

SCSL-04-14-T

(18761-18764).



**SPECIAL COURT FOR SIERRA LEONE**

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**TRIAL CHAMBER I**

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

**Registrar:** Mr. Lovemore G. Munlo, SC

**Date:** 7<sup>th</sup> of July 2006

**PROSECUTOR**                                      **Against**                                      **SAM HINGA NORMAN**  
**MOININA FOFANA**  
**ALLIEU KONDEWA**  
 (Case No.SCSL04-14-T)

**Public Document**

**DECISION ON FOFANA SUBMISSIONS REGARDING PROPOSED EXPERT WITNESS  
 DANIEL J. HOFFMAN PHD**

**Office of the Prosecutor:**

Desmond de Silva  
 James Johnson  
 Joseph Kamara

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

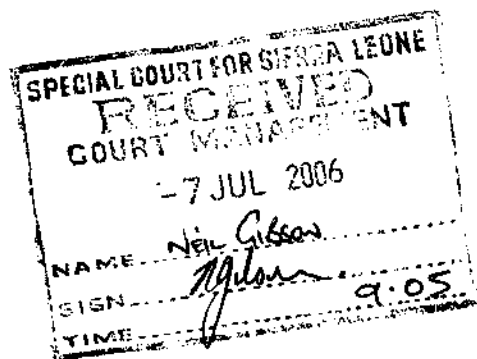
Dr. Bu-Buakei Jabbi  
 John Wesley Hall, Jr.  
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**Court Appointed Counsel for Moinina Fofana:**

Victor Koppe  
 Arrow Bockarie  
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**Court Appointed Counsel for Allieu Kondewa:**

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

**SEIZED OF** the "Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman PhD", filed by Court Appointed Counsel for the Second Accused ("Counsel for Fofana") on the 16<sup>th</sup> of June 2006 ("Motion"), requesting The Chamber to recognize Daniel J. Hoffman PhD ("Dr. Hoffman") as an expert on the basis of his *curriculum vitae*, and to accept his proposed evidence as *prima facie* relevant to the charges in the Indictment;<sup>1</sup>

**NOTING** the "Prosecution Response to Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman PhD", where the Prosecution oppose the Defence request to recognize Dr. Hoffman as an expert witness because the request is procedurally irregular and outside the scope of Rule 94bis of the Rules of Procedure and Evidence of the Special Court ("Rules"), but submit, should The Chamber find otherwise, that Dr. Hoffman does not possess the necessary qualifications to testify to the claimed areas of expertise, that the proposed testimony relates to *ultimate issues* for determination only by The Chamber, and that the bulk of the proposed evidence is irrelevant and will not assist The Chamber to resolve the issues in dispute;<sup>2</sup>

**NOTING** the "Reply to Prosecution Response to Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman PhD", where Counsel for Fofana submit that there is nothing procedurally irregular about the Defence request, and that the Defence submissions do not attempt to limit any of the Prosecution's rights, but rather seek, as a preliminary matter, recognition of Dr. Hoffman's expertise and acknowledgment of the *prima facie* relevance of his proposed evidence, the determination of what weight, if any, to be given to Dr. Hoffman's evidence to be decided at a later point in time;<sup>3</sup>

**NOTING** that Rule 94bis of the Rules relates to the testimony of expert witnesses and provides as follows:

(A) Notwithstanding the provisions of Rule 66(A), Rule 73bis(B)(iv)(b) and Rule 73ter(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.

<sup>1</sup> Motion, para. 20.

<sup>2</sup> Response, paras. 2-3.

<sup>3</sup> Reply, para. 1.

CONSIDERING that The Chamber has to decide first whether the witness has the necessary qualifications to be accepted as an expert, before determining whether his or her evidence is admissible as expert evidence;<sup>4</sup>

RECALLING that The Chamber has determined an expert witness's *prima facie* qualification as an expert, based on the witness's credentials and experience as outlined in his or her *curriculum vitae*, in relation to Prosecution expert witnesses;<sup>5</sup>

CONSIDERING that The Chamber has ruled that an "expert" be defined as: "A person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute";<sup>6</sup>

CONSIDERING further that The Chamber has stated that an expert's testimony is "testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field";<sup>7</sup>

CONSIDERING that Dr. Hoffman, according to the information provided, has special knowledge in the field of cultural anthropology, having obtained his doctoral degree in the subject from Duke University and published numerous scholarly articles and chapters in this field, and given his current appointment as Assistant Professor of Anthropology at the University of Washington, which he has occupied since September 2004;<sup>8</sup>

CONSIDERING further that Dr. Hoffman, according to the information provided, as a socio-cultural anthropologist with particular knowledge of the anthropology of armed conflicts and irregular combatants in the Mano River region of West Africa<sup>9</sup> where he has conducted significant field work,<sup>10</sup> is likely to assist the Chamber in understanding and determining issues relating to the structure and organization of the CDF, in particular the relationships between and among Kamajor fighters and commanders and the distribution and delegation of power within Sierra Leone's civil militia;

NOTING that pursuant to Rule 94bis(B), within 14 days of the filing of Dr. Hoffman's Expert Report, the Prosecution must indicate whether or not they accept the Report, and whether or not they wish to cross-examine the expert witness;

<sup>4</sup> See *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, "Decision on Prosecution's Submissions of Statement of Expert Witness Ewan Brown", 3 June 2003.

<sup>5</sup> *Prosecutor v. Hinga Norman et al.*, SCSL-04-14-T-435, "Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures", 21 June 2005 [Decision of 21 June 2005]; See also *Prosecutor v. Hassan Sesay et al.*, SCSL-04-15-T, "Decision on Prosecution Request for Leave to Call an Additional Expert Witness", 10 June 2005.

<sup>6</sup> [Decision of 21 June 2005], *ibid.*, p.4, citing *Prosecutor v. Stanislav Galic*, IT-98-29-T, "Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps", 3 July 2002, p.2.

<sup>7</sup> *Ibid.*, p.4, citing *Prosecutor v. Akayesu*, ICTR-96-4-T, "Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness", 9 March 1998.

<sup>8</sup> Motion, Appendix B.

<sup>9</sup> Motion, para. 8.

<sup>10</sup> Motion, Appendix C.


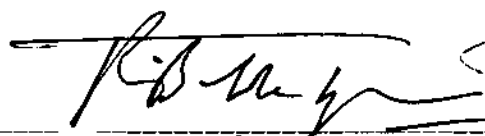
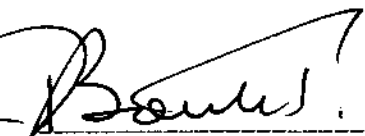
CONSIDERING that The Chamber will then, in accordance with prescribed procedure, take into account the Prosecution's submissions as to the relevance and admissibility of Dr. Hoffman's Report;<sup>11</sup>

CONSIDERING further that the Prosecution will also have the opportunity, if they so wish, to challenge Dr. Hoffman's qualifications, as well as the relevance and admissibility of his evidence during cross-examination of the expert, if any;<sup>12</sup>

PURSUANT to Rules 94bis and 54 of the Rules;

ACCEPTS Dr. Hoffman as an expert;

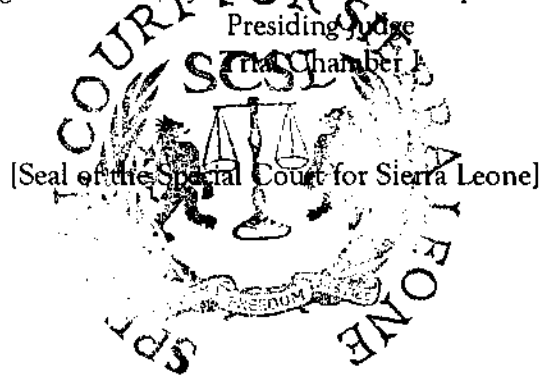
Done in Freetown, Sierra Leone, this 7<sup>th</sup> day of July 2006.

Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Brakole Thompson

Hon. Justice Pierre Boutet



<sup>11</sup> See, *inter alia*, Transcript of the 14<sup>th</sup> of June 2005, p. 13; Transcript of the 16<sup>th</sup> of June 2005, p. 16.

<sup>12</sup> See, *inter alia*, Transcript of the 16<sup>th</sup> of June 2005, p. 4.