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SCSL-2004-14-T  
(9702-9704)

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**SPECIAL COURT FOR SIERRA LEONE**

Before: Judge Benjamin Mutanga Itoe, Presiding Judge  
Judge Bankole Thompson  
Judge Pierre Boutet  
Registrar: Robin Vincent  
Date: 12 October 2004

**THE PROSECUTOR**

**Against**

**SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**

CASE NO. SCSL-2004-14-T

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**SAMUEL HINGA NORMAN and MOININA FOFANA**  
**REPLY TO PROSECUTION RESPONSE TO REQUEST FOR VARIATION OF**  
**PROTECTIVE MEASURES**

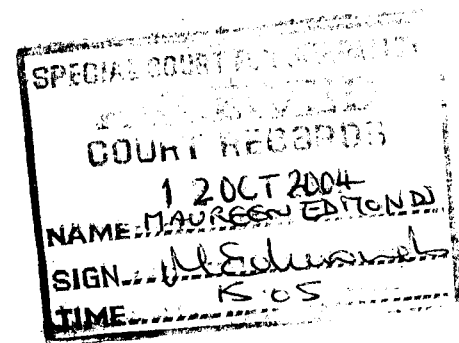
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Office of the Prosecutor:  
James C. Johnson

for Moinina Fofana:  
Michiel Pestman  
Arrow J. Bockarie  
Victor Koppe  
Phoebe Knowles

for Allieu Kondewa:  
Charles Margai

for Hinga Norman  
Quincy Whitaker



1. The Defence for Chief Sam Hinga Norman and Mr. Moinina Fofana (the “Defence”) hereby files its reply to the “Confidential Prosecution Response to ‘Norman and Fofana Joint Request for Variation of Protective Measures of Prosecution Witnesses Pursuant to Rule 75 (G-I)’” (the “Reply”, the “Response” and the “Request” respectively).
2. The Response does not necessitate a lengthy reply from the Defence since it is respectfully submitted that the Prosecution basically phrases a bare denial of the submissions in the Defence’s Request, with repeated reference to arguments raised in earlier submissions on the issue. The Defence in its Reply will therefore confine itself to the following, without any implied agreement on any of the points raised by the Prosecution to which the Defence does not reply.
3. First, the Prosecution seems to take the erroneous position that witnesses have a “right” to protection and that they can therefore “waive” such a “right”.<sup>1</sup> It is important to stress that neither the Statute for the Special Court for Sierra Leone nor the Rules of Procedure and Evidence provide for such a “right” to protective measures. In the respectful but firm opinion of the Defence, witnesses can choose whether or not to come forward, but having chosen to do so, they have no “right” to be protected against danger or risk, which may possibly result from their testimony in trial. Protective measures are ordered at the discretion of the Court, such discretion to be exercised within the statutory limitation to ensure that the accused receive a fair trial.
4. Second, the Prosecution seems to imply that the Court can exercise the above-mentioned discretion and order protective measures *even if the witness concerned expressly states that he does not desire or need protection.*<sup>2</sup> Not surprisingly, there is no jurisprudence of any international tribunal in support of this assertion.

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<sup>1</sup> Response, para. 15.

<sup>2</sup> Response, paras. 12-14.

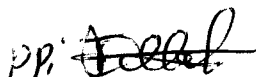
Indeed, the Defence would not be surprised if this were the first time that such a situation has arisen. It submits that the opinion of the witness should be the decisive factor in determining whether a witness even qualifies for protective measures being considered. Other evidence of risk or danger to that witness may be relevant, but only if and in as far as it supports the fears expressed by the witness. The Court must then make a determination as to whether the fears expressed by the witnesses are justified and whether the protective measures can be applied without jeopardising the fairness of the accused's trial. As the witnesses concerned have all declared in court, albeit in varying terms, that they were not afraid of testifying in public,<sup>3</sup> the Defence reiterates that their protective measures should be lifted retroactively.

5. In conclusion, the Defence still holds that the Trial Chamber should grant the relief sought.

COUNSEL FOR MOININA FOFANA

  
Michiel Pestman

COUNSEL FOR CHIEF HINGA NORMAN

  
Quincy Whitaker

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<sup>3</sup> Request, paras. 12-18.