

**SPECIAL COURT FOR SIERRA LEONE**  
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**THE TRIAL CHAMBER**

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

**Registrar:** Robin Vincent

**Date:** 1st of December, 2004

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

**DECISION ON REQUEST OF THE FIRST ACCUSED FOR LEAVE TO CROSS-EXAMINE EXPERT WITNESS OUT OF TIME**

**Office of the Prosecutor:**

Luc Côté  
James Johnson

**Court Appointed Counsel for Sam Hinga Norman:**

Dr. Bu-Buakei Jabbi  
John Wesley Hall, Jr.  
Tim Owen, Q.C.

**Court Appointed Counsel for Moinina Fofana:**

Michiel Pestman  
Arrow Bockarie  
Victor Koppe

**Court Appointed Counsel for Allieu Kondewa:**

Charles Margai  
Yada Williams  
Ansu Lansana

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

**SEIZED** of the *Request of the First Accused for Leave to Cross-Examine Expert Witness Out of Time* (“Request”), filed on the 12th of November, 2004;

**NOTING** the Prosecution Response to the Request filed on the 15th of November, 2004;

**NOTING** Article 17(4)(e) of the Statute of the Special Court for Sierra Leone (“Statute”), which provides for the right of the Accused to “examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”;

**NOTING** Rule 74 *bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”) which provides that:

#### Testimony of Expert Witnesses

(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.

### **HEREBY ISSUES THE FOLLOWING RULING:**

#### **I. BACKGROUND**

1. On the 14th of July, 2004 the Prosecutor submitted the Expert Report of Dr. William Haglund to the Trial Chamber;

2. On the 26th of July, 2004 Counsel for Sam Hinga Norman (“First Accused”) filed a “Notice Conditionally Indicating Wish to Cross-Examine Expert Witness”;
3. On the 26th of July, 2004 Counsel for Moinina Fofana (“Second Accused”) filed the “Fofana Conditional Notice to the Trial Chamber pursuant to Rule 94bis (B)” of the Rules of Procedure and Evidence of the Special Court (“Rules”);
4. On the 28th of July, 2004 Counsel for Allieu Kondewa (“Third Accused”) filed the “Notice Conditionally Indicating Intention to Cross-Examine Expert Witness”;
5. On the 1st of October, 2004 the Trial Chamber issued its *Consequential Order to Decision on Prosecutions Request for Leave to Call Additional Expert Witness* (“Decision”);
6. In its Decision the Trial Chamber ordered the Defence for the three Accused to file on or before the 15th of October, 2004 a notice to the Trial Chamber indicating whether it accepted the expert report, or whether it wishes to cross examine the expert witness; and submissions concerning the admissibility of the said Report;
7. The Counsel for the First Accused did not file this notice before the deadline of the 15th October 2004.

## **II. PARTIES SUBMISSIONS**

### **Defence Request**

8. By its Request, Counsel for the First Accused seeks leave of the Trial Chamber to file its notice out of time. Moreover, apologizing to the Court for having to file this pleading out of time, counsel requests that the Accused be granted leave to cross-examine Dr. Haglund along with the Second and Third Accused inasmuch as no prejudice to the parties and no delay in the proceeding would occur.
9. Counsel for the First Accused submits that Defence Counsel Quincy Whitaker and Dr Bu-Buakei Jabbi thought that their prior notice of the 26th of July, 2004 to the Court would suffice. They submit that they have been informed by the Trial Chamber on the 10th of November, 2004, that their initial response was instead ineffective.
10. Counsel for the First Accused further submits that the other accused have filed notices of intent to cross-examine the witness expert. Permitting the counsel for the accused to participate in such cross-examination would therefore not prejudice the Prosecution. Moreover, the First Accused does not contest the admissibility of the report but reserves the right to question the weight it is to be given on the question of the criminal liability of the First Accused.

### **Prosecution Response**

11. In its Response, the Prosecution does not object to the Defence request to file its notice out of time.

### **III. THE MERITS OF THE APPLICATION**

12. The Trial Chamber considers that in the interest of justice, and with respect for the rights of the Accused enshrined in Article 17(4)(e) of the Statute of the Special Court, namely that accused is entitled to “examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”, the First Accused will be permitted to cross-examine the witness expert and to make submissions on the weight to be given to the expert report.

### **FOR THE FOREGOING REASONS THE TRIAL CHAMBER RULES AS FOLLOWS:**

(1) That the Defence be granted leave to file the notice out of time and therefore be allowed to cross-examine the expert witness, and make submissions on the weight to be given to the expert report. Accordingly the Trial Chamber **GRANTS** the Defence Request.

Done in Freetown, Sierra Leone, this 1st day of December, 2004.

Hon. Judge Pierre Boutet    Hon. Judge Benjamin Mutanga Itoe    Hon. Judge Bankole Thompson  
Presiding Judge,  
Trial Chamber

[Seal of the Special Court for Sierra Leone]