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SCSL-04-15-T  
(17412 - 17427)

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**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone

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

Interim Registrar: Mr. Lovemore Munlo

Date filed: 10 February 2006

**THE PROSECUTOR**

**Against**

**Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao**

Case No. SCSL-04-15-T

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**PUBLIC**  
**PROSECUTION REQUEST FOR LEAVE TO CALL ADDITIONAL WITNESS**  
**AND NOTICE TO ADMIT WITNESS'S SOLEMN DECLARATION PURSUANT**  
**TO RULES 73bis(E) AND 92bis**

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**Office of the Prosecutor:**

James C. Johnson  
Peter Harrison

**Defence Counsel for Issa Hassan Sesay:**

Wayne Jordash  
Sareta Ashraph

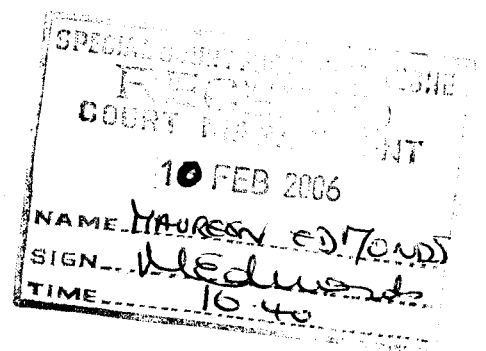
**Defence Counsel for Morris Kallon:**

Shekou Touray  
Melron Nicol-Wilson

**Defence Counsel for Augustine Gbao:**

Andreas O'Shea  
John Cammegh

*Prosecutor v Sesay, Kallon and Gbao, SCSL-04-15-T*



## I. INTRODUCTION

1. The Prosecution respectfully requests that the Trial Chamber allow the addition of a witness, Alfred Sesay, to the Prosecution's witness list pursuant to Rule 73bis(E) of the Rules of Procedure and Evidence of the Special Court ("Rules").
2. The Prosecution does not intend to call Alfred Sesay to testify, rather, it seeks to have his solemn declaration dated 7 July 2005 ("Declaration") admitted into evidence pursuant to Rule 92bis. The Prosecution would agree, however, to make the witness available for cross-examination if so requested by the Defence. The Declaration is attached to this motion as ANNEX A.

## II. BACKGROUND

3. The Prosecution filed its original witness list on 26 April 2004<sup>1</sup> and a modified and reduced list, pursuant to the orders of the Trial Chamber, on 12 July 2004.<sup>2</sup> On 23 November 2004, the Prosecution filed a renewed witness list, consisting of 102 names,<sup>3</sup> to which four witnesses have subsequently been added upon application to the Trial Chamber.<sup>4</sup> A further renewed witness list was filed on 5 May 2005.<sup>5</sup>
4. During the course of the trial of *Sesay et al.*, both Prosecution and Defence have tendered documents as exhibits, some of which were originally part of a collection of documents seized from the residence of Foday Sankoh on 8 May 2000 ("Sankoh Documents").
5. Alfred Sesay has been working as an investigator with the Office of the Prosecutor ("OTP") at the Special Court since 8 June 2003, prior to which he worked as an investigator with the Criminal Investigations Department of Sierra Leone ("CID").

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<sup>1</sup> *Prosecutor v Seasy, Kallon, Gbao*, SCSL-04-15-86, "Material Filed pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004", 26 April 2004.

<sup>2</sup> *Prosecutor v Seasy, Kallon, Gbao*, SCSL-04-15-193, "Materials Filed Pursuant to Order to Prosecution to Produce Witness List and Witness Summaries", 12 July 2004.

<sup>3</sup> *Prosecutor v Seasy, Kallon, Gbao*, SCSL-04-15-284, "Prosecution Revised Witness List", 23 November 2004.

<sup>4</sup> *Prosecutor v Seasy, Kallon, Gbao*, SCSL-04-15-320, "Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements", 11 February 2005; *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-399, "Decision on Prosecution Request for Leave to Call an Additional Expert Witness", 10 June 2005.

<sup>5</sup> *Prosecutor v Seasy, Kallon, Gbao*, SCSL-04-15-370, "Materials Filed pursuant to Consequential Order to the Decision on Further Renewed Witness List Dated 13 April 2005", 5 May 2005.

6. The Declaration states among other things that in 2000, while working at the CID, Alfred Sesay was given custody of the Sankoh Documents. During 2002, investigators from the OTP took possession of a number of the Sankoh Documents from the CID. On 20 May 2005, Alfred Sesay inspected documents held by the OTP's Evidence Unit and identified some of them as Sankoh Documents that had been taken by OTP investigators from the CID during 2002. Alfred Sesay identified these documents by the internal OTP reference numbers ("ERN") and listed them in the Declaration.
7. The Declaration was served on all Defence counsel on 8 July 2005.
8. The documents identified by ERN number in the Declaration and corresponding RUF trial Exhibit numbers are set out in the attached table marked **SCHEDULE 1**. Exhibits 37 and 43 are Defence exhibits while the remainder are Prosecution exhibits.
9. The Prosecution submits that the Declaration of Alfred Sesay will assist the Trial Chamber in establishing the origin and custody of the documents listed in Schedule 1 and in determining issues of reliability and weight at the conclusion of the trial.

### III. ARGUMENT

#### Additional Witness pursuant to Rule 73bis(E)

10. The jurisprudence of the Special Court has established that in an application pursuant to Rule 73bis(E), the Prosecution must demonstrate "good cause" and that the inclusion of the additional witness is in the "interests of justice". The following considerations are relevant to a determination of these factors:<sup>6</sup>
  - a) the circumstances being argued to show good cause are directly related and material to the facts in issue;

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<sup>6</sup> *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-167, "Decision on Prosecution Request for Leave to Call Additional Witnesses", 29 July 2004; *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-213, "Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund", 1 October 2004; *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-320, "Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements", 11 February 2005, paras 34 and 35; *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-399, "Decision on Prosecution Request for Leave to Call an Additional Expert Witness", 10 June 2005. See also *Prosecutor v Nahimana et al*, Case No. ICTR-99-52-I, "Decision on the Prosecutor's Oral Motion for Leave to amend the list of selected witnesses", 26 June 2001.

b) the evidence to be provided by the witness is relevant to determining the issues at stake and would contribute to serving and fostering the overall interest of the law and justice;

c) leave to call a new witness would not unfairly prejudice the defence; and

d) the new evidence could not have been discovered or made available at an earlier point in time notwithstanding the exercise of due diligence.

11. The Prosecution submits that the content of the Declaration meets the standard required for “good cause” and the addition of the witness to the Prosecution’s witness list so as to enable the Declaration to be tendered for admission pursuant to Rule 92*bis* is in the interests of justice. The witness provides important background information as to the seizure and subsequent storage and custody of the Sankoh Documents. This information will assist the Trial Chamber in its analysis of the Sankoh Documents that have been tendered as exhibits and is therefore material to the facts in issue. There is no prejudice to the Defence as the Declaration has already been disclosed to them and they retain the right to cross-examine at such a time as would enable them to prepare adequately. The evidence contained in the Declaration is not ‘new’ evidence as such, but rather, it is intended to inform the Trial Chamber’s assessment of existing documentary evidence and its evaluation of that evidence in the light of all the other evidence. Since the Prosecution does not intend to call the proposed witness, the application is being made at this stage in conjunction with an application to tender the Declaration under Rule 92*bis* in an effort to facilitate a fair, efficient and expeditious trial.

Notice pursuant to Rule 92*bis*

12. Subject to its request pursuant to Rule 73*bis*(E) being granted, the Prosecution gives notice pursuant to Rule 92*bis* of its intention to submit the Declaration of Alfred Sesay as evidence in this trial.

13. Rule 92*bis* (A) and (B) provide that the Trial Chambers “may admit as evidence, in whole or in part, information in lieu of testimony”, if, “in the view of the Chambers it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation”. As explained by the Appeals Chamber:

The effect of the SCSL Rule is to permit the reception of “information”- assertions of fact (but not opinion) made in documents or electronic communications - if such facts are relevant and their reliability is “susceptible of confirmation”. This phraseology was chosen to make clear that proof of reliability is not a condition of admission: all that is required is that the information should be *capable* of corroboration in due course.<sup>7</sup>

14. Trial Chamber I has confirmed that what is required of the Chamber is to determine whether the document sought to be admitted is relevant, whether it possesses sufficient indicia of reliability, and whether its admission would unfairly prejudice the Defence.<sup>8</sup> The Trial Chamber noted that the Accused would be unfairly prejudiced if documents pertaining to the acts and conduct of the Accused were admitted into evidence without giving the Defence the opportunity of cross-examination.
15. The Prosecution submits that the Declaration is clearly relevant as it establishes the genesis of a number of exhibits tendered by both Prosecution and Defence and will assist the Trial Chamber in assessing the weight to be attributed to those exhibits when the time comes to weigh all the evidence in the case. The Declaration contains sufficient indicia of reliability in that it has been sworn by the proposed witness who is currently an OTP investigator and whose previous function as an investigator with the CID is easily verifiable. The admission into evidence of the Declaration, which does not pertain directly to the acts and conduct of any of the Accused, will cause no prejudice to the Defence. The Declaration was disclosed to the Defence on 8 July 2005 shortly after it had been sworn. It was subsequent to this disclosure that the Defence itself tendered two Sankoh Documents as exhibits.<sup>9</sup> It may be assumed that the Defence also has an interest in establishing the origin and reliability of these exhibits, but in any event, as already stated, the Prosecution does not object to the witness being cross-examined by the Defence.

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<sup>7</sup> *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-398, “Fofana-Decision on Appeal Against Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 26, [italics in original].

<sup>8</sup> *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-447, “Decision on Prosecution Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, 14 July 2005; See also *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-431, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice pursuant to Rule 92bis”, 18 November 2005.

<sup>9</sup> Exhibits 37 and 43 tendered on 26 July 2005 and 1 August 2005 respectively.

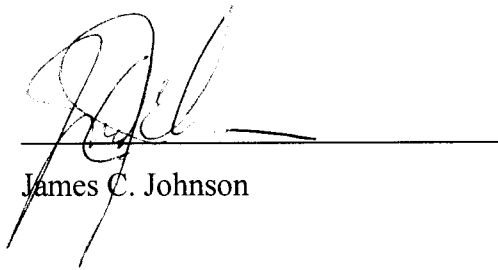
**IV. CONCLUSION**

16. For these reasons the Prosecution requests that its application to add Alfred Sesay to its list of witnesses be granted and that the Declaration of Alfred Sesay be admitted into evidence pursuant to Rule 92*bis*.

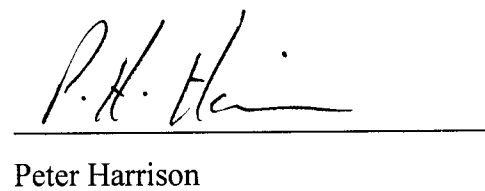
Filed in Freetown,

10 February 2006

For the Prosecution,



James C. Johnson



Peter Harrison

### Index of Authorities

1. *Prosecutor v Seasy, Kallon and Gbao*, SCSL-04-15-86, “Material Filed pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004”, 26 April 2004.
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8. *Prosecutor v Norman, Fofana and Kondewa*, SCSL-04-14-213, “Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund”, 1 October 2004.
9. *Prosecutor v Norman, Fofana and Kondewa*, SCSL-04-14-398, “Fofana-Decision on Appeal Against Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005.
10. *Prosecutor v Norman, Fofana and Kondewa*, SCSL-04-14-447, “Decision on Prosecution Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, 14 July 2005.
11. *Prosecutor v Brima, Kamara and Kanu*, SCSL-04-16-431, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice pursuant to Rule 92bis”, 18 November 2005.
12. *Prosecutor v Nahimana et al*, Case No. ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to amend the list of selected witnesses”, 26 June 2001; <http://65.18.216.88/ENGLISH/cases/Nahimana/decisions/260601.htm>

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**ANNEX A**

Solemn Declaration of Alfred Sesay



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**SPECIAL COURT FOR SIERRA LEONE**

**THE PROSECUTOR**

**Against**

**ISSA HASAN SESAY  
MORRIS KALLON  
AUGUSTINE GBAO**

CASE NO. SCSL – 2004 – 15 – T

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**SOLEMN DECLARATION OF ALFRED SESAY**

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DECLARANT: ALFRED SESAY  
DECLARED AT: FREETOWN  
DATE: 7 JULY 2005

On 7 July, 2005, I, Alfred Sesay, an Investigator with the Office of the Prosecutor for the Special Court for Sierra Leone, do solemnly and sincerely declare as follows:

1. I have been working with the Office of the Prosecutor (OTP) since June 8<sup>th</sup> 2003. Prior to working at the Special Court I was an investigator with the CID. The CID is Criminal Investigations Department.
2. On the 8<sup>th</sup> May 2000, I was working at the CID headquarters in Freetown. On this day, the Parliamentarians, Civil Society Groups and Women’s Organizations organized a demonstration in Freetown at the residence of Foday Sankoh’s house on Spur Road to protest against reports that some UN Peace Keepers (UNAMSIL) in Sierra Leone had been arrested by the Revolutionary United Front (RUF).

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3. Whilst this demonstration was going on during the morning hours, I heard the sound of gun shots from the western part of Freetown. I also saw people running helter skelter and some saying that there was a shoot out at the residence of the late RUF leader Corporal Foday Saybana Sankoh on Spur Road.
  
4. On the 9<sup>th</sup> May 2000, I was given a carton full of documents and I was told by Thomas Lahun, one of the Directors at the CID, that they were seized from the residence of Foday Sankoh. Thomas Lahun transferred to my custody this carton and instructed me to maintain custody of these materials. The documents were thereafter stored in a big cupboard under lock and key at the CID HQ and I remained in possession of these documents. They were locked in a big cupboard and I possessed the only key.
  
5. At some point in that year representatives from the Sierra Leone Attorney General's Office made copies of these documents. The CID remained in possession of the originals. I do not remember exactly when this occurred.
  
6. Also, at some point in the year 2000, representatives from the United Nations came to the CID headquarters to inspect these documents. I do not recall their names or which specific department they belonged to. They remained at the CID office and inspected the documents for several hours. They did not take possession of any of the documents. I am uncertain if they made copies of any of the documents. They took personal notes about the documents.
  
7. On 20 May 2005, Christopher Santora, an attorney with the OTP and Tariq Malik, with the Evidence Unit for the OTP, presented several original documents to me with internal OTP reference numbers marked on each page. To the best of my recollection I recall that these documents were among the set of materials originally turned over to me by Thomas Lahun and were stored in my custody.
  - a. ERN00007868-00008048
  - b. ERN00008049-00008077
  - c. ERN00008078-00008109

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- d. ERN00008228-00008232
- e. ERN 00008251-00008252
- f. ERN00008636-00008726
- g. ERN00008727-00008903
- h. ERN00009645-00009657
- i. ERN00009658-00009671
- j. ERN00007754-00007755
- k. ERN00007802-00007807
- l. ERN00007852-00007862
- m. ERN00012914-00012927
- n. ERN00012875-00012891
- o. ERN00009672-00009681
- p. ERN00008251-00008252
- q. ERN00008253-00008255
- r. ERN00007769-00007770
- s. ERN00009746-00009764
- t. ERN00009765-00009768
- u. ERN00007736-00007737
- v. ERN00009629-00009630
- w. ERN00009772-00009775
- x. ERN00007671-00007674
- y. ERN00008200-00008207
- z. ERN00009636-00009637
- aa. ERN00008196-00008198
- bb. ERN00008196-00008198
- cc. ERN00009489- 0009491
- dd. ERN00009485-00009485
- ee. ERN00012940-00012942
- ff. ERN00012973-00012975
- gg. ERN00012912-00012913
- hh. ERN00012976-00012976

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- ii. ERN00012971-00012972
- jj. ERN00012955-00012070
- kk. ERN00009481-00009484

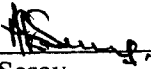
8. At some point in late 2002, Thomas Lahun, who was at this point an investigators with the OTP arrived at the CID headquarters and requested to take possession of certain documents that were among the Sankoh materials related to communications. He took possession of these documents.
9. On 20 May 2005, Christopher Santora, an attorney with the OTP, and Tariq Malik, the Evidence Custodian for the OTP, again presented several original documents to me with internal OTP reference numbers marked on each page. I have inspected the documents marked below and affirm that these were the documents that Thomas Lahun took possession of from me on behalf of the OTP at some point in late 2002.
- a. ERN00007852-00007862
  - b. ERN00012914-00012927
  - c. ERN00007868-00008048
  - d. ERN00008049-00008077
  - e. ERN00008078-00008109
  - f. ERN00008228-00008232
  - g. ERN00008636-00008726
  - h. ERN00008727-00008903
10. Also, at some point in late 2002, I turned over certain documents to investigator from the OTP including one Corinne Dufka, who was an investigator with the OTP at the time. She arrived at the CID headquarters and requested to take possession of certain documents that were among the Sankoh materials. I transferred custody of certain documents to her after her request.
11. On 20 May 2005, Christopher Santora and Tariq Malik again presented several original documents to me with internal OTP reference numbers marked on each page. I have inspected the documents marked below and affirm that these were the documents that

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Corinne Dufka and other investigators from the OTP took possession of from me on behalf of the OTP at some point in late 2002.

- a. ERN00009645-00009657
- b. ERN00009658-00009671
- c. ERN00007754-00007755
- d. ERN00007802-00007807
- e. ERN00012875-00012891
- f. ERN00009672-00009681
- g. ERN00008251-00008252
- h. ERN00008253-00008255
- i. ERN00007769-00007770
- j. ERN00009746-00009764
- k. ERN00009765-00009768
- l. ERN00007736-00007737
- m. ERN00012940-00012942
- n. ERN00012973-00012975
- o. ERN00012912-00012913
- p. ERN00012976-00012976
- q. ERN00012971-00012972
- r. ERN00012955-00012070
- s. ERN00009481-00009484


12. I make this solemn declaration by virtue of the Rules of Procedure and Evidence of the Special Court of Sierra Leone, conscientiously believing that the statements contained herein are true in every particular.

  
 \_\_\_\_\_  
 Alfred Sesay  
 Investigator for the Office of the Prosecutor  
 The Special Court for Sierra Leone

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Declared at Freetown, )  
this 7<sup>th</sup> day of July 2005, )  
before me )  
)

  
Wambui Ngunya  
Office of the Prosecutor  
Special Court for Sierra Leone

Note: Pursuant to Rule 91 of the *Rules of Procedure and Evidence of the Special Court for Sierra Leone* a person making a false statement in a written statement which the person knows, or has reason to know, may be used in evidence in proceedings before the Special Court is liable to a maximum penalty of 2 million Leones or a term of imprisonment of 2 years, or both.

**SCHEDULE I**

<b>ERN Number</b>	<b>RUF Trial Exhibit Number</b>
00008636-00008726	32
00008727-00008903	33
00008078-00008109	34
00009658-00009671	35
00009645-00009657	36
00008251-00008252	37
00007769-00007770	39
00007852-00007862	41
00008228-00008232	43