

**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: Mr. Robin Vincent

Date filed: 6 September 2004

**THE PROSECUTOR****Against****SAM HINGA NORMAN****MOININA FOFANA****ALLIEU KONDEWA**

CASE NO. SCSL-2004-14-T

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**PROSECUTION REPLY TO JOINT RESPONSE OF SECOND AND THIRD ACCUSED  
 TO PROSECUTION'S REQUEST FOR LEAVE TO CALL ADDITIONAL EXPERT  
 WITNESS**

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**Office of the Prosecutor:**

James C. Johnson  
 Luc Côté

**Defense Counsel for Samuel Hinga**

**Norman**  
 Samuel Hinga Norman

**Standby Counsel for Samuel Hinga**

**Norman**  
 Bu-Buakei Jabbi

**Defence Counsel for Moinina Fofana:**

Michiel Pestman

**Defence Counsel for Allieu Kondewa:**

Charles Margai

SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
<b>COURT RECORDS</b>	
NAME	LEN DOLPHIN
SIGN	<i>Len Dolphin</i>
TIME	3:35 pm

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**I. INTRODUCTION**

1. The Prosecution files this Reply to the "Joint Response of Second and Third Accused to Prosecution's Request for Leave to Call Additional Expert Witness" filed on 30 August 2004.
2. The Defence opposes the Prosecution's motion on the following grounds:
  - a. The Prosecution failed to disclose the expert report of Dr. Haglund in a timely manner contrary to the dictates of Rule 94(bis) and the Trial Chamber's Order of 1 April 2004.
  - b. The addition of the expert witness to the Prosecution's list of witnesses will violate the right of the accused to an expeditious trial.
3. The Prosecution respectfully submits that the present request is neither in violation of Rule 94 (bis) nor is it a wilful disregard of the Trial Chamber's Order. Further, the granting of the Prosecution's motion would not, in any way, violate the right of the

Accused to an expeditious trial. Therefore, the Defence arguments should be dismissed.

## II. ARGUMENTS

4. The Prosecution reiterates the arguments in its initial motion that “good cause” exists for the addition of the expert witness to the witness list by virtue of the materiality of the evidence and that it was disclosed in timely fashion. The defence have not identified any substantial prejudice or unfairness arising from the presentation of the report beyond merely asserting prejudice or unfairness to exist.
5. Expert witnesses are in a different category from other witnesses, as acknowledged in the Rules, and the content of Dr Haglund’s report is not a source of unfairness. The contents of the report, by its nature, will assist the Court in its final determination.
6. The Prosecution further reaffirms its position that the full expert report was disclosed to the defence “as early as possible”, in accordance with the requirement stipulated in Rule 94 *bis*.<sup>1</sup> Contrary to Defence assertions in paragraph 5 of the Response, the Prosecution did not represent to the Court on 1 June 2004 that it was not in possession of the expert report.<sup>2</sup> On 28 April 2004, it was stated by the Prosecution at the Pre-trial Conference that “we are waiting to see the report.”<sup>3</sup> At that time, the prosecution did not know that the report was within the possession of the Investigations unit within OTP.<sup>4</sup> On 1 June 2004, at the status conference, the prosecution pledged that “perhaps by the end of this trial session” they would be in a position “to disclose some identities”.<sup>5</sup> The prosecution kept that pledge and disclosed the identities of two experts on 7 June 2004.
7. Finally, the Prosecution submits that the addition of the expert to the Prosecution list of witnesses will not lead to a delay in the trial of the Accused since, having been disclosed at this early stage of the proceedings and given the extended schedule for the

<sup>1</sup> Prosecution Request, paras. 18-21.

<sup>2</sup> Transcript, Status Conference, 1 June 2004, page 26.

<sup>3</sup> Transcript, Pre-Trial Conference, 28 April 2003, page 15.

<sup>4</sup> See, Memorandum of Alan White, attached to Prosecution Request. The OTP is divided into units namely, Prosecutions, Investigations and Evidence Unit.

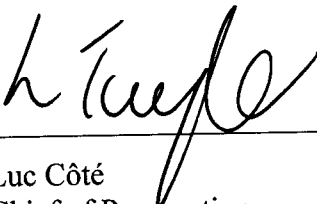
<sup>5</sup> Transcript, Status Conference, 1 June 2004, page 26.

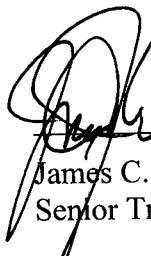
CDF trial coupled with the Prosecution's intention to call Dr. Haglund at a later point in the trial, the Defence will have ample time to study the report and contest its findings as they have already indicated.<sup>6</sup>

8. Accordingly, the Prosecution's request should be allowed.

Freetown, 6 September 2004.

For the Prosecution,

  
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Luc Côté  
Chief of Prosecution

  
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James C. Johnson  
Senior Trial Attorney

<sup>6</sup> *Prosecutor v. Norman et al*, Notice Conditionally Indicating Wish to Cross-examine Expert Witness, 26 July 2004 and *Prosecutor v. Norman et al*, Fofana Conditional Notice to Trial Chamber Pursuant to Rule 94bis(B), 26 July 2004.