



SPECIAL COURT FOR SIERRA LEONE

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CS7 - NOTICE OF DEFICIENT FILING FORM

Date:	06 th December 2007	Case No: SCSL-04-14-A	The Prosecutor v Moinina Fofana, Allieu Kondewa
To:	PROSECUTION: X DEFENCE: X APPEALS CHAMBER: X OTHER (S): REGISTRY, PRINCIPAL DEFENDER'S OFFICE, PRESS & PUBLIC AFFAIRS		
From:	Advera Nsiima K.: Court Management		
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Subject	Article 9 of the Practice Direction on Filing Documents before the Special Court for Sierra Leone		

Document(s): **Request for Leave to Appear as Amicus Curiae Pursuant to Rule 74**

Document Dated: 06th December 2007-Received by Court Management by way of email before 9:00 on 06th December 2007

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Signed: *Nsiima*

Advera Nsiima K.

Dated: 06th December 2007

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SCSL-04-14-A
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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Hon. Justice George Gelaga King, President
Hon. Justice Emmanuel Ayoola
Hon. Justice A. Raja N. Fernando
Hon. Justice Renate Winter
Hon. Justice Jon Kamanda

Registrar: Herman Von Hebel

Date: 6 December 2007

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

Against

**Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-A

**PUBLIC
REQUEST FOR LEAVE TO APPEAR AS *AMICUS CURIAE*
PURSUANT TO RULE 74**

Office of the Prosecutor
Dr. Christopher Staker
Mr. Chile Eboe-Osuji
Mr. Joseph Kamara
Mr. Karim Agha
Ms. Anne Althaus

Court Appointed Counsel for Moinina Fofana:
Mr. Wilfred Davidson Bola Carol

Court Appointed Counsel for Allieu Kondewa
Mr. Yada Williams

Pursuant to Rule 74 of the Special Court Rules of Procedure and Evidence, Human Rights Watch respectfully requests leave to make a written submission as *amicus curiae* in this case. Human Rights Watch submits this application on its own initiative.

Human Rights Watch is a non-profit, non-governmental organization that is dedicated to investigating and exposing violations of human rights and international humanitarian law around the world. To do this, Human Rights Watch sends fact-finding teams to investigate allegations of human rights abuses and international humanitarian law violations. When it finds such abuses or violations, Human Rights Watch publishes detailed reports to call public attention to the wrongdoing, and to identify the changes necessary to end or remedy the abuses. Human Rights Watch publishes between 60 and 85 such reports a year that are widely read, reported in the media, and relied upon by national and international policy makers.

Human Rights Watch is not affiliated with any party to this case. Human Rights Watch has had contact with various members of the court – including in the Registry, the Office of the Prosecutor and the Defense Office – and defense counsel for accused in connection with two reports we have published on the progress of the Special Court: Bringing Justice: The Special Court for Sierra Leone and Justice in Motion: The Trial Phase of the Special Court for Sierra Leone. Human Rights Watch also had contacts with the Office of the Prosecutor in connection with its efforts to secure the arrest of Charles Taylor. Around Charles Taylor's trial, Human Rights Watch has in addition had contacts with the court's Principal Defender along with defense counsel involved in Taylor's representation. Human Rights Watch also maintains ongoing contact with various members of the court in relation to developments in proceedings and the court's funding situation. In addition, a Human Rights Watch researcher, Corinne Dufka, has provided assistance to the Office of the Prosecutor and was a member of the Office of the Prosecutor for one year. Human Rights Watch also was granted leave to and filed an *amicus curiae* brief with the Special Court in December 2005.

Because of its extensive research on human rights and humanitarian law violations, Human Rights Watch is often called upon to assist international tribunals in prosecutions for war crimes,

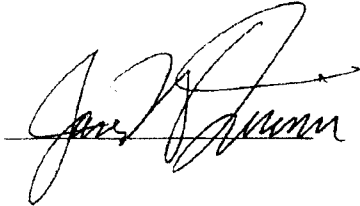
crimes against humanity and genocide. Human Rights Watch researchers have testified both at the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for former Yugoslavia. Researchers have also provided assistance to the International Criminal Court and have testified in war crimes cases in national courts.

Human Rights Watch seeks leave to file a submission as *amicus curiae* with respect to the 9 October 2007 Judgement On The Sentencing Of Moinina Fofana And Allieu Kondewa ("Sentencing Judgement"). Our request relates to the Trial Chamber's finding that the defendants' motivation to restore a democratically elected government was a mitigating circumstance. On 23 October 2007 the Office of the Prosecutor filed a Notice of Appeal to the Appeals Chamber, which *inter alia* argued that the Trial Chamber's treatment of the defendants' "acting out of a sense of allegiance to a democratically elected government" as a mitigating factor was improper.

Human Rights Watch believes that it has valuable information regarding the nature and enforcement of international humanitarian law, and the practice of national and international tribunals in adjudicating war crimes that will assist the Appeals Chamber in reviewing the Sentencing Judgement. In its *amicus curiae* brief, Human Rights Watch would seek to explain the role of sentencing and mitigating circumstances in the enforcement of international humanitarian law. Human Rights Watch has performed substantial research into the origins, policies, and goals of international humanitarian law as part of its efforts to ensure that international humanitarian law and human rights are respected by all sides in times of conflict, and also to assist our efforts in seeking the establishment of fair and effective justice mechanisms to hold perpetrators of serious crimes under international law accountable for their actions. Without taking a position on the actual length of sentence imposed, we believe the Trial Chamber's reliance upon the relative legitimacy of the political and ideological goals for which defendants fought as a mitigating circumstance is wholly inconsistent with international humanitarian law and must be set aside.

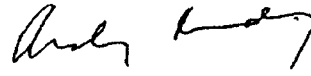
Human Rights Watch believes the proposed *amicus curiae* brief would also provide valuable information regarding consideration of mitigating circumstances at the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia. As discussed above, Human Rights Watch has been closely involved with these tribunals. Human Rights Watch has also published two digests on the case law of these tribunals: Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia (2004) and Genocide, War Crimes and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia (2006). Our analysis is that the Trial Chamber's decision is contrary to decisions by these tribunals.

For the foregoing reasons, Human Rights Watch respectfully requests leave to file an *amicus curiae* brief addressing the above issues.

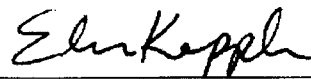


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Date: 6 December 2007
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