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**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

**Court Management Section – Court Records**

**CS6 – AFTER HOURS FILING FORM**

Date: 21.10.03	Case Name: The Prosecutor v. KONDJAWA	Case No.: SCSL-03-12-PT.
To:	<b>OTP</b> Γ D. Crane, Prosecutor    Γ D. De Silva, Deputy Prosecutor    Γ <u>W. COTE</u> , Chief of Prosecutions Γ Trial Attorney in charge of case: _____, received by _____ (signature)	
	<b>DEFENCE</b> Γ Accused: _____ (complete CMS4 Form) <input checked="" type="checkbox"/> Lead Counsel: <u>JAMES MACGILL</u> (name / nom) <input checked="" type="checkbox"/> In Freetown <u>CHARLES MARGAI</u> (signature)    Γ Fax Number: _____ <input checked="" type="checkbox"/> Co-Counsel: <u>JAMES EVANS</u> (name / nom) Γ In Freetown _____ (signature)    Γ Fax Number: _____	
From:	Γ <u>NEIL GIBSEN</u> Γ _____    Γ _____    Γ _____	
CC:	<input checked="" type="checkbox"/> Judge B. Thompson, Presiding <input type="checkbox"/> Judge Boutet <input type="checkbox"/> Judge Itoe <input checked="" type="checkbox"/> Co-ordinator	Γ Judge G. Robertson, President Γ Judge Winter Γ Judge King Γ Judge Jallow Γ Judge Ayoola Γ Co-ordinator
Subject	The following documents were filed out of time:	

Document(s): RESPONSE TO PROSECUTION MOTION FOR JUDGMENT.      Dated: 21.10.03.

Reason(s):

- Under Rule 66 'Disclosure of materials by the Prosecutor', The Prosecutor will disclose to the Defence within 30 days from the initial appearance
- Under Rule 66, the Prosecutor shall disclose to the Defence copies of all witness statements no later than 60 days before the date set for Trial
- Under Rule 72 (E): Notice of Interlocutory Appeal shall be filed within 7 days of the impugned decision
- Under Rule 94 (bis): Within 14 days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether i) it accepts the expert witness statement or ii) it wishes to cross examine.
- Under Rule 108: Notice of Appeal (on Merits) must be filed within 30 days from the date on which the full Judgement and Sentence are delivered in both English and French.
- Under Rule 109: Parties must designate parts of the Trial Record which are necessary for the decision on Appeal within 30 days from the certification of the Trial Record

PURSUANT TO RULE 7, A RESPONSE SHALL BE FILED WITHIN 10 DAYS.  
THE RESPONSE WAS FILED ON THE ELEVENTH DAY.

No. of pages transmitted including this cover sheet In case of transmission difficulties, please contact: Fax Room Tel: _____ Fax: _____ Email: _____
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CS6 FORM

Document1

21.10.03

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SCSL-2003-12-PT  
(1076-1081)  
SPECIAL COURT FOR SIERRA LEONE

FREETOWN - SIERRA LEONE

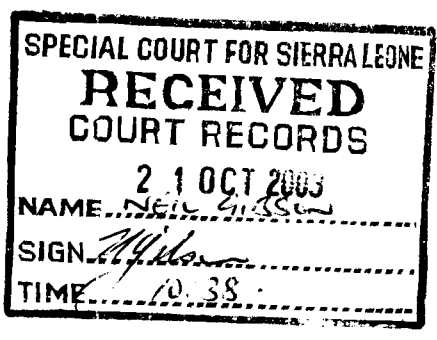
Before: Designated Judge  
Registrar: Robin Vincent  
Date Filed: 20 October 2003

**THE PROSECUTOR**

**Against**

**ALLIEU KONDEWA**

**CASE NO. SCSL-2003-12-PT**



**RESPONSE TO PROSECUTION MOTION FOR JOINDER**

**Office of the Prosecutor:**  
Mr Luc Cote  
Ms Brenda Hollis  
Mr James C Johnson  
Ms Adwaoa Wiafe

**Defence Counsel:**  
Mr James MacGuill, Lead Counsel  
Mr James Evans, Co-Counsel  
Mr Charles Margai, Local Counsel

**SPECIAL COURT FOR SIERRA LEONE**

**THE PROSECUTOR**

**Against**

**ALLIEU KONDEWA**

**CASE NO. SCSL-2003-12-PT**

**RESPONSE TO PROSECUTION MOTION FOR JOINDER**

1. This is the Response of the Accused (“Allieu Kondewa”) to the Prosecution’s Motion for Joinder of Indictments pursuant to Rule 48 of the *Rules of Procedure and Evidence* that the Accused, Samuel Hinga Norman and Moinina Fofana be jointly tried.
2. This Response is made without prejudice to the Accused’s rights pursuant to Rule 72 of the *Rules of Procedure and Evidence* to challenge the jurisdiction of the Special Court or otherwise raise preliminary objections

**THE LAW**

3. It is not doubted the Special Court has the power pursuant to Rules 48 and 82B of the Rules of Procedure and Evidence to Order the accused to be tried jointly. However, it is noted that the power granted to the Special Court pursuant to Rules 48 and 82 is discretionary.
4. In exercising its discretion the Trial Chamber must weigh the overall interests of justice and the rights of the accused. It is submitted that one of the vital factors considered in the Court exercising its discretion is whether there is “*material prejudice*” to the accused in doing so. (See *Prosecutor v Bagosora and Others*, Decision on the Prosecutor’s Motion for Joinder, ICTR Trial Chamber, 29 June 2000, para. 108; *Prosecutor v Ntagerura and Others*, Decision on the Prosecutor’s Motion for Joinder 11 October 1999 and *Prosecutor v Nyiramasuhuko and Others*, Decision on the Prosecutor’s Motion for Joinder of Trials, 5 October 1999).

5. It is accepted that the Court must take account of other factors including transparency in the administration of justice and the impact of separate trials on witnesses, these considerations must be balanced against the rights of the accused to a trial without undue delay and any other prejudice to the accused that may be caused by joinder (See *Prosecutor v Bagosora and Others*, Decision on the Prosecutor's Motion of Joinder, ICTR Trial Chamber, 29 June 2000, paras 145-156)
6. Article 17 of the Statute of the Special Court for Sierra Leone ("the Statute") states:

***Article 17: Rights of the Accused***

1. *All accused shall be equal before the Special Court.*
2. *The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.*
3. *The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.*
4. *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. ....
  - 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;*
  - c. *To be tried without undue delay.....*

**SUBMISSIONS ON PROSECUTION'S MOTION**

7. It is submitted that the Prosecution's Motion for Joinder is premature and stands to potentially cause serious prejudice to the Accused's rights inter alia, to a "fair hearing" and also the right "to have adequate time and facilities for the preparation of his defence". This is inconsistent with the minimum rights guaranteed "in full equality" under Article 17 of the Statute.
8. First and foremost, it should be noted that the Special Court's Ruling on the Prosecution's Motion for Immediate Protective Measures for Witnesses and

Victims and Non-Public Disclosure was only determined by the Right Honourable Judge Benjamin Mutanga Itoe on 10 October 2003. Unusually, the Prosecution's Motion was filed one day prior to the Court's determination on this issue on 9 October 2003.

9. The Accused's Defence team has only on the 17<sup>th</sup> day of October 2003 received the Prosecution material, pursuant to Rule 66(A)(i) and Judge Itoe's determination. Such disclosure has taken place only a matter of days before a response was due to the current Motion as provided under Rule 7(C) of the Rules; being Monday, 20 October 2003.
10. Consistent with the minimum rights of the Accused guaranteed under Article 17 of the Statute, it is a fundamental right of the Accused to be provided with legal advice based on a fully informed basis.
11. The Prosecution are, at this point in time, at a distinct advantage and the Defence team at a distinct disadvantage in not having received the disclosure material pursuant to Judge Itoe's ruling of 10 October 2003. It is not possible for the Defence team to make any meaningful submissions to the Court on whether or not there is any "*material prejudice*" to the Accused in the joinder of trials until such time as there has been ample opportunity to review the material disclosed pursuant to Rule 66 A(i) of the Rules.
12. It should be noted that although Rule 72 (A) of the Rules provides for preliminary motions by either party to be brought within 21 days following disclosure to the Defence of material pursuant to Rule 66 (A) (i) of the Rules, this disclosure has only effectively take place today. It should be noted that such objections may include objections by the Defence on the grounds of there being defects in the indictment.
13. The Accused's Defence team will not be in a position to advise the Accused nor will they be in a position to make any responsible and/or meaningful submissions to the Court on the issue of the "*material prejudice*" likely to be suffered by the Accused for consideration by the Court on the issues raised by the current Motion.
14. It is also submitted that in advising the Accused adequate time for consultation with the proposed co-accused's Counsel will be necessary in order to determine the Accused's position vis-à-vis the proposed co-Accused. It is

- noted that prior to today only one of the proposed co-accused has received the Prosecution's disclosure material pursuant to Rule 66 (A)(i) of the Rules.
15. According to the Prosecution's Motion for Joinder, the Accused's Defence team can expect to receive approximately 110 witness statements as part of their disclosure requirements.
  16. It is submitted that to ensure the rights of the accused as laid down in Article 17 are fully respected, and to ensure a proper hearing for the Accused on the Motion before the Court, the Accused should not be compelled to rely solely upon allegations contained in the indictment but should be permitted to exercise his rights once the Prosecution's disclosure material has been reviewed and make responsible submissions to the Court on the issue of "material prejudice" likely to be suffered by the Accused in being tried jointly. To make submissions in the absence of an adequate and proper review of the material provided by the Prosecution will lead to material prejudice to the Accused's rights; i.e. to make meaningful and responsible submissions on the Motion currently before the Court.

## CONCLUSIONS

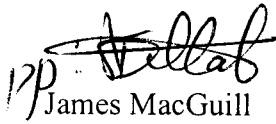
17. For all of the reasons stated above, the Accused submits that the Trial Chamber should, at this point in time, stay any decision to exercise its discretion to grant the Prosecution's Motion that the Accused, Samuel Norman Hinga and Moinina Fofana be jointly tried.
18. Further, the Accused submits that a decision by the Trial Chamber on the Prosecution's Motion ought to be stayed until such time as the Accused and his Defence team have had a reasonable opportunity to review the material disclosed by the Prosecution pursuant to the Ruling of Judge Itoe delivered on 10 October 2003.
19. Further, and without prejudice to the reliefs sought at paragraphs 17 and 18, that pursuant to Rule 7 of the Rules of Procedure and Evidence, the Accused be granted an extension of time in which to file a detailed Response to the Prosecution's Motion for Joinder at a reasonable period of time after the Prosecution's evidence has been disclosed to the Accused's Defence team.
20. Further, and in the alternative, the Accused submits that should the Court be minded to grant the Prosecution's Motion for Joinder, that the Court make

Orders sufficiently preserving the Accused's rights to file a Motion pursuant to Rule 82.

21. Further, and in the alternative, the Accused be granted leave to Appeal the Trial Chamber's decision pursuant to Rule 73 of the Rules.

Dublin, 20 October 2003

For the Defence

  
James MacGuill

James Evans

Charles Margai