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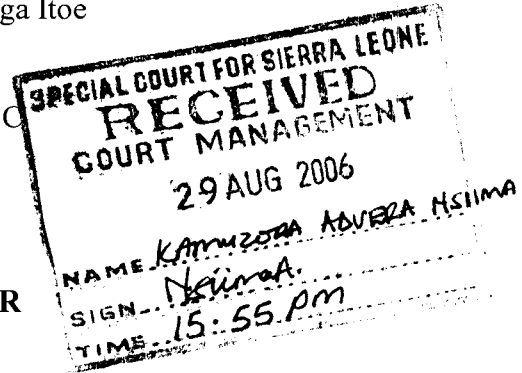
SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

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

Registrar: Mr. Lovemore Munlo, SC

Date: 29th August 2006



THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

Case No. SCSL-04-14-T

PUBLIC

KONDEWA APPLICATION FOR LEAVE

TO CALL ADDITIONAL WITNESSES

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I. INTRODUCTION

1. Counsel for the Third Accused, Mr. Allieu Kondewa (the “Defence”), hereby submit their ‘Application for Leave to Call Additional Witnesses’ (the “Application”). For the reasons outlined below, the Defence seek leave of Trial Chamber I (the “Chamber”) to call an additional SEVEN factual witnesses. The Defence submit that there is good cause to grant the Application and that the addition of the proposed witnesses will serve the interests of justice.

II. BACKGROUND

2. On 28 November 2005, the Trial Chamber issued a “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” (the “Order”)¹ which stipulated that the Defence would only be permitted to add witnesses or exhibits to their list upon a showing of good cause.
3. On 22 March 2006, the Defence submitted the “Submission by Counsel for Third Accused Allieu Kondewa Pursuant to the Consequential Order to the Status Conference”² which stipulated that the Kondewa Defence would file a reduced witness list upon receiving a final witness list from the Norman Defence Team.
4. On 8 May 2006, the Defence submitted the “Updated Witness List of the Third Accused Allieu Kondewa”³ which provided a tentative updated and reduced witness list contingent on receiving a finalized core witness list from both the Norman and Fofana Defence teams. The submitted list included twenty-eight core witnesses. The following names were removed from the witness list: Hassan Décor Sallu, Brima Moriba, Karmoh Lahai Bangura, Karmoh Mohamed Mansaray, Mohamed Daiman Faloun, Dixon Saidu Kosia, Brima John Keni Sei, M. T. Collier, Raymond D. Murphy, and Dr. Joe A.D. Alie.
5. On the 20th July 2006 the Trial Chamber 1 ordered the Kondewa Defence team, inter alia, to remove Momoh Bockarie Moiwa and Joe Kpana Lewis from their witness list as it had been included without leave of the Trial Chamber or, alternatively, to seek leave of the Trial Chamber to add them to their witness list⁴
6. The Defence went on a final investigation trip to the alleged crime bases between the 11th

¹ SCSL-2004-14-T-489, 28 November 2005.

² SCSL-2004-14-T-583, 22 March 2006.

³ SCSL-2004-14-T-593, 8 May 2006.

⁴ SCSL-2004-14-T-673, 20 July 2006

August 2006 and the 16th August 2006 and during this trip discovered 5 additional witnesses of fact crucial and relevant to the defence of the third Accused.

7. In light of paragraphs 5 and 6 hereof the Defence file this motion for leave to call additional witnesses.

III. SUBMISSIONS

The Applicable Law

8. The Rules of Procedure and Evidence (the “Rules”) provide: “After the commencement of the Defence case, if it considers it to be in the *interests of justice*, move the Trial Chamber for leave ... to vary its decision as to which witnesses are to be called”⁵. More specifically, with respect to the defence phase of the CDF proceedings, the Chamber has stated that “[s]hould the Defence seek to add any witnesses to [its] list after the 5th December 2005, it may be permitted to do so only upon *good cause* being shown”⁶.
9. Factors that have been and may be taken into account by the Trial Chamber in determining whether “good cause” has been established include: the materiality of the evidence; the relevance of the evidence to determine the issues at stake; the contribution of the evidence to serving and fostering the overall interest of the law and justice; the absence of prejudice to the other party; the on-going investigations; and whether the new evidence could not have been discovered or made available at an earlier point in time notwithstanding the exercise of due diligence.
10. The Chamber however has placed particular and significant emphasis on the relevance of the proposed evidence as well as the danger of prejudice to the other parties.⁷

Proposed Additional Factual Witnesses

11. The Defence propose to call an additional seven factual witnesses. A chart including their names, the nature of proposed testimony and the specific reasons for their not having been listed

⁵ Rule 73*ter*(E).

⁶ *Prosecutor v. Norman et al.*, SCSL-2004-14-T-585, Trial Chamber I, ‘Decision on the First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibit Lists’, 6 April 2006 at 4, (*quoting Prosecutor v. Norman et al.*, SCSL-2004-14-T-435, Trial Chamber I, ‘Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures’, 23 June 2005, at 3).

⁷ *See, e.g., Prosecutor v. Norman et al.*, SCSL-2004-14-T-213, Trial Chamber I, ‘Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund’, October 2004, ¶17.

previously is attached hereto as Appendix B.

Good Cause and Relevance

12. The Third Accused maintains the position of not having common witnesses with any of the other Accused. Any witnesses that are not called by the First or Second Accused who had erstwhile been deemed common witnesses will be called by the Third Accused. As such, changes made to the witness lists of the First or Second Accused leave the witness list of the Third Accused open and subject to amendments, even after the Defence may have submitted an updated list.
13. Further on-going investigations and in particular investigations carried out by the Kondewa Defence team in the month of August 2006 have uncovered the identity of 5 factual witnesses of great importance and relevance to the Kondewa Defence whose testimony will answer direct allegations made by Prosecution witnesses against the Third Accused.
14. The additional witnesses to be called will answer specific and direct allegations made against the third Accused. The Defence submit that the evidence of the seven witnesses is relevant and request that leave be granted on that score.
15. The Defence submit that with the exception of Joe Kpana Lewis and Momoh Bockarie Moiwa it did not add the witnesses for which leave is now sought to its witness list of the 8th May 2006. The reason being that these witnesses were only discovered in August 2006 when the Defence made their final investigation trip between the 11th August 2006 and the 16th August 2006.

Interests of Justice

16. As outlined in APPENDIX B Each of the seven proposed additional factual witnesses is in possession of material information relevant to the charges against the Third Accused contained in the Prosecution's Indictment. The proposed evidence is not overly duplicative or repetitious of that of the existing witnesses and is directed at specific and clearly identified portions of the Prosecution's case and will answer direct and specific allegations made by witnesses against the Third Accused individually.


17. For the reasons stated above, neither the Prosecution nor the other Accused will suffer any prejudice. Given the timing of the trial, there is no element of surprise resulting in detriment to the Prosecution.

CONCLUSION

18. The Defence submit that it had on the 8th May 2006 filed an updated list of 28 witnesses. If this application is granted the Defence will call a maximum of 20 witnesses as the Defence intend to remove 15 witnesses from their list filed on the 8th May 2006 and augment that list with these seven additional witnesses.

19. For the foregoing reasons, the Defence respectfully request the Chamber to grant the Application in the interest of justice.

COUNSEL FOR ALLIEU KONDEWA


P.P.

CHARLES FRANCIS MARGAI

APPENDIX A

LIST OF AUTHORITIES

1. RULES OF PROCEDURE AND EVIDENCE: RULE 73ter(E)
2. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-585, Trial Chamber I, 'Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists', 6 April 2006
3. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-534, Trial Chamber I, 'Consequential order to the Status Conference of the 18th January 2006', 18th January 2006'
4. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-489, Trial Chamber I, 'Consequential order for Compliance with the order Concerning the Preparation and Presentation of the Defence Case', 28th November 2005'
5. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-435, Trial Chamber I, 'Decision on the Prosecution Request for Leave to Call Additional Witnesses and for the Orders for Protective Measures', 23 June 2005
6. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-213, Trial Chamber I, 'Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund', October 2004

APPENDIX B

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
<p>Joe Kpana Lewis (92 years, Mende, Gambia)</p>	<p>SPECIFIC EVIDENCE: Witness will debunk the evidence of PW 66 (TF2 – 187) i.e. nobody was killed by Allieu Kondewa’s boys by tying him up and dropping melting plastic into his eyes”.</p> <p>Hinga Norman never came to Gambia before, during or after the war.</p> <p>Witness will debunk the evidence of PW 66 (TF2 – 187) with regard the slitting of the stomach of three pregnant women is denied.</p> <p>As chiefdom speaker he was privy to everything that happened in the Gambia.</p> <p>Witness will debunk the evidence of PW 66 (TF2-187) in respect of the helicopter incident.</p>	<p>Witness was mistakenly added to the list of witnesses of the 8th May 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>Witness will testify that the last time that helicopter came to Gambia was during the presidency of Siaka Stevens. No helicopter did not land in the Gambia during the war.</p> <p>GENERAL EVIDENCE : Witness, a Chiefdom Adviser, will give testimony with respect to Mr. Kondewa's role within the Kamajor Society, specifically his role as an initiator.</p> <p>For example, the witness will testify that:</p> <ul style="list-style-type: none"> -Witness was initiated into the Kamajor Society by Mr. Kondewa in 1997. -Mr. Kondewa was an herbalist and masked dancer. He was responsible and had many wives and children. -Mr. Kondewa did not recruit candidates for initiation, but, rather, the candidates came to him oftentimes with letters from their Paramount Chiefs requesting Mr. Kondewa to 	

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>initiate them.</p> <p>-Mr. Kondewa's role as initiator was a full time position and was restricted only to his position as an initiator. He did not in any way encourage or facilitate the planning and implementation of any activity that led to looting, burning of property, or the mutilation and the killing of civilians, collaborators, or enemy combatants.</p> <p>-Witness never saw Mr. Kondewa lead a group of Kamajors to carry out special missions, such as looting or pillaging. Mr. Kondewa also did not order Kamajors to endeavour to obtain public or private property for his own gains, nor did he take people hostage and subject them to indignities, such as humiliating them or subjecting them to similar degrading treatment.</p> <p>- Once the candidates were initiated, they returned back to their respective Chiefdoms and never communicated with Mr. Kondewa afterwards.</p>	

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>-Mr. Kondewa never went to war or led any combat operations. The war commanders were responsible for commanding and controlling their battalions.</p> <p>-Witness never saw children under the age of 15 years initiated and forced to participate in hostilities.</p> <p>-Witness thought the allegations that between 1 November, 1997 and 1 April, 1998 the Kamajors carried out attacks against civilians in the Bonthe District and its surrounding areas, such as Talia, was strange given that both Gambia and Talia were very large Kamajor bases.</p> <p>-Road blocks were set up on the roads leading to Gambia in order to secure the area because Rebels kept sending messages that they wanted Mr. Kondewa's head.</p>	
<p>Moiwai Bockarie Moiwa</p>	<p>Witness, a civilian from Bomie-New Site, will give testimony with respect to the events at Tongo Field during</p>	<p>Witness was mistakenly added to the list of witnesses of the 8th May 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
<p>Tongo (29 years,</p>	<p>the period of 1996-2002.</p> <p>For example, the witness will testify that:</p> <p>-AFRC/RUF fighters overtook Tongo Field on 11 August, 1998. The Kamajors retreated and moved to Mano Ngieyeiya. Witness and civilians there came under the rule of the rebels and the SSDs. A pit was opened at the field which was code named CYBORG, which meant "We don't talk, only the barrel talks." The civilians were forced to work for the rebels and lived under duress. At night they were sent to mine gravel, during which time the AFRC/RUF soldiers would open fire and kill many of the civilians.</p> <p>-Witness left Tongo Field for Panguma. As he was leaving Tongo Field, witness saw AFRC/RUF forces setting houses on fire as they retreated. The AFRC/RUF forces always set houses indiscriminately on fire every time they retreated from Tongo Field.</p>	

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>-Witness did not see the Kamajors screening people according to their tribes and slaughtering non-Mende tribesmen at Tongo Field, Panguma, the way between Tongo Field and Panguma or Talama.</p> <p>- Witness never saw nor heard of Kamajors slitting open the stomachs of murdered civilians and enemy combatants and eating their entrails. Nor did he ever see or hear that a large number of civilians were hacked to death at the edge of a hill in Kamboma.</p>	
<p>Karim Musa Talia Yawbeko</p>	<p>SPECIFIC EVIDENCE : Witness will debunk evidence of TF2-017, TF2-096, TF2-014 that the third Accused carried out killings at Talia</p>	<p>Witness was difficult to find due to his farming activities but he was eventually found in August 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>GENERAL EVIDENCE: Witness, a former Court Chairman, will give testimony with respect to Mr. Kondewa's role within the CDF, specifically as an initiator; and the organization of Base Zero.</p> <p>-For example, the witness will testify that:</p> <p>-Witness was initiated at Mokosi in 1997 and was Court Chairman between 1996 and 1998. Rebels drove him from Talia, and he took refuge at Talia and visited there once a week.</p> <p>-Mr. Kondewa was an initiator, and never had any control over the Kamajor fighters. After initiation, the Kamajor Society, each Kamajor was free to choose to do what he wanted, such as return to the village or opt for military recruitment. He never instructed Kamajors to kill or loot.</p> <p>-It was acceptable to join the Kamajor Society and opt to not be a combatant.</p>	

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>-Jaybayma was the commander of the Death Squad.</p>	
<p>Baimba Jobai (Nyadehun)</p>	<p>SPECIFIC EVIDENCE : Witness will debunk evidence of TF2-017, TF2-096, TF2-014 and other witnesses that the third Accused carried out killings at Talia</p> <p>GENERAL EVIDENCE: Witness, a former Chiefdom speaker at Talia Yawboko in 1997, will give testimony with respect to Mr. Kondewa's role within the CDF; and alleged reports of Kamajor and Death Squad atrocities.</p> <p>For example, the witness will testify that:</p> <p>-Mr. Kondewa was an initiator and came to Talia with Mr. Fofanah but before Mr. Norman. He never sent troops to the battlefield nor commanded or controlled fighting Kamajor troops. Initiates left immediately after the</p>	<p>Witness was difficult to find due to his farming activities but he was eventually found in August 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>initiation was complete.</p> <p>-Witness was initiated by Mr. Kondewa as a means of self-defence. He also got his children initiated into the Kamajor Society.</p> <p>-The Death Squad was between Sumbuya and Bumpe. He never heard any reports of them doing anything evil.</p> <p>-The people of Talia were very happy while the Kamajors were there. No reports of Kamajor atrocities or wrongdoings ever came to witness's knowledge, the Chief, or other Chiefdom elders. No killings took place in Talia, as witness would have received reports about it.</p>	
<p>Steven Edmond Boima (59 years, born in Nongoba Gullom</p>	<p>SPECIFIC EVIDENCE -Evidence of TF2-187 (PW 66) with regard to killing of PW66, S r uncle debunked.</p> <p>-Evidence of TF2-187 (PW 66) with regard to killing of 3</p>	<p>Witness was difficult to find due to his farming activities but he was eventually found in August 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
Chiefdom)	<p>pregnant women debunked.</p> <p>-Evidence of PW 66 (TF2-187) re helicopter incident also debunked.</p> <p>GENERAL EVIDENCE : The witness, a civilian living in Gambia throughout the war, will give testimony with respect to Mr. Kondewa's time in Gambia; and witness's stay in Gambia.</p> <p>For example, the witness will testify that:</p> <p>-Witness was in Gambia while Mr. Kondewa was there for one month.</p> <p>-Witness was initiated by Mr. Kondewa when he came to Gambia. This was after the restoration of the Kabba government. His initiation lasted for one week.</p> <p>-Children were not initiated as Kamajors and he did not</p>	

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>see children fighting with Kamajors.</p> <p>-Mr. Norman never came to Gambia. Witness knew he went to Talia. No helicopter ever came to Gambia, and they did not have any field or landing pad for a helicopter to land.</p>	
Yeama Lewis Gambia	<p>SPECIFIC EVIDENCE -Evidence of TF2-187 (PW 66) with regard to killing of her uncle debunked.</p> <p>-Evidence of TF2-187 (PW 66) with regard to killing of 3 pregnant women debunked.</p> <p>-Evidence of PW 66 (TF2-187) re helicopter incident also debunked.</p> <p>GENERAL EVIDENCE: Witness, a civilian and mid-</p>	<p>Witness was difficult to find due to her mid wife activities but she was eventually found in August 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>wife, will give testimony with respect to Mr. Kondewa and the Kamajors in Gambia.</p> <p>For example, the witness will testify that:</p> <ul style="list-style-type: none"> -Witness was in Gambia while Mr. Kondewa was there. -Kamajors never killed anyone in Gambia. 	
<p>Sampha Carpenter (Bauya Junction)</p>	<p>SPECIFIC EVIDENCE: -Witness knew Festus Kainulo and states it was untrue that Mr. Kondewa threatened to shoot him.</p> <p>-Mr. Kondewa was very friendly to everyone in Sogbini Chiefdom. Mr. Kondewa left Sigbini Chiefdom voluntarily. He was a friend of the Chief and did a few charitable gestures to the Chief.</p>	<p>Witness only made himself available in August 2006</p>

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>-It is untrue that Mr. Kondewa men looted hospital properties and packed them in looted CARE vehicles. There was no incident of Mr. Kondewa ordering to beat and kill the people in Sogbeni. There was no incident of ritual killings, and no occurrences occurred of initiates dying and having their corpses being used for initiations.</p> <p>GENERAL EVIDENCE: Witness, a civilian, will give testimony with respect to Mr. Kondewa's role within the Kamajors; and Mr. Kondewa's activities in Sogbeni and Tihun.</p> <p>For example, the witness will testify that:</p> <p>-Witness was initiated into the Kamajors by Mr. Kondewa.</p> <p>-Once the initiation ceremonies were over, Mr. Kondewa's</p>	

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	<p>control over the initiates ended. All of the initiates were dispersed to their villages afterwards.</p> <p>-Witness traveled to Base Zero on a number of occasions, because Sogbini Chiefdom was very close to Base Zero and people traveled between . He met Mr. Kondewa there each time, and he was very friendly to the people and did not do anything wrong to anyone. Mr. Kondewa was not responsible for the Death Squad. He also never killed anyone at Base Zero.</p> <p>-One can be a Kamajor and not be fighter.</p> <p>-No military training camp existed in Tihun.</p>	