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SCSL-04-14-T
(15068-15072)

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 17 March 2006

THE PROSECUTOR

Against

Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa

Case No. SCSL-04-14-T

PUBLIC

**PROSECUTION RESPONSE TO FIRST ACCUSED'S URGENT MOTION FOR LEAVE TO FILE
ADDITIONAL WITNESS AND EXHIBITS LISTS**

Office of the Prosecutor:

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Court Appointed Defence Counsel for Norman

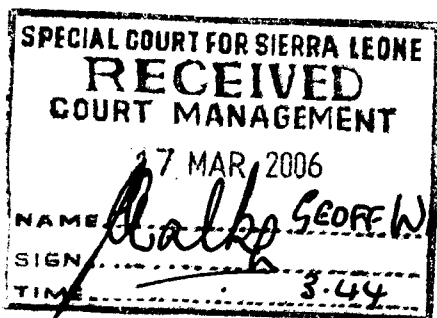
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Mr. Charles Margai
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Mr. Ansu Lansana
Mr. Martin Michael (*Legal Assistant*)



I. INTRODUCTION

1. Noting the Trial Chamber's "Order for Extension of Time and Consequential Order to the First Accused to Re-File Summaries of Witness Testimonies" of 3 March 2006, and "Scheduling Order for Status Conference" of the same date,² the Prosecution files this Response to the "First Accused's Urgent Motion for Leave to File Additional Witness and Exhibits Lists" filed on 14 March 2006 ("**Re-filed Defence Motion**").³
2. The Defence for the First Accused ("**Defence**") filed a similar motion on 1 February 2006 ("**Original Defence Motion**")⁴ to which the Prosecution responded on 8 February 2006 ("**Original Prosecution Response**").⁵ The Re-filed Defence Motion was subsequently filed by the Defence in response to the Trial Chamber's "Order to the First Accused to Re-File Summaries of Witness Testimonies" of 2 March 2006 ("**Order to Re-file**").⁶ The Re-filed Defence Motion does not differ substantially from the Original Defence Motion and the Prosecution therefore relies in response on its arguments in the Original Prosecution Response. In addition, a number of brief submissions are made below.

II. SUBMISSIONS

3. It is for a party asserting a right to prove its entitlement to that right.⁷ As a matter of general principle, where a party moves for some relief before a Trial Chamber, the burden is always on the moving party to establish a sufficient factual basis for the relief requested. In this instance, the Defence is the moving party, and as is evident from the Order to Re-file as well as from general principles, the burden is on the Defence to establish good cause for the addition of any witnesses to its witness list. The burden is

¹ *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-568, "Order for Extension of Time and Consequential Order to the First Accused to Re-File Summaries of Witness Testimonies", 3 March 2006.

² *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-569, "Scheduling Order for Status Conference", 3 March 2006.

³ *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-572, "First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists", 14 March 2006.

⁴ *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-549, "First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists", 1 February 2006.

⁵ *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-553, "Prosecution Response to First Accused's Urgent Motion for Leave to File Additional Witness and Exhibits Lists", 8 February 2006.

⁶ *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-566, "Order to the First Accused to Re-File Summaries of Witness Testimonies", 2 March 2006.

⁷ *Prosecutor v. Tadić*, IT-94-1-A, "Decision on Appellant's Motion for the Extension of Time-Limit and Admission of Additional Evidence", App. Ch., 15 October 1998, paras. 52-53; *Prosecutor v. Delić*, IT-96-21-R-R.19, "Decision on Motion for Review", App. Ch., 25 April 2002, para. 17.

not on the Prosecution to establish that the Defence does *not* have good cause.

4. The Original Prosecution Response set out some of the factors that will be considered by a Trial Chamber in determining whether good cause exists for the addition of new witnesses to a witness list. The Original Prosecution Response argued that the Original Defence Motion did not address some of these factors at all, and did not address others adequately. The Order to Re-file also expressly referred to these factors. However, the Re-filed Defence Motion still omitted to address some of these factors and failed to add anything further in relation to others. In particular, neither the Original Defence Motion nor the Re-filed Defence Motion seeks to address the issues of materiality and relevance of the testimony of the proposed additional witnesses, beyond the summaries contained in Annex A of each motion which have been expanded somewhat in the Re-filed Defence Motion. The Re-filed Defence Motion does not address any of the other factors in a more satisfactory way than the Original Defence Motion.
5. In particular, given the brevity of the summaries provided in Annex A to the Re-filed Defence Motion, the Prosecution remains hampered in any effort to assess whether the evidence of the proposed additional witnesses duplicates that of witnesses that are already on the Defence witness list. The Prosecution submits that a close reading of the summaries suggests that some of the evidence may be repetitive. For example, the summaries of the evidence of proposed witnesses Haroun Collier and Osman Collier tend to suggest that the evidence of these witnesses would be repetitive of each other's testimony, as well as being repetitive of the testimony of M.T. Collier who has already testified.⁸
6. Nonetheless, the Prosecution emphasizes that it would be for the Defence to demonstrate that the evidence *is not* repetitive and not for the Prosecution to bear the burden of demonstrating on the basis of the summaries that it *is* repetitive. The Prosecution will do its best to assist the Trial Chamber by providing further details of the Prosecution's assessment of repetitiveness if called upon to do so at the Status Conference on 22 March 2006.


⁸ See Transcript of 16 February 2006, pp. 68-69, 77, 84-85.

III. CONCLUSION

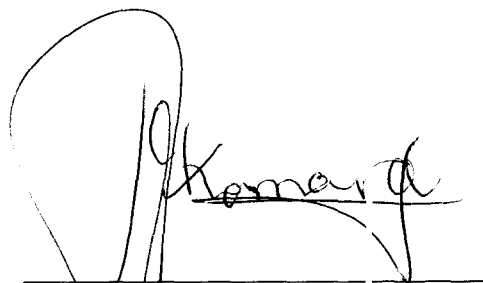
7. The Prosecution relies on its submissions and conclusion in the Original Prosecution Response and notes that the purpose of the Status Conference is to “review the witness list of the First Accused and the expanded summaries of their witnesses and discuss with the Parties the possible reassessment of the witness list, the order of witnesses’ appearances, the comprehensiveness of witness summaries and their material relevance, common witnesses and any other witness related matter”. The Prosecution will be prepared to address these issues as appropriate at the Status Conference.

Filed in Freetown,
17 March 2006

For the Prosecution,



James C. Johnson
Chief of Prosecutions



Joseph Kamara
Trial Attorney

Index of Authorities

1. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-568, “Order for Extension of Time and Consequential Order to the First Accused to Re-File Summaries of Witness Testimonies”, 3 March 2006.
2. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-569, “Scheduling Order for Status Conference”, 3 March 2006.
3. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-572, “First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibit Lists”, 14 March 2006.
4. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-549, “First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibit Lists”, 1 February 2006.
5. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-553, “Prosecution Response to First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists”, 8 February 2006.
6. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-566, “Order to the First Accused to Re-File Summaries of Witness Testimonies”, 2 March 2006.
7. *Prosecutor v. Tadić*, IT-94-1-A, “Decision on Appellant’s Motion for the Extension of Time-Limit and Admission of Additional Evidence”, App. Ch., 15 October 1998.
(<http://www.un.org/icty/tadic/>)
8. *Prosecutor v. Delic*, IT-96-21-R-R119, “Decision on Motion for Review”, App. Ch., 25 April 2002.
9. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T, Transcript of 16 February 2006.