



**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:** 31<sup>st</sup> of July 2006

<b>PROSECUTOR</b>	<b>Against</b>	<b>SAM HINGA NORMAN</b> <b>MOININA FOFANA</b> <b>ALLIEU KONDEWA</b> (Case No.SCSL-04-14-T)
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**Public Document**

**DECISION ON FIRST ACCUSED'S MOTION FOR LEAVE  
TO ADD TWO EXHIBITS TO THE EXHIBIT LIST**

**Office of the Prosecutor:**

Christopher Staker  
 James Johnson  
 Joseph Kamara

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

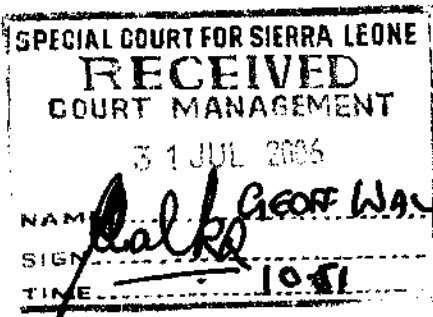
Dr. Bu-Buakei Jabbi  
 John Wesley Hall, Jr.  
 Alusine Sani Sesay

**Court Appointed Counsel for Moinina Fofana:**

Victor Koppe  
 Arrow Bockarie  
 Michiel Pestman

**Court Appointed Counsel for Allieu Kondewa:**

Charles Margai  
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 Ansu Lansana



**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 "First Accused's Urgent Motion for Leave to File Additional Exhibits", filed by Court Appointed Counsel for the First Accused ("Counsel for Norman") on the 18<sup>th</sup> of July 2006 ("Motion"),<sup>1</sup> seeking leave to add an additional two Exhibits to the exhibit list;<sup>2</sup>

**NOTING** the "Order for Expedited Filing", delivered on the 19<sup>th</sup> of July 2006;<sup>3</sup>

**NOTING** the "Prosecution Response to First Accused's Urgent Motion for Leave to File Additional Exhibits Dated 18 July 2006", filed by the Office of the Prosecutor ("Prosecution") on the 21<sup>st</sup> of July 2006 ("Response"),<sup>4</sup> objecting to the Motion on the grounds that good cause has not been established by Counsel for Norman but stating that, should the Motion be granted, the Prosecution seek an order that copies of the complete Exhibits be provided and that they reserve right to state objections to the authenticity of the Exhibits once they are disclosed;<sup>5</sup>

**NOTING** the "First Accused's Reply to the 'Prosecution Response to First Accused's Urgent Motion for Leave to File Additional Exhibits Dated 18 July 2006'", filed by Counsel for Norman on the 24<sup>th</sup> of July 2006 ("Reply");<sup>6</sup>

**NOTING** that on the 5<sup>th</sup> of December, 2005, Counsel for Norman filed their "Defence Witness and Exhibit Lists for the First Accused as per the Consequential Order for Compliance of 28<sup>th</sup> November 2005 Concerning the Preparation and Presentation of Defence Case",<sup>7</sup> wherein Counsel for Norman included a list of 23 Exhibits ("Exhibit List of the 5<sup>th</sup> of December 2005") and stated that they "might add any exhibits to this list depending on when it might unearth certain documents";<sup>8</sup>

**MINDFUL OF** the "Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists", delivered by The Chamber on the 6<sup>th</sup> of April 2006 ("Decision of the 6<sup>th</sup> of April 2006"), granting Counsel for Norman's request to add, *inter alia*, 17 Exhibits to the Exhibit List of the 5<sup>th</sup> of December 2005;<sup>9</sup>

**NOTING** the "Disclosure of Exhibits by Court Appointed Counsel for the First Accused", filed by Counsel for Norman on the 1<sup>st</sup> of May 2006;<sup>10</sup>

**CONSIDERING** that the eighth trial session in this case is scheduled to run from the 13<sup>th</sup> of September 2006 until the 7<sup>th</sup> of December 2006 with a preceding Status Conference on the 12<sup>th</sup> of September

<sup>1</sup> SCSL-04-14-667.

<sup>2</sup> Motion, paras 1, 5.

<sup>3</sup> SCSL-04-14-672.

<sup>4</sup> SCSL-04-14-674.

<sup>5</sup> Response, paras 13-15.

<sup>6</sup> SCSL-04-14-675.

<sup>7</sup> SCSL-04-14-499.

<sup>8</sup> *Ibid.*, para. 11.

<sup>9</sup> SCSL-04-14-585.

<sup>10</sup> SCSL-04-14-589.

2006;<sup>11</sup>

**MINDFUL OF** the “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session” of the 14<sup>th</sup> of June 2006,<sup>12</sup> whereby The Chamber granted Counsel for Norman's request “to defer calling witness No 21, Major-General Abdul One Mohammed, a common witness for the First and Second Accused, until the September-December trial session” and ordered them “to call this witness as the first witness in that session”;<sup>13</sup>

**NOTING** that by their Motion Counsel for Norman now seek leave to add an additional two Exhibits, namely, “Periodic Report Civil Defence Force “Kamajors” dated 7 August 1997” and “Letter from President Ahmed Tejan Kabbah to CSO Mustapha with an Action Plan captioned Operation Athens dated 13 August 1997”, to the Exhibit List of the 5<sup>th</sup> of December 2005;

**NOTING** that the Motion is brought pursuant to Rules 89(C) and 73<sup>ter</sup>(E) of the Rules of Procedure and Evidence of the Special Court (“Rules”) and The Chamber’s “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” of the 28<sup>th</sup> of November 2005 (“Order of the 28<sup>th</sup> of November 2005”);<sup>14</sup>

**NOTING** that sub-Rule 89(C) of the Rules states that “[a] Chamber may admit any relevant evidence”;

**CONSIDERING** that sub-Rule 89(C) is not applicable to the present application, as it deals with the admission of, *inter alia*, documents, including Exhibits, into evidence, whereas the Motion simply seeks to add Exhibits to the exhibit list;

**NOTING** that sub-Rule 73<sup>ter</sup>(E) of the Rules states that “[a]fter 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 this sub-Rule deals with the issue of reinstating “the list of witnesses” or varying The Chamber’s decision “as to which witnesses are to be called” and not with the issue of adding Exhibits to the exhibit list;

**RECALLING** The Chamber’s Order of the 28<sup>th</sup> of November 2005 which states that “[s]hould the Defence seek to add any exhibit to this list after the 5<sup>th</sup> of December, 2005 it may be permitted to do so only upon good cause being shown”;<sup>15</sup>

**NOTING** Counsel for Norman’s argument in support of good cause for granting the present application that due to poor health of the prospective witness Major-General Abdul One Mohammed, Counsel for Norman could not obtain these documents from him on their earlier visit to Nigeria in March 2006 but only “during the second investigative trip to Nigeria from the 25<sup>th</sup> of May to 3<sup>rd</sup> June 2006”;<sup>16</sup>

<sup>11</sup> SCSL-04-14-595, “Order Detailing Judicial Calendar”, the 11<sup>th</sup> of May 2006.

<sup>12</sup> SCSL-04-14-619.

<sup>13</sup> *Ibid.*, Disposition, para. 17(a)(ii).

<sup>14</sup> SCSL-04-14-489.

<sup>15</sup> *Ibid.*, p. 3.

<sup>16</sup> Motion, para. 7; *see also*, Reply, para. 7.

**CONSIDERING** that Counsel for Norman seek leave to add two Exhibits to the Exhibit List of the 5<sup>th</sup> of December 2005 presumably with the intention to tender them at trial through witness Major-General Abdul One Mohammed when and if he comes to testify on the 13<sup>th</sup> of September 2006;

**CONSIDERING**, therefore, that no prejudice will ensue to the Prosecution, as they will have more than six weeks to analyse the documents and prepare for the cross-examination of witness Major-General Abdul One Mohammed on the basis of these documents, when and if they are tendered in court;

**CONSIDERING** further that the Prosecution will have the opportunity to object to the authenticity, relevance and admission of these Exhibits once they are disclosed and are in the process of being tendered through Major-General Abdul One Mohammed;

**NOTING** that the proposed additional Exhibits are reported to be of significant relevance and materiality to the Defence case of the First Accused and, in particular, to the Prosecution's theory of command responsibility;<sup>17</sup>

**RECALLING** The Chamber's Order of the 23<sup>rd</sup> of March that "Court Appointed Counsel for all three Accused persons shall disclose, as soon as possible or at least two days prior to the commencement of the testimony of a witness, to the other Parties, as the case may be, a copy of the Exhibit, which Counsel intend to tender through such witness";

**CONSIDERING** that the Special Court will observe judicial recess from the 7<sup>th</sup> until the 18<sup>th</sup> of August 2006, during which period the Court Management Section of the Registry will not accept any documents for filing;<sup>18</sup>

**PURSUANT TO** Rule 54 and 73 of the Rules;

**THE CHAMBER**, in the existing circumstances of this case and in the exercise of its discretion, **FINDS** that good cause has been established by Counsel for Norman,


**GRANTS** the Motion by allowing Exhibits "Periodic Report Civil Defence Force "Kamajors" dated 7 August 1997" and "Letter from President Ahmed Tejan Kabbah to CSO Mustapha with an Action Plan captioned Operation Athens dated 13 August 1997" to be added to the Exhibit List of the 5<sup>th</sup> of December 2005, and

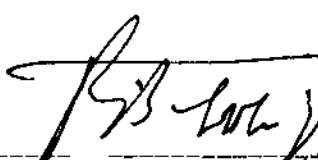
**ORDERS** Counsel for Norman to file the copies of these two Exhibits as soon as possible but no later than Thursday, the 3<sup>rd</sup> of August 2006, at 1:00 p.m.;

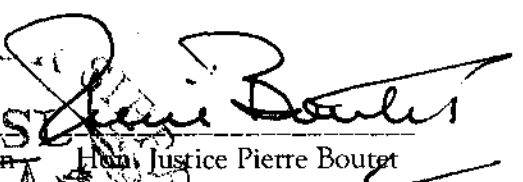
<sup>17</sup> Motion, para. 7; Reply, paras 9, 6.

<sup>18</sup> SCSL-04-14-620, "Order Scheduling Judicial Recess and Authorization Pursuant to Rule 4", issued by the President of the Special Court on the 15<sup>th</sup> of June 2006.

Done in Freetown, Sierra Leone, this 31<sup>st</sup> day of July 2006.

  
Hon. Justice Benjamin Mutanga Itoe

  
Hon. Justice Bankole Thompson

  
Hon. Justice Pierre Boutet

Presiding Judge  
Trial Chamber

[Seal of the Special Court for Sierra Leone]

