

Hon. Justice Benjamin Mutanga Itoe;

MINDFUL of the Oral Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 delivered on the 25th of October, 2006;

MINDFUL of Rule 73*ter* of the Rules which provides for a Pre-Defence Conference to be held prior to commencement of the Defence Case;

CONSIDERING that Article 17(4)(b) of the Statute of the Special Court (“Statute”) provides that the Accused shall be entitled to have “adequate time and facilities for the preparation of his defence”;

CONSIDERING that Article 17(4)(c) of the Statute provides that the Accused shall be entitled “to be tried without undue delay”;

HAVING HEARD the parties’ respective submissions concerning the implementing modalities for the preparation and presentation of the Defence Case at a Status Conference held on the 27th of October, 2006;

MINDFUL of the observations of the Defence Teams on their preparation and the time limits they advanced in relation to their readiness to proceed with the presentation of their cases;

MINDFUL in particular of the submissions and suggestions, in this regard, of Counsel for the First Accused who will be the first to commence presenting his case;

PURSUANT TO Rules 7, 26*bis*, 54, 65*bis*, 69, 73*ter*, 75, 85, 92*bis* and 94*bis* of the Rules;

THE CHAMBER, ORDERS:

1. That each of Defence Team files the following materials, no later than Friday, the 16th of February, 2007 at 04:00pm:

a.) A “core” and a “back-up”^[1] witness list of all the witnesses that each Defence Team intends to call, including:

(i) the name and the relevant identifying data^[2] or, subject to any protective measures that might have been ordered by the Chamber, the pseudonym of each witness;

(ii) a detailed summary of each witness’ testimony. The summary should, subject to any protective measures that might have been ordered by the Chamber, be sufficiently descriptive to allow the Prosecution and the Chamber to appreciate and understand the nature and content of the proposed testimony;^[3]

(iii) the points of the Indictment to which each witness will testify, including the exact paragraph/s and the specific count/s;

(iv) the estimated length of time for each witness to testify and the language in which the testimony is expected to be given;

(v) an indication of whether the witness will testify in person or pursuant to Rule 92*bis* of the Rules;

Should the Defence seek to add any witness or to modify this list after the 16th of February, 2007 it may be permitted to do so only upon good cause being shown;[\[4\]](#)

b.) An indication of whether the Accused will testify at trial pursuant to Rule 85(C) of the Rules;

c.) A list of expert witnesses, whose names must appear on the list of witnesses referred to above, with a brief description of the nature of their evidence and an indication of when their reports will be ready and made available to all the parties and in accordance with Rule 94*bis* of the Rules;

d.) An indication of common witnesses, if any, who will be called by the Defence Teams;

e.) A list of exhibits the Defence intends to offer in its case, containing a brief description of their respective nature and contents, and stating where possible whether or not the Prosecution has any objection as to their authenticity. Should the Defence seek to add any exhibit to this list after the 16th of February, 2007 it may be permitted to do so only upon good cause being shown;

f.) A chart which indicates, for each paragraph in the current Indictment, the testimonial evidence and documentary evidence upon which the Defence will rely to defend the Accused against the allegations contained therein;

3. That the Prosecution and each of the Defence Teams submit, as soon as practicable and in any event no later than the 16th of February, 2007 a joint statement of agreed facts and matters which are not in dispute as well as a joint statement of contested matters of fact and law;[\[5\]](#)

4. That, subject to any further Order by the Chamber, a Pre-Defence Conference will be held on Tuesday, the 20th of March, 2007 in Court Room 1, at 10:00am, for the following purposes:

a.) to consider the compliance of the Defence with the Chamber's above Order on Filings;

b.) to review the Defence witness lists and to set the number of witnesses each Defence Team will be entitled to call;

c.) to determine the time which will be available to each Defence Team to present their case;

d.) to ascertain whether the First and the Third Accused still intend to exercise their right to make an opening statement under Rule 84 of the Rules;

e.) to remind the parties of the procedure for the presentation of the evidence;

f.) to deal with any other matters that the Chamber considers appropriate for the purposes of facilitating the presentation of each Defence case;

5. The Defence case shall commence on Tuesday, the 2nd of May, 2007 subject to any further Order by the Chamber.

Done at Freetown, Sierra Leone, this 30th day of October 2006

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Bankole
Thompson
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

[1] See *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-PT, Order to Prosecution to Produce Witness List and Witness Summaries, 7 July 2004. See, in particular, page 3, where it is stated that “back-up” witnesses “are meant to be used only as ‘back-up’ witnesses if some of the “core” witnesses are not available to testify”. See also *id.*, Decision Regarding the Prosecution’s Further Renewed Witness List, 5 April 2005; *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on the First Accused’s Urgent Motion for Leave to File Additional Witnesses and Exhibit List, 6 April 2006.

[2] See *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-15-T, Consequential Order to the Status Conference of 18 January 2006, 18 January 2006. In particular, Order No. 1 states that identifying information includes: “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.”

[3] For reference, see *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Order to the First Accused to Re-File Summaries of Witness Testimonies, 2 March 2006. In particular, Order No. 2 reads as follows: [the] summaries shall include detailed summaries of the incidents and/or events with 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, nexus between the Accused and the proposed testimony of a witness and other details as Counsel deems necessary and would clearly demonstrate the essence of that testimony. See also, for further guidance, *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005; *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on the Prosecution’s Motion to Compel the Defence’s Compliance with Rules 73ter, 67(C) and 69(C), 2 October 2002.

[4] See also *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order to Prosecution Concerning Renewed Witness List, 3 December 2004.

[5] See also *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order on Cooperation Between the Parties, 9 November 2004.
