



**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 “First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists”, filed by Court Appointed Counsel for the First Accused on the 1st of February, 2006 (“Motion”), seeking leave, *inter alia*, to add an additional 13 witnesses to its witness list;

**NOTING** the “Prosecution Response to First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists”, filed by the Prosecution on the 8th of February, 2006 (“Response”);

**NOTING** that no Reply has been filed by Court Appointed Counsel within the time frame prescribed by sub-Rule 7(C) of the Rules of Procedure and Evidence of the Special Court (“Rules”);

**MINDFUL** of The Chamber’s “Order Concerning the Preparation and Presentation of the Defence Case” delivered on the 21st of October, 2005, whereby each Defence team was ordered, *inter alia*, to file a witness list with “a summary of [each witness’s] respective testimony;[1]

**MINDFUL** of The Chamber’s “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” delivered on the 28th of November, 2005, whereby The Chamber ordered each Defence team to file by the 5th of December, 2005, a list of witnesses including “a summary of the respective testimony of all witnesses that should be sufficiently descriptive to allow the Chamber to appreciate and understand the nature of the proposed testimony” and stated that “should the Defence seek to add any witnesses to this list after the 5th of December, 2005 it may be permitted to do so only upon good cause being shown”;

**NOTING** that Court Appointed Counsel for Norman filed their “Defence Witness and Exhibit Lists for the First Accused as per the Consequential Order for Compliance of 28th November 2005 Concerning the Preparation and Presentation of Defence Case” on the 5th of December, 2005, whereby Counsel indicated their intention to call 77 witnesses for the First Accused and provided a brief testimonial summary of each of these witnesses;

**RECALLING** that at the Pre-Defence Conference of the 11th of January, 2006, The Chamber noted the excessive number of witnesses listed on the Defence witness lists, and encouraged each Defence team “to file summaries that would [...] be a little more comprehensive in nature and give some more details in terms of the testimony that [...] their core witnesses will be putting forward”;[2]

**NOTING** that following the Chamber’s “Consequential Order to the Status Conference of the 18th of January, 2006”, Court Appointed Counsel for Norman filed an updated list of their witnesses, whilst not adding any new details to the content of the summaries of witnesses’ testimonies;

**CONSIDERING** that although Court Appointed Counsel for the First Accused failed to identify under which Rule or sub-Rule of the Rules the present leave is sought, Counsel provided reasons for the existence of “good cause” to grant the Motion;

**CONSIDERING** that in the absence of a clear reference to the applicable Rule in the Motion, The Chamber instructs Counsel to re-file their Motion pursuant to sub-Rule *73ter*(E) of the Rules, which reads as follows:

After the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

**CONSIDERING** that an analogous sub-Rule *73bis*(E) of the Rules, which provides for a case when leave is sought by the Prosecutor, has been consistently interpreted by The Chamber as follows:

[W]hen interpreting provisions of Rule *73bis*(E) together with Rule 66(A)(ii), and the circumstances that give rise to a showing of “good cause” and the “interests of justice”, certain factors should be taken into consideration [... such as,] the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence [...][\[3\]](#)

**CONSIDERING** that sub-Rule *73ter*(D) of the Rules provides for The Chamber’s power to order reduction of the number of witnesses and reads as follows:

The Trial Chamber or a Judge designated from among its members may order the defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.

**RECALLING** that The Chamber has already stated that the power to order reduction in the number of witnesses a party intends to call is an “exceptional power” and should be exercised “only in exceptional circumstances”;[\[4\]](#)

**CONSIDERING** that it is instructive to cite in support hereon this issue, the ICTY Appeals Chamber decision in the *Oric* case, where it was stated as follows:

The Appeals Chamber has long recognized that ‘the principle of equality of arms between the prosecutor and accused in a criminal trial goes to the heart of the fair trial guarantee’. At a minimum, ‘equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case’, certainly in terms of procedural equity. This is not to say,

however, that an Accused is necessarily entitled to precisely the same amount of time or the same number of witnesses as the Prosecution. The Prosecution has the burden of telling an entire story, of putting together a coherent narrative and proving every necessary element of the crimes charged beyond a reasonable doubt. Defence strategy, by contrast, often focuses on poking specifically targeted holes in the Prosecution's case, an endeavor which may require less time and fewer witnesses. This is sufficient reason to explain why a principle of basic proportionality, rather than a strict principle of mathematical equality, generally governs the relationship between the time and witnesses allocated to the two sides.[\[5\]](#)

**CONSIDERING** therefore, that this distinction between the strategies of the Prosecution and the Defence, may require fewer witnesses to be called for the Defence, and thereby dispense with calling of repetitious witnesses;

**CONSIDERING** however, that it would be in the interests of justice to allow the Defence to expand the summaries of 77 witnesses listed on the witness list, save the ones which have already been heard by The Chamber, and also to expand the summaries of proposed 13 additional witnesses, in order to enable The Chamber to understand the nature of their proposed testimony and their material relevance to the case so as to determine whether leave to call additional witnesses should be granted in the present circumstances;

**PURSUANT TO** Rule 54, 73ter(D) and 73ter(E) of the Rules;

**HEREBY ISSUES THE FOLLOWING ORDERS:**

1. Court Appointed Counsel for the First Accused shall re-file the Motion pursuant to sub-Rule 73ter(B) of the Rules;
2. Court Appointed Counsel for the First Accused shall re-file summaries of their proposed 77 witnesses, save the eight witnesses, who have already been heard by The Chamber, and those summaries of their proposed 13 additional witnesses by the 10th of March, 2006 at 4:00 p.m.;
3. These summaries shall include detailed summaries of the incidents and/or events which 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;

4. Court Appointed Counsel for the First Accused shall review and reduce their list of witnesses, if necessary, bearing in mind the considerations of avoiding repetitious evidence and calling an excessive number of witnesses to prove the same fact or calling witnesses in relation to the crimes and events which do not form part of the Indictment or are outside the time frame of the Indictment;

5. Prosecution shall file its Response, if any, by the 16th of March, 2006, at 4:00 p.m.

Done in Freetown, Sierra Leone, this 2nd day of March, 2006.

Hon. Justice Benjamin Mutanga  
Itoe

Hon. Justice Pierre Boutet  
Presiding Judge  
Trial Chamber I

Hon. Justice Bankole  
Thompson

[Seal of the Special Court for Sierra Leone]

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[1] Order 2(a)(ii).

[2] Transcript of the 11th of January, 2006, pp. 32-33.

[3] *Prosecutor Against Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures”, 23 June 2005, p.3.

[4] Transcript of the 11th of January, 2006, p. 31.

[5] *Prosecutor v. Oric*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 7. See also *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A, Judgement, 15 July 1999, para. 44.