

(11622-11625)

**SIERRA LEONE**

**IN THE APPEALS CHAMBER**

Before: Justice Emmanuel Ayoola, Presiding  
Justice George Gelaga King  
Justice A. Raja N. Fenando  
Justice Geoffrey Robertson, QC  
Justice Renate Winter

Registrar: Robin Vincent

Date File: 28 January 2005

**The Prosecutor Against Sam Hinga Norman  
Moinina Fofana  
Allieu Kondewa  
Case No. SCSL -04-14-T**

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**DEFENCE REPLY**

**To Prosecution Response to Interlocutory Appeal By First Accused  
Against the Trial Chamber's Decision on the First Accused's Motion  
for Service and Arraignment on the Consolidated Indictment  
29<sup>th</sup> November 2004**

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**Office of the Prosecutor**

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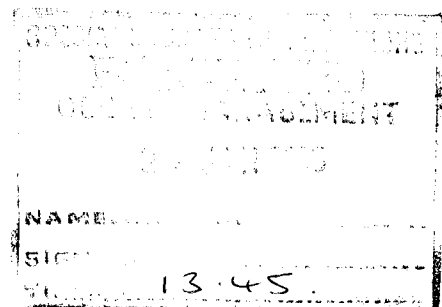
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## **A. INTRODUCTION**

1. The First Accused hereby files this Reply to the “Prosecution Response to Interlocutory Appeal by First Accused Against the Trial Chamber’s Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment, 29<sup>th</sup> November 2004” (The Prosecution Response), which Response was filed 24<sup>th</sup> January 2005.
2. The Prosecution in its aforesaid Response requests the Appeals Chamber to dismiss the First Accused’s Interlocutory Appeal in issue for reasons it purports to have substantially dealt with in its “Prosecution Notice of Appeal Against the Trial Chamber’s Decision of 29<sup>th</sup> November 2004 and Prosecution Submissions on Appeal (The Prosecution Appeal), filed on 12 January 2005.
3. The Prosecution Response adopts and substantially repeats its Prosecution Appeal “in an edited form . . . ., with some additional submissions” (para. 3 of the Prosecution Response). Among the paragraphs with such “additional submissions” are paragraphs 19, 20, 30-32 inclusive of the said Prosecution Response. The remaining paragraphs thereof constitute the edited repetition.
4. Prior to the Prosecution Response, the First Accused had filed various currently active process documents in both the Trial and Appeals Chambers which deal comprehensively with the issues involved, as follows: “First Accused Response to Prosecution’s Request for Leave to Amend the Indictment Against Norman ,” filed 17 December 2004; “Interlocutory Appeal by First Accused Against the Trial Chamber’s Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment, 29 November 2004”, filed 14<sup>th</sup> January 2005; and “Defence Response to Prosecution Notice of Appeal Against the Trial chamber’s Decision of 29 November 2004 and Prosecution submissions on Appeal”, filed 25 January 2005.
5. The aforesaid process documents filed by the First Accused in the Appeals Chamber on 14<sup>th</sup> and 25<sup>th</sup> January 2005 respectively contain analyses and submissions which, in the main, are a sufficient and appropriate reply to the present Prosecution Response. The said analyses and submissions are requested to be adopted and incorporated herein so as to constitute the Reply herein together with all the paragraphs, and the Appeals Chamber is hereby urged to grant this request; and leave is accordingly respectfully presumed herein to that effect.

## **B. PROSECUTION’S ADDITIONAL SUBMISSIONS**

6. The Prosecution submission that the Trial chamber has the power to grant “Joint Trials” pursuant to Rules 73 and 61 is not “outlined below” or elsewhere in the Prosecution Response’ as indicated in paragraph 19 thereof; and it is in any case contrary to the spirit of the Rules and the specific text and language of Rule 48(B) of the Rules which principally deals with applications for “joint trial”.
7. The Prosecution submissions in paragraph 20 of its aforesaid Response that there had been no abuse of process and that the First Accused “has not specified

which rights have been abused” fly in the face of the several abuses of process and of the rights of the First Accused itemised and analysed in paragraphs 68-98 of the latter’s Interlocutory Appeal of 14 January 2005, to which the Prosecution is responding or purports to be responding.

8. The coy statements of certain general principles in paragraph 30 of the Prosecution Response fail to relate them categorically to the First Accused’s Interlocutory Appeal as to whether the latter has complied or not complied with the said general principles. The First Accused submits that his Interlocutory Appeal complies fully with all the general principles mooted in the said paragraph 30, and with more besides.
9. The general principle “noted” in paragraph 31 of the Prosecution Response to the effect “that the Appellant may only raise matters on Appeal that were raised before the Trial Chamber”(Emphasis added), is equally not categorically related to the First Accused’s Interlocutory Appeal as to whether it did or did not raise matters that were raised or not raised before the Trial Chamber.
10. Notwithstanding the coy and non-committal nature of the Prosecution submissions, or perhaps because of it, it should be categorically and explicitly noted in this regard that the sustained complex of relevant issues raised before the Trial Chamber are fully dealt with in paragraphs 17-51 inclusive of the First Accused’s Interlocutory Appeal. Furthermore, it will be clear that the jurisdictional and abuse of process issues involved in the analyses and submissions in paragraphs 52-102 inclusive of the said Interlocutory Appeal arise directly from the findings of the Trial Chamber and its decision and orders regarding the staying of specified portions of the consolidated indictment and its proffered option to the prosecution to elect to “amend” it by expunging or retaining the said specified portions, even where no such staying or amendment issues had been raised before the Trial Chamber as such. Rather, the said staying or amendment decisions or options were raised directly by the Trial Chamber itself in its concluding decision and orders, and were indeed their very pith and substance. As the grounds of appeal indicate in paragraph 102 of the said Interlocutory Appeal, it was necessary to demonstrate both the formal and substantive inappropriateness, absurdity, and/or impossibility of the “amendment” options in all the circumstances of the current consolidated indictment which is subject of the decision, and that it was the entirety of it that was liable to be stayed temporarily and ultimately permanently, rather than just the specified portions thereof, and contrary to the Trial Chamber’s irreparably flawed decision in those respects. The jurisdictional and abuse of process issues analysed therein are the justifying reasons for objecting to and rejecting the proffered partial stay and amendment options as radically flawed, even invalid, and both inappropriate and unavailable in the circumstances. All this does not, of course, affect the soundness and unassailability of the Trial Chamber’s findings as to the items, nature, scope and materiality of the specified new and/or additional features or elements of the current consolidated indictment.
11. When the prosecution accordingly concludes in paragraph 32 of its aforesaid Response that the said consolidated indictment is not invalid, null or void, that it is amenable to amendment and should not be permanently stayed or terminated,

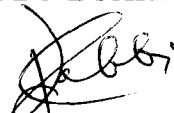
it is clear that it has no foundation or basis for so concluding, as it has offered no analysis or informed submissions to counter the First Accused submissions or to support its own ultimate conclusions or rather concluding assertions.

### **C. CONCLUSION**

12. From the foregoing analysis and submissions and for the reasons given above, and even more extensively and copiously in the First Accused's Interlocutory Appeal, the First Accused requests the Appeal Chamber to allow his appeal and grant all the orders and reliefs as prayed in the said Interlocutory Appeal.

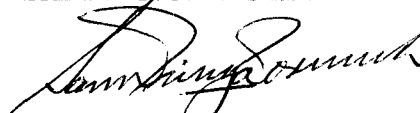
Done in Freetown this 28<sup>th</sup> day of January 2005.

**DR. BU-BUAKEI JABBI**



**COURT APPOINTED C OUNSEL  
FOR FIRST ACCUSED**

**SAM HINGA NORMAN**



**FIRST ACCUSED**