitled to have sufficient time to prepare for their respective cross-examinations of witnesses called by Counsel for Fofana and Counsel for Kondewa;

REITERATING The Chamber’s Order of the 21st of October 2005, Order of the 28th of November 2005, Order of the 18th of January 2006, Order of the 23rd of March 2006 and Decision of the 17th of July 2006;

PURSUANT TO Rule 54, 73ter(E), 92bis and 94bis of the Rules;

THE CHAMBER ORDERS AS FOLLOWS:

1. Counsel for Fofana shall re-file the Fofana Witness List of the 27th of June 2006, as soon as possible but no later than the 21st of August 2006, by including the names of the additional seven witnesses, a summary of their proposed testimony that should be sufficiently descriptive, and also including the points of the Indictment to which they will testify, the estimated length of time for their testimony, the mode of their testimony and the language of the testimony;
2. Counsel for Fofana shall file, as soon as possible but no later than the 21st of August 2006, the identifying information for their additional seven witnesses and the rest of the information for witnesses, in respect of whom it has not yet been provided; this information shall include family name, first name and nicknames, date and place of birth

(if known), names of parents, if applicable, religion, occupation at the time relevant to the Indictment and current address;

3. Counsel for Fofana shall, as soon as possible but no later than the 21st of August 2006, file a list containing the order of their witnesses' appearance for the eighth trial session; this list shall include references to the Exhibits, which Counsel for Fofana are intending to tender through a particular witness in that order; any deviation from this order may be granted upon good cause being shown by Counsel for Fofana and shall be communicated as soon as possible to all Parties;

4. Counsel for Fofana shall, as soon as possible but no later than the 21st of August 2006, disclose to the Prosecution and file with the Court, pursuant to Rule 92bis of the Rules, witness statements of those witnesses whom the Second Accused does not intend to call to give oral testimony;

5. The Prosecution shall, within five days from the date of receiving such statements, file their objections, if any;

6. Counsel for Fofana shall, as soon as possible but no later than the 21st of August 2006, disclose to the Prosecution and file with the Court the expert report of Dr Daniel Hoffman;

7. The Prosecution shall, within fourteen days of the filing of the expert report, file a notice indicating whether they accept the expert report or wish to cross-examine Dr Daniel Hoffman;

8. Counsel for Kondewa shall remove Momoh Bockarie Moiwa and Joe Kpana Lewis from the Kondewa Witness List of the 8th of May 2006, or, alternatively, seek leave from The Chamber to add these witnesses, should they still intend to call them on behalf of the Third Accused;

9. Counsel for Kondewa shall re-file the Kondewa Witness List of the 8th of May 2006, as soon as possible but no later than the 31st of August 2006;

10. This re-filed witness list shall include the names of the witnesses, the points of the Indictment to which they will testify, the estimated length of time for their testimony, the mode of their testimony, the language of their testimony and a summary of their proposed testimony, which shall contain detailed summaries of the incidents and/or events which a witness is called to testify upon, exact location and date (if available) of these alleged incidents and/or events, position and/or role of a witness in relation to the crimes charged in the Indictment and the nexus between the Accused and the proposed testimony of a witness;[\[32\]](#)

11. Counsel for Kondewa shall, as soon as possible but no later than the 31st of August 2006, file a list containing the order of their witnesses' appearance; this list shall include references to the Exhibits, which Counsel for Kondewa are intending to tender through a particular witness in that order; any deviation from this order may be granted upon good cause being shown by Counsel for Kondewa and shall be communicated as soon as possible to all Parties;

12. Counsel for Kondewa shall endeavour to disclose to the Prosecution and file with the Court, pursuant to Rule 92bis of the Rules, witness statements, if any, of those witnesses whom the Third Accused does not intend to call to give oral testimony;

13. Counsel for Fofana and Counsel for Kondewa shall disclose, as soon as possible or at least two days prior to the commencement of the testimony of a witness, to the other

Parties, as the case may be, a copy of the Exhibit, which Counsel intend to tender through such witness;

14. Counsel for Fofana and Counsel for Kondewa shall ensure at all times the availability of at least two standby witnesses in court to testify in order to avoid any possible delays;

15. Counsel for Fofana and Counsel for Kondewa shall endeavour to submit any documents pursuant to Rule 92bis of the Rules, as soon as possible or at least fifteen days prior to the anticipated closing of their respective Defence cases.

Done in Freetown, Sierra Leone, this 20th day of July 2006.

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Bankole
Thompson

Hon. Justice Pierre Boutet

Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

[1] SCSL-04-14-474.

[2] SCSL-04-14-489.

[3] SCSL-04-14-500.

[4] SCSL-04-14-498.

[5] SCSL-04-14-525.

[6] SCSL-04-14-526.

[7] SCSL-04-14-534.

[8] SCSL-04-14-540, Counsel for Fofana noted in their submissions that some requested information was not available for all witnesses, para. 3.

[9] SCSL-04-14-543.

[10] SCSL-04-14-571.

[11] SCSL-04-14-575.

[12] SCSL-04-14-591.

[13] SCSL-04-14-593.

[14] SCSL-04-14-639, Counsel for Fofana relied on the Fofana Witness List of the 23rd of January 2006, with respect to the summaries of their proposed testimony, the points of the Indictment to which each witness will testify, the estimated length of time for each witness and the language of the proposed testimony, para. 2.

[15] SCSL-04-14-668.

[16] Reference to witnesses' numbers is in accordance with the Fofana Witness List of the 27th of June 2006.

[17] Fofana Witness List of the 23rd of January 2006.

[18] Fofana Witness List of the 23rd of January 2006.

[19] Fofana Proposals, para. 3.

[20] Fofana Witness List of the 23rd of January 2006, *see* witnesses No. 4 Hassan Décor, No. 17 Joseph Lansana, No. 18 Joseph Lappia, No. 20 Mohammed Mansaray, No. 24 Augustine Ngauja.

[21] Reference to witnesses' numbers is in accordance with the Kondewa Witness List of the 8th of May 2006.

[22] Kondewa Witness List of the 14th of March 2006.

[23] The Chamber also notes that no information was submitted for witnesses Momoh Bockarie Moiwa and Joe Kpana Lewis, as was ordered by The Chamber in its Order of the 21st of October 2005 and Order of the 28th of November 2005.

[24] *See, e.g.*, witness Chief Gaima (no indication of the village, the chiefdom and the timeframe); witness Moses Bangura (no indication of the timeframe).

[25] Disposition, Order 4.

[26] Disposition, Order 10.

[27] Disposition, Order 11.

[28] SCSL-04-14-620, “Order Scheduling Judicial Recess and Authorization Pursuant to Rule 4”, the 15th of June 2006.

[29] SCSL-04-14-595, “Order Detailing Judicial Calendar”, the 11th of May 2006.

[30] SCSL-04-14-619, “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session”, the 14th of June 2006, paras 14 and 17(a)(ii).

[31] Transcript of the 25th of May 2006, p. 62.

[32] *See*, SCSL-04-14-575, Order of the 23rd of March 2006, Disposition, Order 2.
