

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

SEIZED OF the “Third Accused’s Request for Leave to be at Liberty to Raise Evidentiary Objections During Prosecution’s Cross Examination of Witnesses Not Called by Him” brought by Court Appointed Counsel for the Third Accused (“Counsel for Kondewa”), filed on the 24th of February 2006 (“Kondewa Motion”), through which Counsel for Kondewa seeks leave to be at liberty to raise objections to questions posed by the Prosecution during the cross-examination of witnesses called by other Accused after having himself cross-examined the witness in question;

SEIZED OF the “Fofana Request for Leave to Raise Evidentiary Objections” brought by Court Appointed Counsel for the Second Accused (“Counsel for Fofana”) filed on the 24th of February 2006 (“Fofana Motion”),¹ through which Counsel for Fofana associates himself with the submissions in the Kondewa Motion;

NOTING the “Prosecution Response to Third Accused’s Request for Leave to be at Liberty to Raise Evidentiary Objections During Prosecution’s Cross Examination of Witnesses Not Called by Him” filed as a consolidated response to the Kondewa Motion and the Fofana Motion (collectively “the Motions”) by the Prosecution on the 6th of March 2006 (“Response”), which does not oppose the Motions;

NOTING that no Replies have been filed by Counsel for Norman and by Counsel for Fofana within the time frame prescribed by sub-Rule 7(C) of the Rules of Procedure and Evidence of the Special Court (“Rules”);

RECALLING the Oral Application made by Counsel for Kondewa on the 9th of February 2006, to be permitted liberty to raise an objection to a question posed by the Prosecution during the cross-examination of witness Peter Penfold, who was called by the First Accused and who was not a common witness;²

MINDFUL OF The Chamber’s Oral Ruling granting Counsel for Kondewa’s Oral Application, which was contingent on the specific circumstances of the request;³

NOTING that in granting the Oral Application, the Presiding Judge stated: “We will allow you [Counsel for Kondewa] to make that objection given the nature of the question, and given what you have stated to the Court, that this goes to the CDF rather than specifically to your client”;⁴

MINDFUL OF The Chamber’s further ruling that this decision “shall not be understood to allow [Counsel for Kondewa] to object as a right to all the questions asked by the Prosecution in cross-examinations”;⁵

CONSIDERING that the Kondewa Motion is based in part on Rule 82(A) of the Rules;

¹ SCSL-04-14-565, The Fofana Motion was filed on the 24th of February 2006 at 16:15 and therefore was served on The Chamber on the 27th of February 2006.

² Transcript of the 9th of February 2006, pp. 27-31.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

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MINDFUL OF the interpretation of Rule 82(A) given in open session by the Presiding Judge on the 20th of February 2006, at the request of Counsel for Kondewa;⁶

NOTING that the Presiding Judge stated at that time that any objection, by Court Appointed Counsel, who has not called the witness, to questions being asked during cross-examination by the Prosecution must be related to the cross-examination completed by that Counsel;⁷

CONSIDERING that where a witness is common to two or more Accused persons, Court Appointed Counsel do not require leave to object to questions put to the witness during cross-examination by the Prosecution;

CONSIDERING that, by contrast, when a witness is not a common witness, and has not been called by the Accused whom Court Appointed Counsel represent, Counsel are expected to address the interests of their client through cross-examination;

NOTING however, that in multi-Accused trials, cross-examination may not be limited strictly to issues arising out of the direct examination of the witness in question;⁸

RECALLING that under most circumstances it would be appropriate that concerns of Court Appointed Counsel, who have not called a witness and who wish to object to a question raised in cross-examination by the Prosecution, should be addressed through consultation with Court Appointed Counsel who did call the witness;⁹

CONSIDERING that following the completion of their cross-examination, Court Appointed Counsel are required to seek leave to object to questions raised by the Prosecution in cross-examination on a case-by-case basis and in the interests of justice leave could be granted;

CONSIDERING that this approach has since been consistently applied by The Chamber;¹⁰

CONSIDERING that this approach also accords with that of other international criminal tribunals;¹¹

⁶ Transcript of the 20th of February 2006, p. 89.

⁷ *Ibid.*

⁸ In this regard, see *Prosecutor v. Bagosora*, ICTR Case No. ICTR-98-41-T, "Decision on Modalities for Examination of Defence Witnesses", Trial Chamber, 26 April 2005, para. 6:

To some extent, Defence teams other than the one calling a witness will be allowed to elicit evidence in its favour, even if this is not "cross-examination" in the narrow sense of the word. However, such evidence will only be admitted if it is relevant, contributes to the ascertainment of truth and does not lead to needless consumption of time, as required by Rule 89 (C) and 90(F). It is expected that when eliciting such evidence, Defence counsel will avoid asking leading questions to the witness as this will undermine the credibility of such testimony, and will avoid repetitive questions. The exact extent and manner of questioning permitted by other Co-Accused will depend on the nature of the testimony which has been given by the witness and the purpose of the questioning. This will be decided on a case-by-case basis.

⁹ Transcript of the 9th of February 2006, p. 27; Transcript of the 15th of May 2006, p. 63.

¹⁰ Transcripts of the 9th of February 2006, p. 31; the 20th of February 2006, p. 89; the 5th of May 2006, p. 52; the 8th of May 2006, p. 71; the 15th of May 2006, p. 63; the 23rd of May 2006, p. 43;

¹¹ *Prosecutor v. Kupreskic*, ICTY Case No. IT-95-16, "Decision on Order of Presentation of Evidence", Trial Chamber, 21 January 1999; *Bagosora*, *supra* note 8.

CONSIDERING that these Motions do not bring any new issues to support the Motions and do not provide any authorities in support of their respective submissions;

CONSIDERING that the instant case is distinguishable from the authorities cited by the Prosecution in their Response;

PURSUANT to Rules 54, 82(A), 89(B), and 90(F) of the Rules;

THE CHAMBER REITERATES its Oral Rulings of the 9th of February 2006 and the 20th of February 2006; and

DISMISSES the Kondewa Motion and the Fofana Motion.

Done in Freetown, Sierra Leone, this 8th day of June 2006.

Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Pierre Bouter
Presiding Judge,
Trial Chamber I

Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

