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SCSL-04-14-T
(14851-14867)

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SPECIAL COURT FOR SIERRA LEONE

The Trial Chamber 1

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

Interim Registrar: Lovemore Munlo, SC

Date: 1 February, 2005

PROSECUTOR

Against

**Sam Hinga Norman
Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-T

**FIRST ACCUSED'S URGENT MOTION FOR LEAVE TO FILE ADDITIONAL
WITNESS AND EXHIBITS LISTS**

Office of the Prosecutor

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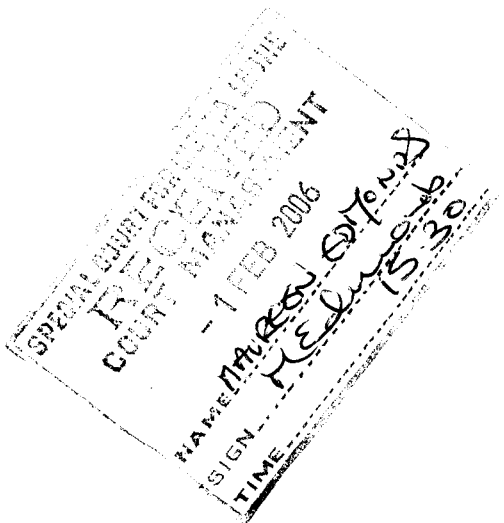
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INTRODUCTION

1. The Counsel for the First Accused hereby files this urgent application for leave to file additional witness and exhibits lists on behalf of the First Accused
2. The Defence for the First Accused finds itself obligated, however to seek leave to file additional witness and exhibit lists on behalf of the First Accused so as to put up an effective defence.
3. On the 21st of October the Trial Chamber issued an “order concerning the Preparation and Presentation of the Defence Case”¹ where it Ordered the Defence Teams to file a list of witnesses that each Defence Team intends to call no later than 17th of November, 2005.
4. This order was subsequently followed with “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case”² of the 28th of November, 2005 whereby the Court “Further Orders that each Defence Teams for Norman, Fofana and Kondewa shall individually file the following materials, by no later than 5th December, 2005, at 04:00pm:”
 - a). “ A list of witnesses that each Defence Team intends to call, including
 - i) The names or, subject to any protective measures that might have been ordered by the Chamber, the pseudonym of each witness;
 - ii) A summary of the respective testimony of all witnesses that should be sufficiently descriptive to allow the Chamber to appreciate and understand the nature of the proposed testimony
 - iii) The points of the indictment to which each witness will testify, including the exact paragraph and the specific counts;
 - iv) The estimated length of time for each witness to testify in person or pursuant to rule 92bis of the Rules;
 - v.) The language in each witness intends to testify;

The said order further states that “should the Defence seek to add any witnesses to this list after the 5th of December, 2005 it may be permitted to do so only upon good cause being shown;”
 - d) A list of exhibits the Defence intends to offer in its case, containing a brief description of their respective nature and content and contents, and stating where possible whether or not the Prosecution has any objection as to their authenticity. Should the Defence seek to add any exhibit to this list after 5th of December, 2005 it may be permitted to do so only upon good cause being shown;
5. The Defence for the First accused hereby seeks leave of the Court to file an additional witness and exhibit lists which are very material to its case and which were not available to the Defence Team as of the 5th of December, 2005.

¹ Order Concerning the Preparation and Presentation of the Defence Case, 21st October, 2005

² Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 28th November, 2005

SUBMISSIONS

Good Cause

7. The Norman Defence states that it encountered a lot of difficulties during its investigative and witness tracing exercises to the various crime bases which hindered its ability to track down some important witness and exhibits for the defence of the First Accused.

8. Throughout the investigative and witness tracing exercise of the Norman Defence Team, the First Accused withheld cooperation with his Defence Team, let alone give the Team an indication of who he might want to call as a witness in his own defence.

9. Due to this impasse between the First Accused and his defence Team, some of the witnesses even refused to cooperate with the Defence Team without further instructions from the First Accused which was not forthcoming. All attempts by the Norman Defence Team to get some information from the Accused to assist in the investigative and witness tracing exercise failed. It is the intention of Counsel to present the best and most effective witnesses.

10. The Norman Defence Team filed its lists on the 5th of December 2005 while still investigating and tracing witnesses. When the First Accused finally indicated to his Defence Team in January 2006 that he was going to be a witness in his own defence, some potential witnesses who were still out there and not willing to testify because of the First Accused's earlier attitude of not going to court, later met the Defence Team of the First Accused and indicated their willingness to appear in court as witnesses for the First Accused. Counsel having interviewed and taken down the statements of these witnesses, have discovered that their testimony is very material for the defence of the First Accused.

11. In *The Prosecutor Vs. Ferdinand Nahimana*³, the ICTR held that “*considering that the proposed witnesses would provide relevant material evidence which it would be in the interests of justice to receive, and that the calling of additional witnesses would not result in a prejudicial delay in the present case*”. The Court further held that “*in assessing the interests of justice and good cause Chambers have taken into account such considerations as the materiality of the testimony, the complexity of the case, prejudice to the defence, including elements of surprise, on-going investigations, replacement and corroboration of evidence*”.

12. In the *Goran Jelusic Case*⁴, the ICTY held that “*it is to be in the interests of justice that any evidence necessary to ascertain the truth be presented to it and be subjected to examination by the parties*”. Considering that the

³ The Prosecutor vs. Ferdinand Nahimana, Case No. ICTR-99-52-T. (Decision of 9 October 2002)

⁴ The Prosecutor vs. Goran Jelusic, Case No. IT-95-10-T (Decision of 27 April 1999)

proposed exhibits and witnesses would provide relevant material evidence which it would be in the interests of justice to receive, and that the calling of additional witnesses would not result in a prejudicial delay in the present case. Counsel has hereby attached the list of the additional witnesses the Defence intends to call and a summary of their respective testimonies as a **ANNEX A**.

13. The Norman team has equally received some important documents from some of the witnesses which are very material to the defence which rebuts the Prosecution theory of command responsibility. These documents were only made available to the Norman Defence Team in January 2006, long after the deadline for filing of documents ordered by the Court in its Consequential Order of the 28th of November.
14. The Defence draws the attention of the Chamber to the jurisprudence of the United States of America in the Case of *Francisco v. Cascade Investment*, (Div. II No. 70-418) of 15 June 1971 cited with approval in *ICTR*⁵ whereby the Colorado Court of Appeals ruled that “*the lower court should have granted the applicant leave to amend the list of exhibits in order to prevent a manifest injustice to the applicant*” The said exhibit list and a summary of their content is hereby attached for the kind perusal of the Chamber as **ANNEX B**.

Fair Trial

15. As emphasized by the Human Rights Committee, “the right of the accused person to have adequate time and facilities for the preparation of his or her defence is an important guarantee of a fair trial and a corollary of the principle of equality of arms”. In General comment No. 13 on Article 14, the Committee also explained that the meaning of “*adequate time*” *depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel*” The inability of Counsel to communicate with the First Accused to assist in the investigation and witness tracing exercise severely hampered the ability of his Defence Team to get the best witnesses and exhibits necessary in his defence.
16. Art. 17(4) of the Statute of this Court provides as follows:
In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:
 - a. To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
 - b. To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

⁵ The Prosecutor v. Ferdinand Nahimana, Case No. ICTR-99-52-T (Decision of 9 October 2002)

- c. To be tried without undue delay;
- d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- e. To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
- g. Not to be compelled to testify against himself or herself or to confess guilt.

13 .Read as a whole, this statute, which incorporates the International Covenant on Civil and Political Rights is tantamount to a list of fundamental procedural rights of persons accused of crime in this Court under international law. The right to put up a defence is a fundamental human right, recognized in all civilised jurisdictions and legal systems and the Defence of the First is of the view that, this right is going to be violated if Counsel is not granted leave to file a list of additional witnesses and exhibits.

CONCLUSION

14. The Norman Defence Team hereby request the Court to use its powers in the interests of justice to grant the request of Counsel to file an additional witness and exhibits list. Considering that the proposed exhibits and witnesses would provide relevant material evidence which it would be in the interests of justice to receive, and that the calling of additional witnesses would not result in a prejudicial delay in the present case.


Dr. Bu-Buakei Jabbi,
Court Appointed Counsel

LIST OF AUTHORITES

1. Order Concerning the Preparation and Presentation of the Defence Case, 21st October, 2005
2. Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 28th November, 2005
3. The Prosecutor vs. Ferdinand Nahimana, Case No. ICTR-99-52-T. Decision of 9 October 2002
4. The Prosecutor vs. Goran Jelisić, Case No. IT-95-10-T (Decision of 27 April 1999)
5. Francisco v. Cascade Investment, (Div. II No. 70-418) of 15 June 1971.

ANNEX A

LIST OF ADDITIONAL WITNESSES THE FIRST ACCUSED INTENDS TO CALL

Name of Witness	Summary of testimony	Reference to key Points in the indictment	Estimated time	Intended mode and language of testimony.
1. Chief Brima A. Jimmi (Dauda Town Lay-Out Kenema)	<ul style="list-style-type: none"> -Witness was in charge of organisation and provision of logistics within the CDF - How the Kamajors and Ecomog forces fought together to oust the juntas in kenema -How the juntas were shooting indiscriminately and terrorizing the civilian population - The destruction carried out by the juntas in Kenema while retreating by burning and looting - The killings of innocent civilians by the Juntas and how CDF made civilian protection its paramount interests and about the alleged lootings and burnings in Kenema. -How children were not permitted to take part in combat within the Kamajors 	Paragraphs 13, 17, 23, 24, 25, 26, 27	4 hours	In person (Mende)
2. Umaru Conteh (Daru Jawie Chiefdom, Kailahun District)	<ul style="list-style-type: none"> - One of the initiators of the Kamajors who fought alongside Ecomog in Kenema -Witness will testify about the planning of the attack in Kenema and the alleged killings by the Kamajors. - How the juntas were looting and burning while retreating and the Kamajors struggled to protect civilians during the attack on Kenema -About the sporadic shootings by juntas and the panic and fear it caused to the civilian population. - How the CDF got supplies of logistics from Ecomog and they reported directly to Ecomog. 	Paragraphs 13, 23, 24, 25, 26, 27, 28.	3 hours	In person (Mende)

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<p>3. Habibu Brima (alias "A.G. Mokosie), Talia</p>	<ul style="list-style-type: none"> -The mechanics of initiation in the conflict -How the Hinga Norman was invited by the people of Talia to assist them to chase out the juntas and a delegation was sent to him in Liberia to that effect. -How weapons were constantly supplied to the kamajors by the President through Gen. Khobe - How the Kamajors fought alongside the Ecomog forces to chase out the juntas -How food, arms and ammunition was constantly supplied in a military helicopter from Conakry for the up keep of the Kamajors by the President. -Witness will testify about the alleged killings by the Kamajors in Talia . -How the kamajors fought had with the juntas defend their villages 	<p>Paragraphs 23, 24e, f, 27</p>		<p>In person (Mende)</p>
<p>4. Haroun (Aruna) Collier</p>	<ul style="list-style-type: none"> -How parents and elders selected and approved any particular to be initiated who was of good moral standing. -How initiates were given a series of instructions and laws -How young people were immunized from bullet as a protection not for combat purposes. -About the formation of the Death Squad and its activities and objectives and witness role as a frontline commander -Specific laws of the Death Squad as outlined by the Chieftom. -How witness and his squad captured many weapons from the rebels which they subsequently used against them -How emissaries were sent to Liberia to inform Hinga 	<p>Paragraphs 13, 23, 24e, f, 27, 28</p>	<p>3 hours</p>	<p>In person (Mende)</p>

	<p>Norman of their determination to resist the juntas and how he made it to Talia.</p> <ul style="list-style-type: none"> -How the war council was created with powers to assign various positions and give instructions. - How the Death Squad was summoned before the war Council upon a complaint lodged by Albert Nallo - How logistics were supplied by President Kabbah through the Deputy Minister of Defence. - How during one the visits of Hinga Norman to Conakry, he briefed them that President Kabbah is fully behind them in the prosecution of the war that is why he is making available the logistics. -How the President used to call Norman through the Satellite phone and how Gen. Khobe visited several times at Base Zero. -How they were given instructions on modern war fare that captured enemies must not be killed. -How the Kamajors attacked Koribondo and how he sustained an injury on his knee, -How children were not part of thse fighting with the kamajors 			
<p>5. Moseray Vandi</p>	<ul style="list-style-type: none"> -How Ecomog supplied the Kamajors with arms and ammunition. -How Chief Norman visited the Kamajors in Gendema where he pleaded with the Kamajors to fight in the interest of the nation for the restoration of the democratically elected government. -How the Kamajors fought directly under the control of Ecomog who were responsible for all logistics and materials need for the prosecution of the war. -About the alleged killings and looting in Talia 	<p>Paragraphs 13, 23, 24e, 25f, 26b, 27, 28,</p>	<p>3 hours</p>	<p>In person (Mende)</p>

	-How witness subsequently became Norman's body guard .			
6. James B.S Kailie (Kaniya Village)	<p>-How witness was nominated by his chief to assist in the defence of chiefdom</p> <p>-How the Kamajors were supplied with weapons like AK47, 57. G-3, FN Rifles by their chiefdom and how their welfare was equally their responsibility.</p> <p>-How the relationship between the Kamajors and the soldiers deteriorated when the soldiers started looting and brutalising innocent civilians.</p> <p>-How as Chief Kamajor witness use to patrol check points to receive situational reports</p> <p>-How many RUF/AFRC combatants were captured by witness and where with witness and finally what happened to the said captives.</p> <p>-About the activities of Death Squad of Bobor Tucker</p> <p>-How witness was under the command of Ecomog and how at all times material to the conflict witness received instructions from Ecomog</p> <p>-How the CDF struggled to take over Koribondo and witness was called upon by the War Council to give the actual situation report on Koribondo before the final attack.</p> <p>-How some juntas usually the wore the kamajor ronko attire thereby causing a lot of confusion and terrorizing the civilian population.</p>	Paragraphs 13, 23, 24e, 25d&f, 26, 27, 28,	3 hours	In person (mende)
7. Hon. P.C. Bai Suntuba Omara IV Yele, Bonkelenkeh	<p>-Witness was chief commander of the Kapras of CDF</p> <p>- How witness request Base Zero to send someone to train the Kapras of his Chiefdom and Bobor Tucker was sent.</p> <p>-How witness was wounded in battle and hospitalised in</p>	Paragraphs 13,27,	3 hours	In person (Mende)

Chiefdom, Tonkolili District (Paramount Chief and Member of Parliament)	Bo -How witness chiefdom was invaded by the RUF, witness requested kamajor assistance and one Mustapha Koroma led the liberation of his chiefdom - Alleged killings and looting and burnings by the CDF and how the civilian interests was of paramount concern to the CDF			
8. Morie Jusu Kamara	-How witness was initiated and given specific laws -How the relationship between the Kamajors and soldiers became sour when the soldiers started killing the civilians and kamajors. -How witness and others were addressed in Talia by Norman and Gen. Khobe to convey a message from President Kabbah - How Gen Khobe supplied them with food and logistics which he said was sent by President Khabbah - How Gen. Khobe visited them with a message from President Khabbah that they should prepare for an all out war with the junta forces. -How the Kamajors used to get support from President Kabbah's wife like food and medicine through father Garrick -About President Kabbah's visit to Lungi with other dignitaries. -How Peter Penfold gave the CDF 10000 pounds through President Kabbah as assistance.	Paragraphs 13, 25, 26, 27, 28,	3 hours	In person (Mende)
9. Osman Collier (Talia Yawbekow)	-How witness was immunized to prevent bullets from penetrating into his body -How emissaries were sent from Talia by M.T. Collier to Liberia to bring Hinga Norman to assist in the prosecution of the war	Paragraphs 13, 25,26,27, 28.	3 hours	In person (Mende)

	<p>-How weapons were supplied by President Kabbah and equally satellite phone made available to Norman</p> <p>-How captured rebels were brought to Base Zero almost naked and were about to be killed when Hinga Norman intervened and refused that they should not be killed and that they should instead use them to get vital information.</p> <p>-Witness did not see Kamajors killing innocent civilians at Talia</p> <p>-About alleged burnings and looting in Talia</p>			
10. Adam Bakarr (Bongor Village)	<p>- How arms and ammunition was supplied to the Death Squad by the chieftom in the defence of the village.</p> <p>-How Kamajors were very concern about civilians and their safety was of paramount concern to the Kamajors.</p> <p>- How kamajors lived cordially with the civilians and people used to give them gifts as a sign of appreciation for the defence they provide.</p> <p>-How they were initiated and given certain laws respective of which was a guarantee of survival in the battle front.</p>	Paragraphs 13, 27, 28	3 hours	In person (Mende)
11. Mohamed K. Swaray (14 Jakoba Street, Kenema)	<p>-Witness was a CDF Battalion commander in Kenema who fought under Kenema</p> <p>- How the rebels invaded Kenema and terrorized the civilians by shooting indiscriminately, exercising physical violence against the civilian population.</p> <p>How the juntas killed many civilians who were not sympathising with them</p> <p>-How the juntas burning and looting property while retreating when attacked by Ecomog and CDF forces.</p>	Paragraphs 25, 26, 27,	3 hours	In person (Mende)
12. James Tucker	<p>-How the rebels attacked Talia Yawbekow when they were retreating after being attacked by Kamajors they</p>	Paragraphs 27, 28, 29		

<p>(Civilian, Yawbekow Chiefdom)</p>	<p>did a lot of destruction, looting, burning and killings indiscriminately -How the Kamajors brought back civilians from the bushes who had escaped during the rebel upsurge. -How Chief Norman came to Talia in a military helicopter and other military officers. -How the kamajors in Talia requested for weapons from Norman in a meeting and Norman said he was an emissary of the President he was going to convey their message to President Kabbah -How they Kamajors were supplied with food, medicine and logistics -Witness will equally testify about the alleged killing of pregnant women in Talia. -How children were immunized from bullets.</p>			
<p>13. J. A. Carpenter, Secretary to Sierra Leone Parliament, Freetown</p>	<p>- The role of Parliament during the conflict - Steps taken by the government to legitimize CDF operations in Parliament - Specific issues that Parliament addressed concerning the CDF legitimization</p>	<p>Paragraph 13</p>	<p>2 hours</p>	<p>In person (English)</p>

ANNEX B

LIST OF ADDITIONAL EXHIBITS THE NORMAN DEFENCE TEAM INTENDS TO OFFER IN ITS CASE

No	Title of Document	Nature of Document	Objection from Prosecution?
1.	CDF Channel of Command and Communication, dated 8th October 1998	Directive from Ecomog to the CDF on where to channel communications for the request of logistics and demands from Ecomog	Not Sure
2.	Re-Request for Kenema District to be Considered an Operational Area dated 8th August 1998	Document from Defence Headquarters, Armed Forces of Sierra Leone directing that Kenema District is under the Operational Command of 15 Ecomog Brigade.	Not Sure
3.	Ammo Request, dated 5th December 1998	Document from District Administrator Kenema District to Brigade Commander Ecomog requesting for ammunition.	Not sure
4.	Handing over of Sierra Leone Police Mohammed 5606, dated 5th Sept. 1998	Document from Ecomog to the Commissioner of Police Kenema, requesting for the transfer of the said police officers for alleged atrocities during the junta era.	Not sure
5.	Issue of Ammo, Dated 5th December 1998	Document from 15 Ecomog Brigade granting that	Not sure

		weapons be issued to CDF	
6.	Minutes of Meeting held with Hon. Vice President (Dr. A.J.E. Demby) on Monday 28th June, At Kenema Town Council.	Visit from the Vice President to Kenema to inform the public that his message from the President is to explain recent government policies adopted by the Parliament of Sierra Leone	Not sure
7.	Document with reference OP SS/TT-ISSUE OF AMMUNITION, dated 7 March 1999	Document from Ecomog authorising the issue of Ammunition to CDF	Not sure
8.	Issue of Ammunition, dated 1 June 1999	Document from Ecomog authorising the issue of ammunition to the CDF.	Not sure
9.	Issue of Ammunition and Logistic Support to Kamajors Head of Nibatt 25 Location, dated 3 Feb. 1999	Letter from Ecomog to CDF Administrator for the issue of Ammunition and logistic requirement.	Not sure
10.	C.O. JAMES, C. KALLON AND 10 Kamajors wanted at CDF Headquarter, dated 14th July, 1999	Document from The Administrator requesting that Kamajors to be involved in the raid on Jao and Kamasu in Tunkia Chiefdom	Not sure
11.	Warning Letter dated 31st August, 1999	Letter from CDF Chiefdom Chairman Nongowa, to all commanders reminding them that before they became Kamajors, it was through the recommendation of the chiefs under the	Not sure

		approval of the paramount Chief.	
12.	Request for Shot Guns, dated 1-9-00	Letter from CDF Administrator to the Resident Minister-East, Kenema requesting for cartons of Shot gun cartridges.	Not sure
13.	Distribution of Logistics-Guidelines, dated 19th June, 1999	Document from the Administrator, CDF, Kenema to Hon. Mohamed D. Daramy, Eastern Region Representative, dealing with the guidelines on distribution of logistics.	Not sure
14.	Complaint against Mr. J.C.Kallon Battalion Commander, Gaura Chiefdom for Staging a Dance at Perri Village and Assault on Town Chief Brima Kaikai of the same village, dated 14th Sept. 1999.	Letter from the District Administrator CDF, Kenema endorsing that certain Kamajors be suspended from office pending investigation for final dismissal.	Not sure
15.	Dear Chief, dated 13th December 1997, from Conakry.	Letter from Patricia Kabbah (Wife of President Kabbah) to Chief Hinga Norman commending his effort and informing him about the large consignment of electronic equipment brought amongst which were three satellite phones and that she expressed the hope to H.E that one of	Not sure

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		the would go to him and he said yes.	
16.	Certificate of Recognition (Civil Defence Force)	Certificate of appreciation of outstanding efforts to members of the CDF signed by President Kabbah and Hinga Norman	Not sure.