

**SPECIAL COURT FOR SIERRA LEONE**  
Freetown – Sierra Leone**Trial Chamber 1**

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

Interim Registrar: Mr. Lovemore Munlo

Date: 7 November 2005

**THE PROSECUTOR**

Against

**Sam Hinga Norman**  
**Moinina Fofana**  
**Allieu Kondewa**

Case No. SCSL-04-14-T

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**Joint Reply of the First and Second Accused to the Prosecution Response to Joint Motion for the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98**

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**Office of the Prosecutor**

Luc Cote  
James C. Johnson  
Nina Jorgensen  
Mohamed Bangura

**Court Appointed Counsel for Sam Hinga Norman**

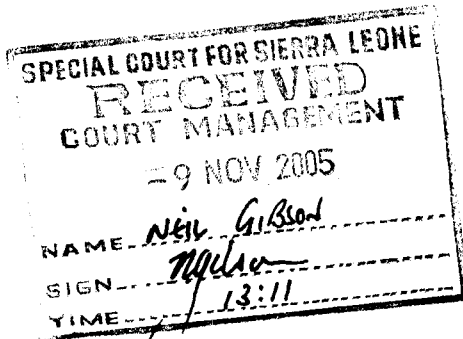
Dr. Bu-Buakei Jabbi  
John Wesley Hall Jr.  
Clare da Silva

**Court Appointed Counsel for Moinina Fofana**

Victor Koppe  
Arrow J. Bokarie  
Andrew Ianuzzi

**Court Appointed Counsel for Allieu Kondewa**

Charles Margai  
Yada Williams  
Ansu Lansana  
Martin Michael



## I. Introduction

1. The Defence files this Reply to the Prosecution Response to Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, filed on 4 November 2005 (“Prosecution Response”).<sup>1</sup>
2. In its Response, the Prosecution argues that the Decision on Motions for Judgement of Acquittal does not lack clarity and the motion for Clarification should therefore be dismissed.

## II. Arguments

3. According to the Prosecution, the Indictment is sufficiently clear and precise for the preparation of the Defence case.<sup>2</sup>
4. The Prosecution argues that as the accused persons are charged with responsibility as superiors or as joint of a joint criminal enterprise their proximity to the physical acts becomes more distant and less precision is required in relation to the particular killings.<sup>3</sup>
5. In making this argument, the Prosecution fails to acknowledge that the Accused have also been charged with individual criminal responsibility. Individual criminal responsibility is the primary form of responsibility charged under the Indictment, with command responsibility having been charged as an alternative or secondary form of criminal responsibility<sup>4</sup>. Further, regardless of the form of criminal responsibility the Prosecution has relied on the same factual basis to underpin all the charges against the Accused. While the Prosecution is clearly entitled to plead all three forms of criminal liability, it cannot now suggest that the Indictment as a whole

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<sup>1</sup> *Prosecutor v Norman, Fofana and Kondewa*, SCSL-2004-14-T-479, “Prosecution Response to Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98”, 4 November 2005 (“Prosecution Response”).

<sup>2</sup> *Ibid.* ¶ 13

<sup>3</sup> *Ibid.* ¶ 12

<sup>4</sup> *The Prosecutor Against Hinga Norman, et al*, Indictment, SCSL-2004-C11-21D, 5 February 2004 ¶ 20-21. The Defence would also point out that the even the specific form of joint criminal enterprise that the Accused have been charged with has also not been pleaded in the Indictment.

requires less precision because superior responsibility or joint criminal enterprise have been pleaded. If we extended the Prosecution argument to its logical conclusion, then all geographical locations would become superfluous in the Indictment. Clearly this cannot be the case. Such a manner of pleading does not clearly inform the accused of the exact nature and cause of the specific allegations against him.

6. The Prosecution further suggests that paragraph 25(g) when considered with Paragraph 24 (f) along with the types of responsibility alleged in the Indictment as a whole is sufficiently clear and precise.

7. Paragraph 25 (g) now read:

Between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants.

8. Paragraph 24(f) states:

In an operation called “Black December”, the CDF blocked all major highways and roads leading to and from major towns mainly in the southern and eastern Provinces. As a result of these actions, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants.

9. The Prosecution also submits that this vague description of “Operation Black December” feeds into other counts in the Indictment such as terrorising the civilian population and child soldiers. Reference is also made to paragraph 28 of the Indictment which states that “At times relevant to this indictment, the CDF, largely Kamajors, committed the crimes set forth in paragraphs 22-27 and charged in counts

1 through 5 including threats to kill, destroy and loot, as part of a campaign to terrorise the civilian population of those areas and did terrorise those populations.”<sup>5</sup>

10. Thus, according to the Prosecution, the Indictment is sufficiently clear in charging the Accused under three forms of criminal liability relating to all 8 Counts in the Indictment that pertain to “Operation Black December” over a four month period in the Eastern and Southern Provinces of Sierra Leone without any specific geographical locations being mentioned.
11. The Defence submits that pleading to a wide range of events that are alleged to have occurred in the East and Southern Provinces is not sufficient detail for the defence to prepare its case. The Eastern and Southern Provinces are more than half of the geographic territory of Sierra Leone. So somewhere in half of Sierra Leone, the three Accused are responsibility for alleged killings under Counts 1 and 2 of the Indictment as well as all other alleged crimes in Counts 3-8. The Defence is in an impossible position to try and respond to allegations and vague and as broad as these.
12. An indictment must set out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.<sup>6</sup> Thus, when the Prosecution failed to provide evidence with respect to any of the geographical locations relating to “Operation Black December”, it follows that paragraph 25(g) has been dropped from the Indictment as has “Operation Black December” as a whole.

### III. Conclusion

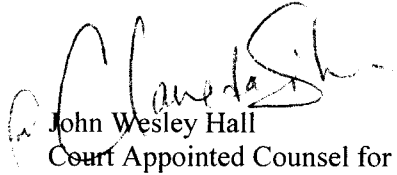
13. For these reasons, the Defence submits that its interpretation of the Decision, the paragraph 25(g) has now been dropped from the indictment and that there is no need to address “Operation Black December”, is the correct one and requests that the Trial Chamber affirm this view.

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<sup>5</sup> Supra Note 1, ¶ 14

<sup>6</sup> See, for example, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, “Judgement”, 29 July 2004, para. 209.

Filed in Freetown,  
8 November 2005



John Wesley Hall  
Court Appointed Counsel for the First Accused



Victor Koppe  
Court Appointed Counsel For the Second Accused



### **Index of Authorities**

1. *Prosecutor v Norman, Fofana and Kondewa*, SCSL-2004-14-T-479, “Prosecution Response to Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98”, 4 November 2005.
2. The Prosecutor Against Hinga Norman, et al, Indictment, SCSL-2004-C11-21D, 5 February 2004.
3. *Prosecutor v. Blaškić*, Case No. IT-95-14-A, “Judgement”, 29 July 2004.