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SCSL-2003-11-PT
(1019-1021)

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THE TRIAL CHAMBER

Before: Judge Rosolu John Bankole Thompson, Presiding
Judge Pierre G. Boutet
Judge Benjamin Mutanga Itoe

Registrar: Mr. Robin Vincent

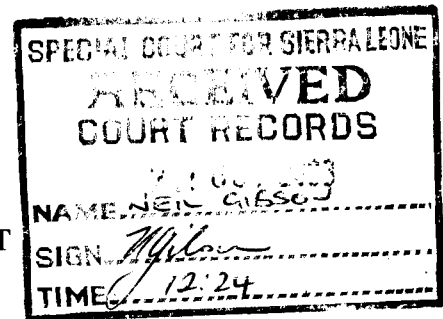
Date: 18 October 2003

THE PROSECUTOR

Against

MOININA FOFANA

CASE NO. SCSL-2003-11-PT



**REQUEST FOR AN EXTENSION OF TIME FOR THE FILING OF A RESPONSE
TO THE PROSECUTION MOTION FOR JOINDER**

Office of the Prosecutor:

Mr. Luc Côté, Chief of Prosecutions

Defence Office:

Mr. Sylvain Roy, Acting Chief

Defence Counsel:

Mr. Michiel Pestman

Mr. Victor Koppe

Mr. Arrow John Bockarie

Prof. André Nollkaemper

Dr. Liesbeth Zegveld

1. The Defence of Mr. Fofana hereby requests extra time to respond to the motion for joinder filed by the Prosecution on 9 October 2003 (“the Motion”).
2. The Motion was received by the Defence on Monday, 13 October 2003. Pursuant to Rule 7(C) of the Rules of Procedure and Evidence (the “Rules”) the response must be filed within ten days. The Defence has, however, not yet received any of the material supporting the indictment (Rule 66(A) of the Rules), although the Trial Chamber ordered the transmission of this material to the Registrar on 30 July 2003. The Defence submits that it is not in a position to respond to the Motion without access to the supporting material, and that the rights of Mr. Fofana would be irreparably harmed if the Defence were forced to do so nonetheless.
3. In its Motion, the Prosecution rightly points out that persons who are indicted separately can only be tried together if sufficient *proof* exists that the crimes committed by these persons were part of the same transaction¹. As the Defence has not yet seen any proof of the charges listed in the indictment, it is unable to assess whether this criterion essential for joinder is met. It will only be able to do so after disclosure of all supporting material to the Defence.
4. Were sufficient proof to exist that the crimes alleged were committed as part of the same transaction, the Trial Chamber would then exercise its discretion in the interests of justice and with regard to the rights of the accused.
5. In the absence of any supporting material the Defence is unable to comment on whether joinder in this case is indeed appropriate or reasonable. The Defence is unable to assess whether a joint trial would really be in the interests of justice and not create a conflict of interests that might cause serious prejudice to Mr. Fofana, as the Prosecutions submits in the Motion².
6. For example, in support of its argument that joinder would serve the interests of justice, the Prosecutor states that a joint trial would avoid duplication of evidence³. In the absence

¹ Motion for Joinder, 9 October 2003, paras. 10 et seq.

² *Ibidem*, para. 17.

³ *Ibidem*, para. 26.

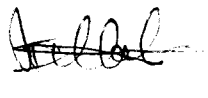
of the disclosure materials, the Defence can neither accept nor challenge this statement, as it has no idea of the nature of the evidence the Prosecution intends to bring against Mr. Fofana and it cannot check whether the proposed witnesses are indeed common to the other accused persons, as the Prosecution claims⁴.

7. Perhaps more importantly, the Prosecution states that a joint trial would not result in a conflict of interests leading to serious prejudice to Mr. Fofana⁵. As the supporting material has not yet been disclosed, the Defence has not been able to develop a defence strategy. It is therefore premature, to say the least, to address potential conflicts of interest and the question whether such a conflict would cause serious prejudice to the accused.

Request

8. In the light of the above, the Defence of Mr. Fofana respectfully asks the Trial Chamber to extend the time for the filing of the response to the Motion until ten days after the Defence receives the supporting material pursuant to Rule 66(A) of the Rules.

COUNSEL FOR THE ACCUSED

pp. 

Mr. Michiel Pestman

⁴ *Ibidem*, paras. 27-9.

⁵ *Ibidem*, para. 33.