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SCSL-04-14-T  
(18276-18280)

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**SPECIAL COURT FOR SIERRA LEONE**

**In Trial Chamber I**

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

Registrar: Mr Lovemore Munlo, SC

Date: 17 May 2006

**THE PROSECUTOR**

**-against-**

**SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA**

SCSL-2004-14-T

PUBLIC

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**JOINT DEFENCE REPLY TO PROSECUTION RESPONSE  
TO URGENT JOINT DEFENCE MOTION REGARDING THE  
PROPRIETY OF CONTACTING DEFENCE WITNESSES**

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**For the Office of the Prosecutor:**

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Mr James C. Johnson  
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Ms Nina Jørgensen

**For Samuel Hinga Norman:**

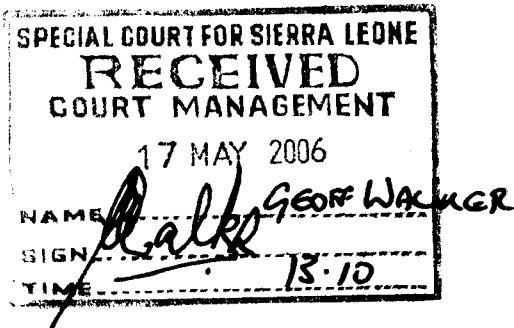
Mr John Wesley Hall Jr  
Dr Bu-Buakei Jabbi  
Mr Alusine Sani Sesay  
Ms Clare DaSilva  
Mr Kingsley Belle

**For Moinina Fofana:**

Mr Victor Koppe  
Mr Arrow Bockarie  
Mr Michiel Pestman  
Mr Andrew Ianuzzi

**For Allieu Kondewa:**

Mr Charles Margai  
Mr Yada Williams  
Mr Ansu Lansana  
Mr Martin Michael



## INTRODUCTION

1. Counsel for the First, Second, and Third Accused (the “Defence”) hereby jointly replies to the ‘Prosecution Response to the Urgent Defence Motion Regarding the Propriety of Contacting Defence Witnesses’ (the “Response”) filed on 15 May 2006<sup>1</sup>.
2. The Defence submits that the Prosecution is entitled to contact and interview defence witnesses. However, such practice should be regulated by clearly defined procedures and notice given to the interested parties.

## SUBMISSIONS

3. The Defence reiterates its position that, as a general principle, the Prosecution should not *directly* contact and interview confirmed defence witnesses. The Defence has not argued that the witnesses are “attached” to the Defence or that the Defence enjoys a proprietary relationship to any of its witnesses, as the Prosecutions seems to suggest<sup>2</sup>. Rather, the Defence maintains that the Prosecution should not contact defence witnesses without requesting to do so first either through the Defence or the Witness and Victims Support Unit (the “WVS”).
4. Further, the Defence has not suggested that there are no valid reasons for the Prosecution to contact and interview confirmed defence witnesses. Again, it is the position of the Defence that the Prosecution is entitled to request to contact defence witnesses upon showing that such a request is reasonable. The Defence does not contest that there might be a number of legitimate reasons for the Prosecution to interview defence witnesses.
5. The Defence agrees entirely with the Prosecution’s submissions that interviews conducted by the Prosecution must “keep an eye on the trial and its fairness as well as on their own investigations when conducting their interviews”<sup>3</sup>. Further, the Defence agrees with the Prosecution that it is important that “investigating officers should not

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<sup>1</sup> *Prosecutor v. Norman et al.*, SCSL-2004-14-T-596.

<sup>2</sup> See Response, ¶ 6.

<sup>3</sup> Response, at n.7, quoting *R v Higgins* (2003) EWCA Crim 2943.

act in such a way in their questioning in interview so as to brow-beat or intimidate a potential witness”<sup>4</sup>.

6. Despite stating these points, the Response fails to acknowledge the patent unreasonableness of using police officers to effectively “round up” defence witnesses for interviews. The Prosecution submits that it needs the assistance of local police to locate witnesses and that it is in the interests of the witness to be interviewed in police stations as a matter of privacy<sup>5</sup>. The Prosecution also states that their investigators require the assistance of the police to provide facilities where interviews can take place, suggesting that police stations are the only appropriate forum in rural areas for such interviews<sup>6</sup>.
7. The Defence submits that when an individual—for example, an illiterate woman from a rural area as in the case of Wuiyata Sheriff—is brought to a police station by a commanding officer from that police station, where the right to refuse to be interviewed is not explained, and is then told to discuss what she knows about the activities of Kamajors in the presence of investigators and other members of the police, it is not difficult to reach the conclusion that such an individual might very well feel compelled to speak.
8. The Defence reiterates its concern that the use of the local police to find and bring defence witnesses to police stations for interviews is problematic. The Defence has already provided the Prosecution with sufficient information to locate defence witnesses, should the need arise. For the Prosecution to suggest that average Sierra Leoneans might not feel intimidated by the police suggests that prosecution investigators may be (i) too deeply entrenched in the machinery of state authority to make objective determinations in this regard and (ii) insensitive to certain historical realities which occurred in this country during the war<sup>7</sup>.

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<sup>4</sup> *Ibid.*

<sup>5</sup> See Response, ¶ 16.

<sup>6</sup> *Ibid.*

<sup>7</sup> *N.B.* The Defence reminds the Chamber and the Prosecution that during the interregnum many members of the Sierra Leone Police Force sided with the AFRC junta and lent support to its regime.

9. The Defence does not dispute that the Statute of the Special Court for Sierra Leone (the “Statute”) permits the Prosecution to enlist the aid of “State authorities” with respect to certain aspects of prosecution investigations<sup>8</sup>. However, the Defence submits that a plain reading of the relevant portions of Article 15 of the Statute reveals that such assistance is to be limited to situations where it is “appropriate”<sup>9</sup>. The Defence submits that where the Prosecution is already equipped with the name and address of a particular witness<sup>10</sup>, utilising the “State authorities” to contact such a witness is not appropriate, given the problematic associations outlined above and in the ‘Urgent Joint Defence Motion Regarding the Propriety of Contacting Defence Witnesses’ (the “Motion”)<sup>11</sup>. The Defence does not take issue with the Prosecution’s use of the authorities to conduct background checks, etc. It is the use of the police to approach and question defence witnesses that the Defence finds problematic.
10. Given the concerns outlined above and in the Motion, the Defence welcomes the Prosecution’s intention to dispense with its current practice<sup>12</sup> until resolution of the Motion and urges the Chamber to adopt the following procedures<sup>13</sup>:
- a. The Prosecution should seek to establish contact with defence witnesses through the WVS. It should be the responsibility of the WVS to determine the best and least coercive method for locating and contacting witnesses.
  - b. The Prosecution should, at the commencement of any interview with a defence witness, provide the witness with a document in the form provided at Annex A of the Response, and have that document read to the witness in a language the witness comprehends. When approaching the witness, the WVS should also inform him of his right not to cooperate with the Prosecution.
  - c. The Prosecution should reinforce to its investigators the need to be especially vigilant when interviewing persons who are listed as defence witnesses in this case to ensure that the witness is aware that the interview is voluntary and that the witness is under no coercion.

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<sup>8</sup> Statute, Article 15.

<sup>9</sup> *Ibid.*

<sup>10</sup> *N.B.* This information has been provided to the Prosecution by the Defence.

<sup>11</sup> *Prosecutor v. Norman et al.*, SCSL-2004-14-T-594, 11 May 2006, ¶ 16.

<sup>12</sup> See Response, ¶ 22.

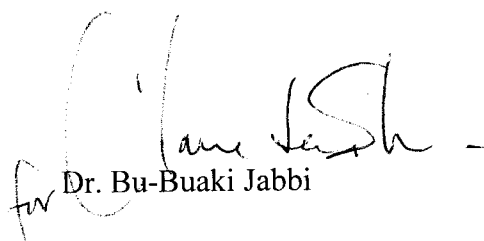
<sup>13</sup> *N.B.* These procedures are modified versions of those submitted by the Prosecution in its Response at ¶ 23.

- d. Should any of these measures prove to be impracticable in the future, the Prosecution should revert to the Trial Chamber.

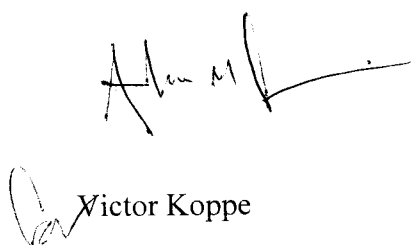
### CONCLUSION

11. Accordingly and for the reasons stated above and in the Motion, the Defence respectfully requests the Chamber to adopt the proposals outlined herein and to exclude any statements taken by the Prosecution to date. Furthermore, the Defence respectfully requests the Chamber to urgently rule on the motion of the Second Accused pursuant to Rule 66 of the Rules of Procedure and Evidence<sup>14</sup>, as certain issues raised therein relate to the instant Motion.

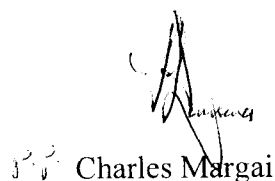
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<sup>14</sup> *Prosecutor v. Norman et al.*, SCSL-2004-14-T, Trial Transcript, 27 January 2006, at 49-81.