

TRIAL CHAMBER I (“The Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Pierre Boutet, Presiding Judge, Hon. Justice Bankole Thompson and Hon. Justice Benjamin Mutanga Itoe;

SEIZED OF the “First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists”, re-filed by Court Appointed Counsel for the First Accused (“Counsel for Norman”) on the 3rd of April, 2006 (“Motion”), seeking leave to add an additional eight witnesses to the witness list and 17 Exhibits to the exhibits list;

NOTING that the Motion was initially filed on the 1st of February, 2006¹ and pursuant to The Chamber’s “Order to the First Accused to Re-File Summaries of Witness Testimonies” of the 2nd of March, 2006² and “Order for Extension of Time and Consequential Order to the First Accused to Re-File Summaries of Witness Testimonies” of the 3rd of March, 2006³ was re-filed on the 14th of March, 2006;⁴

NOTING the “Prosecution Response to First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists”, filed on the 8th of February, 2006 (“1st Response”),⁵ the “Prosecution Response to First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists”, filed on the 17th of March, 2006 (“2nd Response”),⁶ and the “Prosecution Response to First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists Dated 3 April 2006”, filed on the 5th of April, 2006 (“3rd Response”);⁷

NOTING that no Reply has been filed by Counsel for Norman within the time frame prescribed by sub-Rule 7(C) of the Rules of Procedure and Evidence of the Special Court (“Rules”);

NOTING that on the 5th of December, 2005, Counsel for Norman filed their “Defence Witness and Exhibit Lists for the First Accused as per the Consequential Order for Compliance of 28th November 2005 Concerning the Preparation and Presentation of Defence Case” (“Witness List of the 5th of December” and “Exhibit List of the 5th of December”), whereby Counsel for Norman indicated their intention to call 77 witnesses for the First Accused and provided a brief testimonial summary of each of these witnesses;

NOTING that Counsel included a list of 23 Exhibits in their Exhibit List of the 5th of December, and stated that they “might add any exhibits to this list depending on when it might unearth certain documents”;⁸

¹ Document SCSL-04-14-549. The initial motion sought leave to add an additional 13 witnesses and an additional 16 Exhibits.

² Document SCSL-04-14-566. The order considered “that it would be in the interests of justice to allow the Defence to expand the summaries of 77 witnesses listed on the witness list, save the ones which have already been heard by The Chamber, and also to expand the summaries of proposed 13 additional witnesses, in order to enable The Chamber to understand the nature of their proposed testimony and their material relevance to the case so as to determine whether leave to call additional witnesses should be granted in the present circumstances” and ordered Counsel to re-file them by the 10th of March, 2006.

³ Document SCSL-04-14-568. The order granted an extension to re-file expanded summaries by the 14th of March, 2006.

⁴ Document SCSL-04-14-572. The re-filed motion sought leave to add an additional 13 witnesses and an additional 17 Exhibits and included expanded summaries of the proposed 13 witnesses.

⁵ Document SCSL-04-14-553.

⁶ Document SCSL-04-14-574.

⁷ Document SCSL-04-14-584.

⁸ para. 11.

NOTING that pursuant to the number of Orders issued by The Chamber in respect of the witness list of the First Accused,⁹ Counsel for Norman re-filed their witness list on the 23rd of January, 2006¹⁰ and on the 14th of March 2006;¹¹

NOTING the submissions of the Parties at the Status Conference held on the 22nd of March, 2006;

NOTING the submissions of the Parties at the Status Conference held on the 5th of April, 2006;

NOTING that pursuant to The Chamber's "Consequential Order to the Status Conference of 22 March 2006", filed on the 23rd of March, 2006 ("Order of the 23rd of March"), Counsel for Norman filed "Norman Filing and Application Following Consequential Order to the Status Conference of 22 March 2006" on the 3rd of April, 2006, thereby listing 27 witnesses on the "core" list¹² and 51 witnesses on the "back-up" list¹³ ("Witness List of the 3rd of April");

NOTING that the 27 "core" witnesses include four witnesses, that Counsel for Norman seek to add to the Witness List of the 3rd of April, namely, No. 8 James B.S. Kailie, No. 10 Haroun (Aruna) Collier, No. 19 Mohamed K. Swaray, and No. 26 J.A. Carpenter;¹⁴

NOTING that the other four additional witnesses, namely, No. 48 Moseray Vandj, No. 49 Osman Collier, No. 50 Adam Bakarr, and No. 51 James Tucker, are now included in the list of 51 "back-up" witnesses;

NOTING the Counsel for Norman's submission that "it is considered prudent at this stage to retain a tentative back-up list of a further 51 witnesses as a pool to which resort may or may not be made as may become strictly necessary in the interests of the defence of Norman" and that Counsel "will endeavour to do its utmost to dispense with in the actual testimonies for Norman by the time Annex A is exhausted";¹⁵

CONSIDERING that according to the practice set by this Chamber, a "back-up" witness "is designed to make up lists for the deficiency in the 'core' list"¹⁶, Counsel may, therefore, call a witness from the "back-up" list only "if some of the 'core' witnesses are not available to testify";¹⁷

CONSIDERING that this Motion is filed pursuant to sub-Rule 73ter(E) of the Rules, which reads as follows:

After the commencement of the defence case, the defence may, if it considers it to be in the interests

⁹ See, "Consequential Order to the Status Conference of 18 January 2006", filed on the 18th of January, 2006; "Order to the First Accused to Re-File Summaries of Witness Testimonies" of the 2nd of March, 2006; "Order for Extension of Time and Consequential Order to the First Accused to Re-File Summaries of Witness Testimonies" of the 3rd of March, 2006.

¹⁰ Document SCSL-04-14-542, "Materials for the First Accused as per Consequential Order to the Status Conference of 18 January 2006".

¹¹ Document SCSL-04-14-573, "Re-Filed Summaries of the First Accused as per 'Order to the First Accused to Re-File Summaries of Witness Testimony'".

¹² Filed as Annex A.

¹³ Filed as Annex B.

¹⁴ Witness numbers correspond to the numbers appearing on the Witness List of the 3rd of April.

¹⁵ Witness List of the 3rd of April, para. 6.

¹⁶ Transcript of the 11th of January, 2006, p.p. 24-25.

¹⁷ See, *inter alia*, *Prosecutor v. Sesay, Kallon, Gbao*, Case No. SCSL-04-15-T, "Decision Regarding the Prosecution's Further Renewed Witness List", the 5th of April, 2005, para. 24.

of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

CONSIDERING that an analogous sub-Rule 73bis(E) of the Rules, when leave is sought by the Prosecution, has been consistently interpreted by The Chamber as follows:

[W]hen interpreting provisions of Rule 73bis(E) together with Rule 66(A)(ii), and the circumstances that give rise to a showing of “good cause” and the “interests of justice”, certain factors should be taken into consideration [... such as,] the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence [...]¹⁸

RECALLING The Chamber’s “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” of the 28th of November, 2005, stating that “[s]hould 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”;

CONSIDERING that the inability of Counsel for Norman to determine, in the existing circumstances, the materiality of the testimony of certain witnesses, and to secure their attendance until January 2006 due to the logistical difficulties and on-going investigations,¹⁹ amounts to a showing of “good cause”;

CONSIDERING further that the Witness List of the 3rd of April has been substantially reduced, from 77 witnesses to a total of 35 witnesses, which includes seven witnesses who have already testified before this Court, and that this reduction will contribute to the expeditiousness of the trial by avoiding repetitive evidence and the calling of an excessive number of witnesses to establish the same facts;

CONSIDERING, however, that summaries of some of the witnesses listed on the “core” list still contain references to crimes and events and/or matters which do not form part of the Indictment or are outside the time frame of the Indictment, and that therefore, Counsel for Norman will not be allowed to lead such evidence, as was previously ordered by The Chamber;²⁰

CONSIDERING that it appears that the proposed evidence of witnesses James B.S. Kailie, Haroun (Aruna) Collier, Mohamed K. Swaray and J.A. Carpenter, as summarised in the expanded witness summaries, is relevant, material and not repetitive of the proposed evidence of the rest of the witnesses listed on the “core” list;

CONSIDERING further that it is in the interests of justice for The Chamber to make its determination on whether to grant or dismiss Counsel for Norman’s leave to add four witnesses, who are currently listed on the “back-up” list, when and if a situation arises in which it becomes necessary to substitute a witness on the “core” list by a witness from the “back-up” list;

NOTING the Counsel for Norman’s argument that the proposed additional Exhibits are “very material to the defence which rebuts the Prosecution theory of command responsibility” and that these

¹⁸ *Prosecutor Against Norman, Fofana and Kondewa*, Case No. SCSL04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures”, 23 June 2005, p.3.

¹⁹ Motion, paras 6-11.

²⁰ See, e.g. Order of the 23rd of March, 2006, No 1.

documents were only made available to Counsel for Norman in January 2006 and one of them was only made available in March 2006;²¹

RECALLING The Chamber’s oral ruling of the 22nd of March, 2006 granting the Counsel for Norman’s request to add 17 Exhibits to the Exhibits List of the 5th of December;²²

NOTING the Prosecution’s submission in this respect that “on the basis of the list provided by the Defence, it is difficult for the Prosecution to comment on the materiality of the proposed exhibits or to comment on whether these exhibits are duplicative of other evidence in this case” and that “until the Prosecution is provided with these or indeed any of the proposed Defence Exhibits, it is unable to state whether or not it has any objections as regards authenticity”;²³

RECALLING The Chamber’s Order of the 23rd of March that “Court Appointed Counsel for all three Accused persons shall disclose, as soon as possible or at least two days prior to the commencement of the testimony of a witness, to the other Parties, as the case may be, a copy of the Exhibit, which Counsel intend to tender through such witness”;

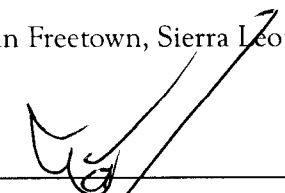
CONSIDERING therefore, that the Prosecution will have the opportunity to object to the authenticity, relevance and admission of an exhibit once it is disclosed and is in the process of being tendered through a particular witness;

FINDING that good cause exists in this case for granting leave to add four witnesses, namely James B.S. Kailie, Haroun (Aruna) Collier, Mohamed K. Swaray and J.A. Carpenter, to the Witness List of the 3rd of April and to add 17 Exhibits to the Exhibit List of the 5th of December;

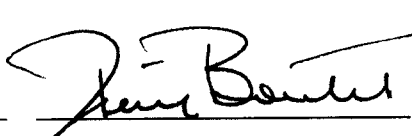
PURSUANT TO Rule 54 and 73^{ter}(E) of the Rules;

THE CHAMBER GRANTS THE MOTION IN PART by allowing witnesses James B.S. Kailie, Haroun (Aruna) Collier, Mohamed K. Swaray and J.A. Carpenter, to be added to the “core” list of the Witness List of the 3rd of April and the 17 Exhibits to be added to the Exhibit List of the 5th of December;

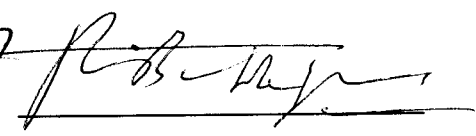
Done in Freetown, Sierra Leone, this 6th day of April, 2006.



Hon. Justice Benjamin Mutanga Itoe

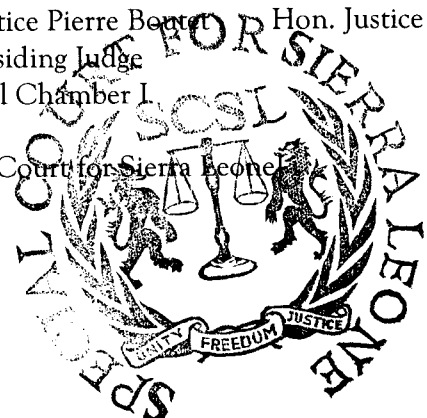


Hon. Justice Pierre Bantat
Presiding Judge
Trial Chamber I



Hon. Justice Bankole Thompson

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²¹ Motion, para. 14.
²² Transcript of the 22nd of March, 2006, p. 9.
²³ 1st Response, para. 17.