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9619

SCSL-2004-14-T  
(9619-9624)

**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Judge Benjamin Itoe  
Judge Bankole Thompson  
Judge Boutet  
Registrar: Mr. Robin Vincent  
Date filed: 1 October 2004

**THE PROSECUTOR**

Against

**SAM HINGA NORMAN**

**MOININA FOFANA**

**ALLIEU KONDEWA**

**CASE NO. SCSL - 2003 - 14 - T**

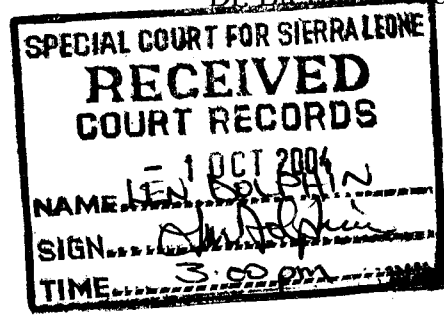
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**PROSECUTION RESPONSE TO NORMAN MOTION FOR SERVICE AND  
ARRAIGNMENT ON SECOND INDICTMENT**

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Office of the Prosecutor:  
Luc Côté  
James C. Johnson  
Adwoa Wiafe

Court Appointed Counsel for Norman:  
Quincy Whitaker  
John Wesley Hall  
Dr. Bu-Buakei Jobbi



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**I. INTRODUCTION**

1. The First Accused, Norman, appeared in court on 15, 17 and 21 March 2003 on an indictment dated 7 March 2003. He pleaded not guilty to eight (8) counts of crimes against humanity and war crimes. The Accused Fofana and Kondewa were both indicted on 24 June 2003 for the same charges (8 counts). The Fofana and Kondewa indictments contained additional particulars not contained in the Norman indictment.
2. On 9 October 2003, the Prosecution filed a motion requesting the joinder of the trials of the 3 accused; Norman, Fofana and Kondewa. The Prosecutor further requested that the indictments against the three accused be consolidated into a single indictment.
3. On 27 January 2004, the Trial Chamber granted the Prosecution request for joinder (“the Joinder Decision”) and consequentially ordered that a single consolidated indictment (“the Consolidated Indictment”) be prepared as the Indictment on which the joint trial shall proceed. The Chamber further ordered that the Consolidated Indictment be served on each Accused in accordance with Rule 52 of the SCSL Rules. The Consolidated

Indictment was filed by the Prosecution on 4 February 2004 and served on Defence Counsel on 5 February 2004.<sup>1</sup>

## II. SUBMISSIONS OF FIRST ACCUSED

4. The First Accused filed a motion on 20 September 2004 (“the Norman Motion”) seeking service and arraignment on the Consolidated Indictment because the indictment contains new, expanded charges. The First Accused further seeks a formal quashing of the indictment on which he was arraigned.
5. The Prosecution submits that the motion should be dismissed in its entirety.

## III. ARGUMENTS

6. The First Accused submits that he has not been served with the Consolidated Indictment and properly arraigned on the “new, expanded charges” that he faces in accordance with Rule 50(B)(i).
7. As regards the service of the Consolidated Indictment on the First Accused, the Prosecution notes that the court records indicate that the Consolidated Indictment was served on Defence Counsel and not the Accused. However, the Prosecution submits that the failure of the Registry to personally serve the First Accused with the Consolidated Indictment was an administrative or procedural anomaly which has caused no identifiable prejudice to him. First, the Consolidated Indictment contains no additional charges. Secondly, the Consolidated Indictment was served on the Norman Defence team representing him at that time. The First Accused has demonstrated knowledge of the charges contained in the Consolidated Indictment, as he defended himself against those charges in the first trial session and at the beginning of the second trial session.
8. The First Accused further argues that he must be arraigned on the “new, expanded charges” against him in the Consolidated Indictment. The Prosecution submits that the Consolidated Indictment contains no new charges and, thus, no further arraignment is required. As held by the Joinder Decision and referred to in the Norman Motion, the Indictments against the three Accused contain exactly the same charges (counts).<sup>2</sup> As

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<sup>1</sup> See Proof of Service attached.

<sup>2</sup> See, para. 5 of the Norman Motion.

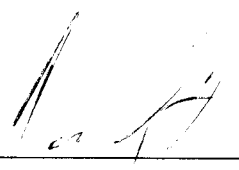
such, the Trial Chamber did not find it necessary to order a further arraignment of the First Accused.

- 9. The First Accused finally seeks the quashing of the original indictment or a declaration that it is superseded by the Consolidated Indictment to protect him against double jeopardy. The Prosecution submits that the Special Court has been held to be an International Tribunal by the Appeals Chamber<sup>3</sup> and, as such, applies internationally recognised legal principles. Consequently, as rightly pointed out in the motion, trial on the superseding indictment should prevent retrial on the former indictment.<sup>4</sup> Therefore, contrary to the concerns of the First Accused, a complete acquittal on the Consolidated Indictment will not leave him “vulnerable to further prosecution on the old indictment”.

**IV. CONCLUSION**

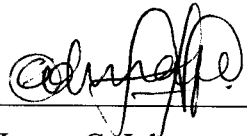
- 10. Based on the foregoing, the Prosecution submits that the Norman Motion should be dismissed.

Freetown, 1 October 2004




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Luc Côté




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James C. Johnson for James Johnson.

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<sup>3</sup> *Prosecutor v. Kallon*, SCSL-2004-15-AR72(E), *Prosecutor v. Norman*, SCSL-14-AR72(E), *Prosecutor v. Kamara*, SCSL-16-AR(E), Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004, para. 55.

<sup>4</sup> Norman Motion, para. 11.

**Prosecution Annex**

1. Proof Service in Freetown, 5 February 2004.

9624



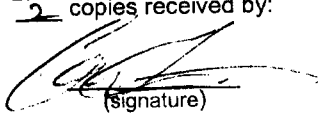
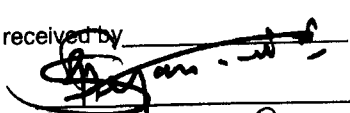
SPECIAL COURT FOR SIERRA LEONE

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COURT SERVICE – FORM 3 – PROOF OF SERVICE IN FREETOWN

Date: 5 - 02 - 04	Case Names The Prosecutor V: Sam Hinga Norman, Moinina Fofana, Allieu Kondewa
	Case No. s SCSL - 2004 - 14 - PT
To: A:	<input checked="" type="checkbox"/> <b>TRIAL CHAMBER</b> <u>2</u> copies received by:  (signature)
	<input type="checkbox"/> <b>APPEALS CHAMBER</b> ___ copies received by: _____ (signature)
	For onward transmission to: <input type="checkbox"/> Judge B. THOMPSON, Presiding <input type="checkbox"/> Judge ITOE <input type="checkbox"/> Judge BOUTET <input type="checkbox"/> Legal Officer <input type="checkbox"/> By Fax: See CS Form 3F
	For onward transmission to: <input type="checkbox"/> Judge G. ROBERTSON, President <input type="checkbox"/> Judge R. WINTHER <input type="checkbox"/> Judge AYoola <input type="checkbox"/> Judge G. KING <input checked="" type="checkbox"/> Fax: See CS Form 3F - <u>5/2/04</u> <u>ATTORNEY-GENERAL</u>
	<b>OFFICE OF THE PROSECUTOR</b> Trial Attorney in charge of case: _____, received by: <u>Sukman B. Rajansie</u>  <input type="checkbox"/> <b>DEFENSE</b> <input type="checkbox"/> Accused: See CS 2 Form <input type="checkbox"/> Defence Office: <u>PHILIP SCOTT</u> <input type="checkbox"/> For onward transmission to counsel <input type="checkbox"/> Counsel: <u>Sir B. Jenkins-Johnston</u> <input type="checkbox"/> In Freetown: <u>CHARLES MARRAI</u> (Signature) <input type="checkbox"/> Abroad: <input type="checkbox"/> By Fax see CS 3F Form
	<b>All Decisions &amp; Imp. Public Docs:</b> <input type="checkbox"/> Press & Public Affairs <input type="checkbox"/> Court Library
From:	<input type="checkbox"/> Listing Officer <input type="checkbox"/> Court Officer <input type="checkbox"/> Deputy Registrar <input type="checkbox"/> Registrar
CC:	<input type="checkbox"/> Registrar <input type="checkbox"/> Deputy Registrar <input type="checkbox"/> Chief WVSS <input type="checkbox"/> Chief of Security
Subject	Kindly find attached the following documents:

Document's Title	Date filed	Pages
1. INDICTMENT	5-02-04	11-21