

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-14-T  
TRIAL CHAMBER I

THE PROSECUTOR  
OF THE SPECIAL COURT  
v.  
SAM HINGA NORMAN  
MOININA FOFANA  
ALLIEU KONDEWA

8 JUNE 2004  
1013H  
DECISION

Before the Judges:

Benjamin Mutanga Itoe, Presiding  
Bankole Thompson  
Pierre Boutet

For the Registry:

Mr. Geoff Walker

For the Prosecution:

Mr. Luc Côte  
Mr. James C. Johnson  
Mr. Charles Caruso

For the Principal Defender:

Ms. Simone Monasebian  
Mr. Ibrahim Yillah

For the Accused Samuel Hinga Norman:

Mr. Sulaiman B. Tejan-Sie

For the Accused Moinina Fofana:

Mr. Michiel Pestman  
Mr. Arrow Bockarie  
Mr. Michael Uiterwaal

For the Accused Allieu Kondewa:

Mr. Charles Margai  
Mr. Thomas Briody  
Ms. Susan Wright  
Mr. Yada Williams

Court Reporter:

Ms. Gifty C. Harding

## P R O C E E D I N G S

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MR. PRESIDENT:

Can you please call the matter that is listed for today?

MR. WALKER:

This is Case No. SCSL-2004-14, the Prosecutor against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa, which is listed for trial.

MR. PRESIDENT:

The interpreters are reminded they are still bound by their oath. I hope they have heard me.

This is our decision on the request contained in Exhibit 1.

The Trial Chamber of the Special Court of Sierra Leone, composed of Judge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson, and Judge Pierre Boutet, mindful of the letter dated the 3rd of June 2004 written by the first Accused, Samuel Hinga Norman, and addressed to Principal Defender indicating his intention to defend himself from that day henceforth;

Mindful of the provisions of Article 17 sub-section 4(b), 17 sub-section 4(c) and 17 sub-section 4(d) of the Statute of the Special Court;

Mindful of the international human rights norms which guarantee both a right of self representation and a right of legal existence;

Mindful in this regard of the provisions of Article 14 of the International Covenant on Civil and Political Rights;

Mindful of Rule 26 *bis* of the Rules of Procedure and Evidence;

Mindful of the provisions of the directive for the assignment of counsel for the Special Court promulgated by the Registrar on the 3rd of October 2003;

Mindful of the overall and overriding interest of justice, this is our decision, and it is unanimous:

The facts are that by a decision dated the 28th of January 2004, the Trial Chamber ordered a consolidation of the indictment and a joint trial of the three CDF group of detainees; namely, Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa. On the 11th of May 2004, we issued a scheduling order indicating the 3rd of June 2004 as the date for the commencement of the trial of the case against the said CDF group of indictees of which Samuel Hinga Norman is the first Accused,

1 with Moinina Fofana and Allieu Kondewa as the co-accused.

2  
3 On this date, after the opening statement of the Prosecutor, pursuant to Rule 84 of the Rules, the  
4 Court rose to resume at 2:30 on this same date. The first Accused, Samuel Hinga Norman, in the  
5 interval, addressed a letter in manuscript to the Principal Defender. The letter is dated the 3rd of June  
6 2004. In that letter now labelled Exhibit 1 which was received by the Chief of the Special Court  
7 Detention Facility at 1:30 p.m. on that day and handed over to the judges in Chamber, the first  
8 Accused had this to say and we quote:

9  
10 "The Principal Defender, SCSL, Freetown, Sierra. Dear Sir/Madam, Self Defence" -- that is the  
11 object -- the subject matter of the letter -- "This is to inform you that I have, as indicated this morning  
12 before the start of the trial in the case against me, finally decided to, one, appear for myself, represent  
13 myself, defend myself, effective today, the 3rd of June 2004. And to state further that any  
14 representation by my counsel on my behalf does not, repeat, not carry my consent or have it.  
15 Regards, Chief Samuel Hinga Norman, 3rd of June 2004."

16  
17 Whilst the Chamber, the Prosecution, counsel and everybody was poised to commence the trial on  
18 the 3rd of June 2004 after the opening statement of the Prosecution, pursuant, as we have said, to  
19 the provisions of Rule 84 of the Rules of Procedure and Evidence, the first Accused informed the  
20 Court through Exhibit 1 that he was dispensing with all his counsel, who we note have been acting for  
21 him since his incarceration in Bonthe Island in March 2003, and more precisely, in court since the  
22 17th of March 2003.

23  
24 On the law that applies to this situation, we would like to say that the representation of suspects and  
25 of accused persons by counsel is guaranteed by Article 17 of the Statute which spells out the rights of  
26 the Accused. Article 17(4) on this issue stipulates as follows: "In the determination of any charge  
27 against the accused pursuant to the present Statute, he or she shall be entitled to the following  
28 minimum guarantees in full equality;

29  
30 "(B) To have adequate time and facilities for the representation of his or her defence -- for the  
31 preparation of his or her defence and to communicate to counsel his or her own choosing;

32  
33 "(C) To be tried in his presence -- in his or her presence and to defend himself or herself in person or  
34 through legal assistance of his choice." I repeat, "to defend himself or herself in person or through  
35 legal assistance of his or her choice; to be informed, if he or she does not have legal assistance, of  
36 his rights and to have the legal assistance assigned to him or her in any case where the interest of  
37 justice so require and without payment by him or her of any such -- in any such case if he or she does

1 not have sufficient means to pay for it."

2  
3 Article 26 *bis* of the Rules of Procedure and Evidence provides as follows:

4  
5 "The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that  
6 proceedings before the Special Court are conducted in accordance with the Agreement, the Statute  
7 and the Rules with full respect for the right of the accused and due regard for the protection of victims  
8 and witnesses."

9  
10 Clearly, as a matter of statutory construction, Article 17(4)(D) does guarantee an accused person first  
11 and foremost, the right to self-representation. This is clear from the plain and literal meaning of that  
12 provision. But the crucial question to focus on is whether this guaranteed right of self-representation  
13 is absolute, having regard to the statutory purport and intendment -- the intendment of Article  
14 17(4)(D). In the judgment of this Trial Chamber, the answer is that the said right is not absolute;  
15 rather, it is a qualified right.

16  
17 This interpretation of the statutory provision is amply corroborated by the qualifying clause of  
18 Article 17(4)(D) to wit, and I quote, "To have legal assistance assigned to him or her in any case  
19 where the interest of justice so require."

20  
21 In the light of these provisions, it is clear, and the Chamber so holds, that the right to self-  
22 representation by an accused person is a qualified and not an absolute right, and particularly so  
23 because Article 17(4)(D) provides that legal assistance could be assigned to him or her in cases  
24 where the interest of justice so require.

25  
26 The interest of justice, we observe as a Chamber, is a multifaceted legal concept which is all  
27 encompassing and the vital component of the principle of the rule of law. In this case, for instance,  
28 where the first Accused, Samuel Hinga Norman, has been in detention since the month of March  
29 2003, the interest of justice require, as is provided for in Article 17 sub-section 4(C) of the Statute, that  
30 he be tried without undue delay. This, as provided for under Rule 26 *bis* of the Rules of Procedure  
31 and Evidence, connotes the necessity and obligation imposed on the Chamber to ensure that a trial is  
32 fair and expeditious and that even though this right is conditioned to a full respect of the rights of the  
33 accused, we consider and so hold that these rights would not include an absolute right of self-  
34 representation.

35  
36 The question to put here is whether the attendant consequences that would flow from our granting the  
37 request of Exhibit 1 would in the overall interest of justice, be consistent with the statutory guarantees

1 to a fair and expeditious trial to be reserved by this Court to the Accused, particularly where as in this  
2 case, his detention has been as long as over one year.

3  
4 In answering this question, a number of issues need to be addressed. The first Accused is jointly  
5 indicted with two others, who our records show neither understand nor speak the English language.  
6 For this reason, they require a permanent translator from English to *Mende* and vice-versa, of course,  
7 in due course, for the Chamber. Each of these two accused persons has a legal team to represent  
8 them. If the application in Exhibit 1 were granted, this would have the potential to negatively impact  
9 on the fairness and expeditiousness of the trial of these co-accused persons given the complexities  
10 and intricacies of the judicial process, and considering the gravity of the alleged crimes.

11  
12 We are of the opinion, and do state here, that the first Accused cannot and, indeed, should not be  
13 allowed to exercise this qualified right to self-representation to the detriment of the rights of his co-  
14 accused to a fair and expeditious trial. Besides, even if he were credited with the capability of  
15 conducting his defence, it would require long adjournments to enable make any meaning out of the  
16 numerous and intricate documents, some of them redacted, arising from disclosures and elsewhere,  
17 which has hitherto been handled in a professional manner by counsel whose services he is seeking to  
18 terminate.

19  
20 In the same vein, we find that any new counsel for the first Accused, whoever he may be, will likely  
21 suffer from the same handicap and would of course and of necessity, seek adjournment for  
22 preparation; a sure and certain contingency that would unavoidable occasion a delay of the  
23 proceedings which we as a Chamber have a duty to prevent because of the limited time span of this  
24 Court.

25  
26 On the case law, and in deliberating on this matter, the Chamber has addressed this same issue that  
27 was at stake in the case of the *Prosecutor vs. Slobodan Milosevic*, in the International Criminal  
28 Tribunal for former Yugoslavia. In that case, Milosevic asserted the right to self-representation from  
29 the onset -- from the outset. Samuel Hinga Norman, the first Accused, on the contrary, is asserting  
30 this same right as lately as on the first day of his trial after over a year in pre-trial detention, defended  
31 by a legal team composed of learned lead counsel, Mr. Jenkins-Johnston and subsequently,  
32 Mr. Sulaiman Tejan-Sie, who has represented him at his request from the 17th of March 19 -- 2003 in  
33 Bonthe Island, up to the 3rd of June 2004 when Exhibit 1 surfaced in these proceedings.

34  
35 In fact, the Trial Chamber of the ICTY stated that it was satisfied that Milosevic, who had clearly and  
36 unequivocally informed the court from the outset that he did not want to be represented by defence  
37 counsel, was competent to exercise the right to defend himself in person even though the Trial

1 Chamber held in that case as well that this right is not absolute.

2  
3 The distinction between these two cases is that whilst Milosevic is being tried separately and alone,  
4 Hinga Norman is being tried with two accused persons. In addition to this, whilst Milosevic indicated  
5 his option for self-representation from the outset as soon as he was transferred to the custody of the  
6 ICTY, Hinga Norman did this only on the 3rd of June 2004, in fact, on the date which had, with his  
7 consent, been fixed for the commencement of his trial, to invoke and exercise this same statutory  
8 right.

9  
10 The task, therefore, of properly assuming the mantle of conducting his defence could turn out to be  
11 difficult, onerous and exacting, if not impossible, and would necessarily result in unnecessarily  
12 prolonging these proceedings.

13  
14 In the Milosevic case, the Chamber, in addition to holding that the right to self-representation is not  
15 absolute, also held that there may be circumstances where it is in the interest of justice, as is in our  
16 opinion the case here, to appoint counsel. The court then proceeded to appoint three *amicus curia* to  
17 cater for Milosevic's interest and his procedural links with the Tribunal.

18  
19 In the case of the *Prosecution vs. Vojislav Seselj*, the Accused, a professor of law at the University of  
20 Belgrade, surrendered himself to the ICTY. When legal assistance was offered him, he turned it down  
21 and stated from the outset that he would defend himself.

22  
23 The prosecution filed a motion requesting an order for the trial chamber -- from the trial chamber that  
24 defence counsel be assigned to him. The trial chamber dismissed the motion, recognised the  
25 accused's right to self-representation, but at the same time, decided to appoint a stand-by counsel to  
26 cater for his eventual legal needs and to coordinate these needs with the institutional obligations of  
27 the Court to ensure that the overall interest of justice prevailed, thereby confirming once again that the  
28 statutory rights of self-representation is not absolute.

29  
30 In that context, it is useful to consider the established procedure adopted in the United States of  
31 appointing stand-by counsel by the court. The Supreme Court in this regard, approved the  
32 appointment of stand-by counsel and discussed the role of such a counsel in its decision in the case  
33 of *Mckaskle vs. Wiggins*, where the accused was permitted to proceed *pro se*, but the trial court  
34 appointed a stand-by counsel to assist him. And in this case, the Supreme Court had this to say -- I  
35 mean, the Supreme Court of the United States of America, and I quote: "Accordingly, we make  
36 explicit today what is already explicit in *Feretta*: a defendant Sixth Amendment rights to  
37 self-representation are not violated when a trial judge appoints a stand-by counsel even over the

1 defendant's objection, to relieve the judge the need to explain and enforce basic rules of courtroom  
2 protocol, or to assist the defendant in overcoming routine obstacles that stand in the way of the  
3 defendant's achievements of his own clearly indicated goals.

4  
5 "Participation," the court said, "by counsel to steer a defendant through the basic procedures of trial is  
6 permissible, even in the unlikely event that it somewhat undermines the *pro se* defendant's  
7 appearance of control over the Defence."

8  
9 The role of defence counsel, it has been stated and as we do observe as a Chamber here, is  
10 institutional and is meant to serve not only the interest of his client, but those of the court and the  
11 overall interest of justice. This is why we are strongly of the opinion that the action by the -- by the  
12 first Accused to relieve his counsel of their judicial duty of defending him on the date of his trial and on  
13 the grounds of a right which he enjoys under the Statute, should be viewed or endorsed with a lot of  
14 caution.

15  
16 In the case of the *Prosecution vs. Barayagwiza*, the Trial Chamber of the International Criminal  
17 Tribunal of Rwanda held that counsel is assigned and not appointed. And, in the view of the  
18 Chamber, this does not only entail obligations towards the client, but also implies that he represents  
19 the interest of the Tribunal to ensure that the Accused receives a fair trial.

20  
21 In arriving at this conclusion, we are guided in our -- in our opinion by the decision of Honourable  
22 Judge Reinhardt in the case of *Farhad vs. The United States* where he said that, "the permitting of  
23 self-representation, regardless of the consequences, threatens to direct criminal trials from their  
24 clearly defined purpose of providing a fair and reliable determination of guilt or innocence." The  
25 learned judge observed that "a defendant could not waive his right to a fair trial and that this right  
26 implicates not only the interest of the Accused, but also the institutional interest of the judicial system."

27  
28 As far as the factors to be considered in the determination of this issue are concerned, the philosophy  
29 of this Chamber on this crucial issue compels us to factor into the equation certain critical issues;  
30 namely, the right of the -- of counsel which is statutorily guaranteed by Article 17(4)(D) of our Statute,  
31 is predicated upon the notion that representation by counsel is an essential and necessary  
32 component of a fair trial. The right --

33  
34 Two, the right to counsel relieves the trial judge of the burden to explain and enforce basic courtroom  
35 protocol, and to assist the Accused in overcoming routine and regular legal obstacles which the  
36 accused may encounter if he represents himself. For the court, to our mind, is supposed to remain  
37 the arbiter in the adversarial context and in the context of his participation in these proceedings.

1 Three, given the complexity of the trial in the present case, it cannot be denied that a joint trial of such  
2 magnitude, having regard to the gravity of the offences charged, and considering the number of  
3 witnesses to be called by the Prosecution and the Defence, make for a trial fraught with a high  
4 potential of complexities and intricacies typical of evolving international criminal law.

5  
6 Four, there is also the public interest, the national and international, in the expeditious completion of  
7 the trial. And, furthermore, there is the high potential for further disruption to the Court's timetable and  
8 calendar which we are already witnessing in this case. In fact, two Prosecution witnesses who the  
9 Chamber insisted should testify on the 3rd of June after the opening statement and ceremonies were  
10 taken back into the protection unit without achieving this objective.

11  
12 Given the limited mandate of the Court, this creates a serious cause for concern as far as our  
13 calendar is concerned.

14  
15 When all these factors are taken into consideration and we, individually and cumulatively, for  
16 purposes of determining the present matter, the Chamber is of the opinion, and without in any way  
17 seeking to contest the existence of the said right of self-representation, which to us is qualified and  
18 not absolute, that there is certainly -- that this is certainly not a proper case where the accused  
19 person's request to exercise this right to self-representation should be considered without  
20 qualifications or preconditions.

21  
22 We take this stand because we foresee that granting the request in Exhibit 1 without preconditions  
23 could lead to certain procedural difficulties in the conduct of his trial, which could lead to an injustice.

24  
25 In this regard, we would like to affirm that the Trial Chamber cannot allow the integrity of its  
26 proceedings to be tarnished or perceived in a manner that is not in conformity with the aspirations of  
27 the norms of the judicial process. As a matter of law, it is our duty as a Chamber at all times to  
28 protect the integrity of the proceedings before us and to ensure that the administration of justice is not  
29 brought into disrepute. This we can achieve by ensuring amongst other things that persons who are  
30 accused and indicted for serious offences such as these are properly represented by counsel as this  
31 would safeguard the overall interest of justice and ensure that the rule of law is upheld.

32  
33 It was decided in the case of *Croissant vs. Germany* by the European Court of Human Rights, that it  
34 is for the court to decide whether the interest of justice require that the accused be defended by  
35 counsel appointed by him -- by them. When appointing counsel the national court must certainly have  
36 regard to the defendant's wishes. However, they can override those wishes when there are relevant  
37 and sufficient grounds for holding that this is necessary in the interest of justice.



1 We hold that the first Accused has a right to self-representation, but that such a right, being qualified  
2 and not absolute, could, in the light of certain circumstances, be derogated, should the interest of  
3 justice so dictate.

4  
5 To this end, and having regard to all the preceding factors articulated for purposes of determining this  
6 application, we rule and order as follows:

7  
8 That a right, the right to self-representation, solicited in this case by the first Accused, Samuel Hinga  
9 Norman, can only be exercised with the assistance of counsel to be assigned to the trial in whatever  
10 capacity they are assigned or designated, stand-by or otherwise, without prejudice to the Registrar's  
11 discretion to designate, if the first Accused so expresses this desire, members of his former Defence  
12 team, and this in accordance with the provision of Article 17(4)(D) of the Statute of the Special Court,  
13 the Rules of Procedure and Evidence of the Special Court and the provisions for the Directive for the  
14 Assignment of Counsel promulgated by the Registrar of the Special Court on the 3rd of October 2003.

15  
16 This matter stands adjourned to Thursday, the 10th of June 2004 at 10:00 a.m. for hearing.

17  
18 We order that these orders that we have made be carried out immediately.

19  
20 Done at Freetown, this 8th day of June 2004, and signed by judges who compose this Chamber.

21  
22 I would like to go out of the -- the ordinary to invite the first Accused, if he has any ideas or any  
23 comments that he has to make only on the finding of the Court on the representation which is likely to  
24 be composed following this decision. Mr. Norman, would you -- do you have any comment to make  
25 please?

26 ACCUSED NORMAN:

27 Your Honour, yes, I do, and I would want to state this fact, that the right of self defence has no  
28 qualification whatsoever relative to --

29 MR. PRESIDENT:

30 Mr. Norman, Mr. Norman, Mr. Norman, I would like to draw your attention immediately to the fact that  
31 this Court has made a ruling, and this is not the right place for you to contest that ruling. Do you -- the  
32 Court wants to know, do you have any comments on the sort of representation that you would like to  
33 put in place, following the order of this Court?

34  
35 We don't want to listen to you. The Court does not want to hear you on the validity of the decision. I  
36 mean, it is your opinion to think the way you are thinking, but this is not the forum for it, Mr. Norman.  
37 So can you give us -- can you share with us, you know, your impressions or your ideas on how you

1 think that this decision will impact on the conduct of your trial?

2 ACCUSED NORMAN:

3 My Lord, I seem to be in a difficulty having been asked to comment and having been square jacketed  
4 not to say anything. But this much I will say that I exercise my right. I respect your ruling. Even in  
5 exercising my right, I want to extend my very much -- very high appreciation to Your Lordships, but to  
6 emphasise that in refusing my right, it will only render me that I will no representation and, as a result,  
7 I will prefer to be put in my cell and let the Court go ahead and render justice, and I will not appear  
8 since I have been denied the right of defence.

9 MR. PRESIDENT:

10 Thank you, Mr. Norman. You can sit down, please.

11 ACCUSED NORMAN:

12 Thank you.

13 MR. PRESIDENT:

14 As we indicated, this matter is adjourned to the 10th of June 2001 (*sic*) for hearing. And on this note,  
15 the matter is adjourned and the Court will rise. Court rises.

16 (*Court adjourned at 1052H*)

17 (*Pages 1 to 9 by Gifty C. Harding*)

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CERTIFICATE

I, Gifty C. Harding, Official Court Reporter for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

\_\_\_\_\_ Gifty C. Harding