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SPECIAL COURT FOR SIERRA LEONE

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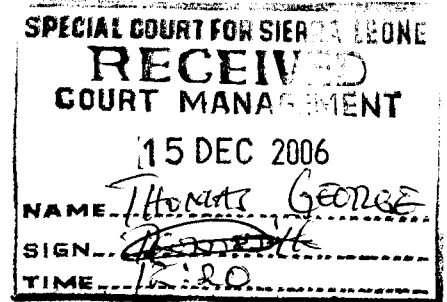
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TRIAL CHAMBER I

Before: Hon. Justice Bankole Thompson, Presiding Judge

Registrar: Mr. Lovemore G. Munlo, SC

Date: 15th of December 2006



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

Public Document

DECISION REGARDING PROSECUTION AND KONDEWA FINAL TRIAL BRIEFS

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I, HON. JUSTICE BANKOLE THOMPSON, PRESIDING JUDGE OF TRIAL CHAMBER I of the Special Court for Sierra Leone ("Special Court");

MINDFUL OF The Chamber's "Order to Review Final Trial Briefs", filed *confidentially* on the 5th of December 2006¹ ("Order of the 5th of December 2006");

RECALLING that by the Order of the 5th of December 2006, the Witnesses and Victims Section of the Special Court ("WVS") was ordered to review public versions of the Final Trial Briefs of the Parties, as identified therein, "in order to determine if the identity of a protected witness or victim has been disclosed or if information which was conveyed in closed session and which could lead to the identification of a protected witness or victim has been referred to in any of these documents" and to report back to The Chamber as soon as possible, but no later than the 15th of December 2006, by 12.00 p.m.;²

SEISED OF the Report from Mr. Naeem Ahmed, Acting Chief of WVS, entitled "Reduction [sic] of final briefs in CDF trial", dated the 14th of December 2006 ("WVS Report"), attached to the present Order as a confidential Annex;

PURSUANT to Article 17(2) of the Statute and Rules 26bis, 27(B), 46, 54, 69, 75 and 79 of the Rules of Procedure and Evidence of the Special Court ("Rules");

I HEREBY ISSUE THE FOLLOWING DECISION:

I. PROCEDURAL BACKGROUND

1. On the 22nd of November 2006, pursuant to The Chamber's "Scheduling Order for Filing Final Trial Briefs and Presenting Closing Arguments" of the 18th of October 2006,³ all Parties in this case filed their respective Final Trial Briefs ("FTB"). The FTBs of all three Defence teams were filed *publicly*, while the FTB of the Prosecution in its entirety was filed *confidentially*.⁴ The reasons for confidentiality were outlined in the Court Management Filing Form as follows: "Filed confidentially because the document contains identifying information with respect to witnesses who testified in closed session."

2. On the 23rd of November 2006, The Chamber ordered the Prosecution to file a public version of their FTB with redactions as necessary to protect the identity of witnesses, as soon as possible, but no later than Monday, the 27th of November 2006 by 2 p.m.⁵ The Prosecution filed their public FTB in compliance with the set deadline.⁶

¹ SCSL-04-14-T-753.

² SCSL-04-14-T-753, Order of the 5th of December 2006, p. 4, Disposition, Orders Nos 3-4.

³ SCSL-04-14-T-722.

⁴ SCSL-04-14-T-734, "Fofana Final Trial Brief"; SCSL-04-14-T-735, "Norman Final Trial Brief"; SCSL-04-14-T-736, "Final Trial Brief of the Third Accused Allieu Kondewa" ("Kondewa FTB of the 22nd of November 2006"); SCSL-04-14-T-737, "Prosecution Final Trial Brief".

⁵ SCSL-04-14-T-739, "Order to the Prosecution to Re-File Final Trial Brief", the 23rd of November 2006 ("Order of the 23rd of November 2006").

⁶ SCSL-04-14-T-747, "Prosecution Final Trial Brief", the 27th of November 2006 ("Prosecution FTB of the 27th of November 2006"); See also SCSL-04-14-T-749, "Annexes III and IV to be Attached to the Public Version of the Prosecution Final Trial Brief", the 27th of November 2006.

3. Upon examination of the public Defence FTBs of the 22nd of November 2006, The Chamber noted that some parts thereof disclosed the identity of protected witnesses or referred to information which was conveyed in closed session and which could have led to the identification of protected witnesses contrary to The Chamber's Decisions on protective measures for witnesses or victims.⁷ Therefore, The Chamber ordered the Court Management Section ("Court Management") to re-classify all three Defence FTBs of the 22nd of November 2006 as *confidential* documents and to keep them under seal. The Chamber also ordered each of the Defence teams to re-file their FTBs as *public* documents with redactions as necessary to protect the identity of the witnesses, as soon as possible, but no later than Monday, the 27th of November 2006 by 10 a.m.⁸

4. Furthermore, on the 24th of November 2006, on my direct instruction, Krystal Thompson, the Chief of Court Management, spoke personally with Counsel from each Defence team to ensure proper compliance with The Chamber's Order of the 24th of November 2006. Specific paragraphs of the FTBs which contained disclosed identifying information of protected witnesses were identified for Counsel and Counsel were asked to redact those paragraphs. The importance of undertaking a thorough review of their FTBs and the removal of any information which could lead to the disclosure of the identity of the protected witnesses was also emphasised to Counsel.

5. Court Appointed Counsel for the Second Accused ("Counsel for Fofana") re-filed their FTB on the 24th of November 2006.⁹ Court Appointed Counsel for the First Accused ("Counsel for Norman") and Court Appointed Counsel for the Third Accused ("Counsel for Kondewa") both filed on the 27th of November 2006.¹⁰

6. On examining the re-filed briefs, The Chamber noted that Counsel for Kondewa failed to remove an extract of closed session testimony from the Kondewa FTB of the 27th of November 2006, which could lead to the identification of a protected witness.

7. On the 5th of December 2006, I, therefore, ordered the Court Management to re-classify the Kondewa FTB of the 27th of November 2006 as a *confidential* document and to keep it under seal. In order to safeguard the privacy and security of witnesses and victims, to preserve the integrity of the proceedings and out of an abundance of caution, it was deemed necessary that the public versions of the

⁷ See *Prosecutor v. Norman*, SCSL-03-08-PT, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure", the 23rd of May 2003, *Prosecutor v. Fofana*, SCSL-03-11-PT, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure", the 16th of October 2003, *Prosecutor v. Kondewa*, SCSL-03-12-PT, "Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures Until Appropriate Protective Measures are in Place", the 10th of October 2003, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses", the 8th of June 2004, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, "Ruling on Motion for Modification of Protective Measures for Witnesses", the 18th November 2004 (collectively "The Chamber's Decisions on protective measures"); see also, *Prosecutor v. Norman, Fofana and Kondewa*, Oral Ruling Granting a Closed Session Hearing of Witness TF2-017, Transcript of the 19th of November 2004, pp. 1-2.

⁸ SCSL-04-14-T-742, "Order on Re-Classification and Re-Filing of the Defence Final Trial Briefs", filed *confidentially* on the 24th of November 2006 ("Order of the 24th of November 2006").

⁹ SCSL-04-14-T-743, "Fofana Final Trial Brief", the 24th of November 2006 ("Fofana FTB of the 24th of November 2006").

¹⁰ SCSL-04-14-T-745, "Norman Final Trial Brief", the 27th of November 2006 ("Norman FTB of the 27th of November 2006"); SCSL-04-14-T-746, "Final Trial Brief of the Third Accused Allieu Kondewa", the 27th of November 2006 ("Kondewa FTB of the 27th of November 2006").

FTBs filed by all the Parties be reviewed again, by an independent organ of the Court, to ensure that no other violation of The Chamber's Decisions on protective measures has occurred, inadvertently or otherwise. On the 14th of December 2006, I received the WVS Report.

II. FINDINGS

8. The WVS Report identifies one instance in the Prosecution FTB of the 27th of November 2006, where reference to the location of the incident and the names of the witness's brother and relatives were given. This information, according to the WVS, can disclose witness's identity.¹¹ I concur with this finding.

9. The WVS Report further identifies two instances of inappropriate disclosure in the Kondewa FTB of the 27th of November 2006. The first instance provides reference to the names of the witness's relatives and sister, which according to the WVS, can disclose his identity.¹² The second instance mentions the name of a protected Prosecution witness instead of his pseudonym.¹³ I concur with both WVS findings relating to the Kondewa FTB of the 27th of November 2006.

10. The WVS Report states that no such incidents of disclosure have been found by WVS in the Norman FTB of the 27th of November 2006 or the Fofana FTB of the 24th of November 2006.

11. I recall that The Chamber granted protective measures for three categories of Prosecution witnesses. These measures included, *inter alia*, orders that "the names and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of witnesses and victims, shall not be disclosed to the public or the media and this order shall remain in effect after the termination of the proceedings in this case".¹⁴

12. I, therefore, find that the Prosecution and Counsel for Kondewa are in clear violation of The Chamber's Decisions on protective measures.¹⁵ I further find that the Prosecution and Counsel for Kondewa are not in compliance with The Chamber's Orders of the 23rd of November 2006¹⁶ and the 24th of November 2006,¹⁷ wherein The Chamber ordered the Parties to re-file their respective FTBs, initially filed on the 22nd of November 2006, as public documents *with redactions as necessary to protect the identity of the witnesses*.

13. Furthermore, I recall that The Chamber in its Order of the 24th of November 2006 also ordered Counsel for Kondewa to re-file their FTB ensuring that every reference to the testimony of witnesses is supported by the date and transcript page reference of the testimony in question. However, in addition to providing such requested references, Counsel for Kondewa introduced the following changes to the Kondewa FTB of the 27th of November 2006, thereby altering the content thereof, without leave of The

¹¹ Annex, WVS Report, p. 1.

¹² Annex, WVS Report, p. 2.

¹³ *Ibid.*

¹⁴ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses", the 8th of June 2004, Disposition para. (e); *see also* decisions listed in *supra* note 7.

¹⁵ *See* decisions listed in *supra* note 7.

¹⁶ SCSL-04-14-T-739, *supra* note 5.

¹⁷ SCSL-04-14-T-742, *supra* note 8.

Chamber and contrary to its Order of the 24th of November 2006. These changes are summarised below as follows:

- a) The following references to evidence, which appear in the Kondewa FTB of the 22nd of November 2006 have been deleted from the Kondewa FTB of the 27th of November 2006:
- “This is just an example, My Lord. I am saying that the rebels wore military – sorry, Kamajor dress, disguised themselves as kamajors and attacked villages.” Albert Joe Edward Demby (13/2/06) (28) [was on p. 11]
 - Rebels adopted Kamajor clothing to lull civilians. Bobor Brima (10/5/06) [was on p. 12]
 - He himself never went to battle, in fact no initiators did after one particular initiator, Kamoh Kowa, went to warfront without a gun and was killed. Lansana Bockarie (26/5/06) [was on p. 18]
 - When Kamajors go to war they must go to Kondewa to be advised. Kondewa chooses who goes to warfront, blesses them as high priest. Kondewa sometimes instructed them not to go but never instructed them to go. TF2-068 (emphasis added in FTB) (18th November 2004) [was on p. 19]
 - Command and control of all fighting forces was “vested clearly in ECOMOG.” Dr. Albert Joe Demby (13th February 2006) [was on p. 40]
 - Letters regarding disciplinary measures. ECOMOG disciplined Kamajors for giving guns to children [was on p. 41]
 - One witness said of Mr. Hinga Norma [sic], Mr. Fofana and Mr. Kondewa that “whenever happen they come together because they are the leaders and the Kamajors look up to them.” TF2-068 17th November 2004. But as the evidence made clear, being looked up to did not confer any power or authority on Mr. Kondewa. [was on p. 46]
 - Rebels and soldiers burned down houses when they attacked villages near Koribundo. TF2-82 (17/9/04) (130) [was on p. 76]
- b) The following reference to evidence, which does not appear in the Kondewa FTB of the 22nd of November 2006 has been added to the Kondewa FTB of the 27th of November 2006:
- W heard that Ks were working under ECOMOG command at the end of 1997- beginning of 1998 (TF2-068 18/11/04 page 49)
- c) Certain references to testimony are still not supported by references to the date and page reference of the testimony:
- Evidence of TF2-140, p. 26
 - Evidence of Haroun Aruna Collier, p. 28
- d) Certain references to testimony are still not supported by any references whatsoever:
- Bullet points 3 and 5 on p. 29
 - Bullet point 2 on p. 32
 - Bullet point 5 on p. 33
 - Bullet point 5 on p. 36
 - Dr Hoffman quote on p. 46

- e) Introduction of minor changes, including the correction of typographical errors, have also been noted.

III. DISPOSITION

14. I declare that the Prosecution and Counsel for Kondewa violated The Chamber's Decisions on protective measures, as articulated in paragraphs 8-12 of the present Decision. I also declare that the Prosecution and Counsel for Kondewa are not in compliance with The Chamber's Orders of the 23rd of November 2006 and the 24th of November 2006, as stated in paragraph 12 of the present Decision.

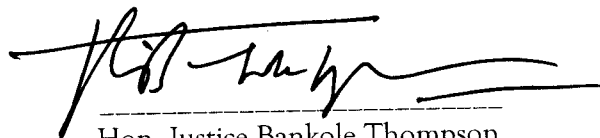
15. I further declare that Counsel for Kondewa not only included identifying information on protected witnesses in the original Kondewa FTB of the 22nd of November 2006, but also failed, despite an explicit warning, to remove such information from their re-filed Kondewa FTB of the 27th of November 2006. They also introduced changes to the Kondewa FTB of the 27th of November 2006, without leave of The Chamber and contrary to The Chamber's Order of the 24th of November 2006.

16. As to the issue of the legal consequences of such non-compliances, especially that of possible sanctions, The Chamber will in due course deliberate on this question and issue the necessary consequential directions by way of final disposition.

17. I, therefore, **ORDER** as follows:

- 1) The Court Management shall identify page 119, registry page 20659, of the "Public Prosecution Final Trial Brief", dated the 27th of November 2006, Document Number SCSL-04-14-T-747, and keep this page under seal;
- 2) The Prosecution shall re-file one page of the Prosecution FTB of the 27th of November 2006, as identified in this Disposition, with redactions as stated in the Annex to this Decision, as soon as possible, but no later than Friday, the 15th of December 2006 at 4 p.m.;
- 3) Counsel for Kondewa shall re-file the Kondewa FTB of the 22nd of November 2006, with redactions as stated in the Annex to this Decision, as soon as possible, but no later than Monday, the 8th of January 2007 at 9:30 a.m.;

Done in Freetown, Sierra Leone, this 15th day of December 2006.



Hon. Justice Bankole Thompson
Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

