

(12483 - 12487)

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

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

Registrar: Robin Vincent

Date filed: 15 March 2005

THE PROSECUTOR

Against

**SAMUEL HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA**
(Case No. SCSL-2004-14-T)

**PROSECUTION RESPONSE TO 'DEFENCE REQUEST FOR "STAYED"
WITNESS INDEXING'**

Office of the Prosecutor:

Luc Côté
James C. Johnson
Kevin Tavener

Defence Counsel for Sam Hinga Norman

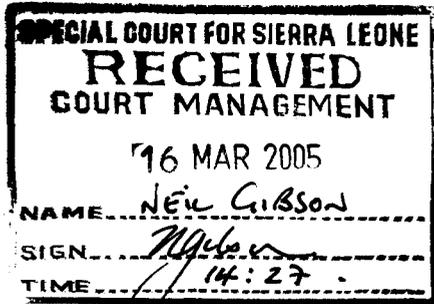
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Defence Counsel for Allieu Kondewa

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I. INTRODUCTION

1. On the 29 of November 2004, the Trial Chamber delivered its “Decision on First Accused’s Motion for Service and Arraignment on the Consolidated Indictment,” (“**Decision**”) ordering that certain portions of the Consolidated Indictment were to be stayed as against the First Accused.¹
2. The Defence for the First Accused, in its motion of 7 March 2005 entitled, “Defence Request for ‘Stayed’ Witness Indexing,” (“**Motion**”) has asked that the Prosecution outline or ‘index’ for the assistance of the Defence, the evidence relating to those stayed portions. In particular, the Defence has asked the Prosecution to outline which witnesses have testimony directed to the stayed portions of the Consolidated Indictment, the substance of their testimony, and the date the Prosecution anticipates leading the evidence of the witnesses in this group who have not already testified.²
3. The Prosecution respectfully submits that there is no legal basis upon which the Prosecution is required to enhance and facilitate defence preparations. There is not a special category of witnesses which requires the Prosecution to provide additional services to the Defence.

II. ARGUMENT

¹ *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Decision on First Accused’s Motion for Service and Arraignment on the Consolidated Indictment,” 29 November 2004.

² *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Defence Request for ‘Stayed’ Witness Indexing,” 7 March 2005.

4. The Defence requests the Prosecution to conduct this exercise as it “is necessary for the purposes of relevant Defence investigations and for the preparation and conduct of the Defence.” It is acknowledged that the Defence have a right to cross-examine witnesses who testify, including those witnesses who testify on matters related to the stayed portions of the Consolidated Indictment. It is then upon the Defence to deal with the resulting testimony in whatever manner they consider appropriate.
5. Pursuant to an order of the Trial Chamber³, the Prosecution files a witness order 14 days prior to calling a witness; the substance of the witness’s testimony is disclosed at an earlier time. This procedure is followed for all witnesses, including those witnesses whose testimony relate to the stayed portion of the Consolidated Indictment.
6. The First Accused has been on notice of the Prosecution’s intention to lead the subject evidence since its inclusion in the Consolidated Indictment. The Defence cannot be surprised by this evidence. It is submitted that the Defence has had adequate time to investigate and prepare for the relevant cross-examination. In registering its positive support of the Prosecution’s oral motion to proceed with evidence relating to the Moyamba crime Base, the Defence declared that the First Accused was prepared to cross-examine on this evidence.⁴
7. In respect of its request for a schedule, it is submitted that no sound reason has been raised as to why additional notice, beyond that provided for by the standing Order of the Court on filing Witness Orders, is required in these circumstances.
8. The Prosecution submits that the Defence does not require additional assistance in dealing with the Moyamba based witnesses, and any other witnesses whose testimony may touch on stayed portions of the indictment.

³ *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Order to Prosecution to Provide Order of Witnesses and Witness Statements,” 25 January 2005 (hereinafter “**Order of the Court on filing Witness Orders**”).

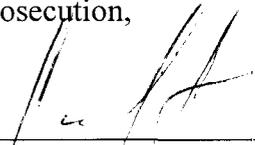
⁴ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Transcript, 25 February 2005.

III. CONCLUSION

9. The testimony of witnesses in respect of stayed portions of the indictment is not a special category by which the Prosecution is required to provide a helpful *tool* for the Defence.
10. The Defence request for extraordinary assistance, by the Prosecution, in dealing with evidence should be rejected.

Freetown, 15 March 2005.

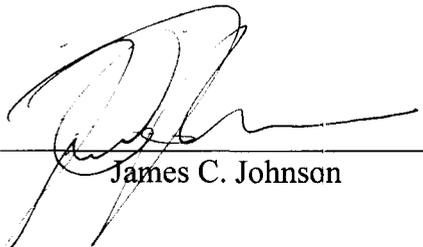
For the Prosecution,



Luc Côté



Kevin Tavener



James C. Johnson

ANNEX A
PROSECUTION INDEX OF AUTHORITIES

1. *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Decision on First Accused’s Motion for Service and Arraignment on the Consolidated Indictment,” 29 November 2004.
2. *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Defence Request for ‘Stayed’ Witness Indexing,” 7 March 2005.
3. *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Order to Prosecution to Provide Order of Witnesses and Witness Statements,” 25 January 2005.
4. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Transcript, 25 February 2005.
5. *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-14-PT, “Prosecution Chart Indicating Documentary and testimonial Evidence by Paragraph of the Consolidated Indictment Pursuant to the trial Chamber Order dated 1 April 2004,” 4 May 2004.