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SCSL-04-14-T  
(20799-20807)  
SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone

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

Registrar: Mr Lovemore G Munlo SC

Date filed: 1 December 2006

**THE PROSECUTOR**

**Against**

**Samuel Hinga Norman  
Moinina Fofana  
Allieu Kondewa**

Case No. SCSL-04-14-T

**PUBLIC**

**PROSECUTION LIST OF AUTHORITIES REFERRED TO IN ORAL CLOSING  
SUBMISSIONS**

Office of the Prosecutor:

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Ms Nina Jørgensen

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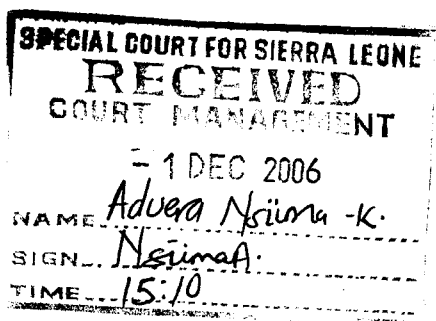
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1. Pursuant to the permission granted by the Trial Chamber during the oral closing arguments on 28 November 2006 (transcript, p. 32, line 23 to p. 33, line 4; p. 57, lines 5-8) and 29 November 2006 (transcript, p. 24, line 23-26; p. 27, lines 3-7), the Prosecution files this list of authorities for certain of the points made by counsel for the Prosecution in its closing arguments, that are additional to the authorities contained in the Prosecution final trial brief.

**1. Considerations when assessing the evidence:**

- Prosecution Brief, paras 32-51.

*Cf.* Norman Brief, paras 113-145.

Fofana Brief, paras 4-22.

Kondewa Brief, pp. 3-5.

- a. **Each item of evidence needs to be looked at in light of all of the evidence as whole, and the credibility and reliability of witnesses needs to be assessed in the light of all of the evidence as a whole (Transcript, 28 November 2006, p. 27, line 18-20):**

- *Prosecutor v Tadic*, IT-94-1-A-R77, “Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin,” Appeals Chamber, 31 January 2000, para. 92.

<http://www.un.org/icty/tadic/appeal/vujin-e/index.htm>

- *Prosecutor v. Kupreškić et al*, IT-95-16-A, “Appeal Judgement”, Appeals Chamber, 23 October 2001, para. 334.

<http://www.un.org/icty/kupreskic/appeal/judgement/index.htm>

- b. **The evidence as a whole must be evaluated by a Judge in the light of common sense with a view to establishing the truth (Transcript, 28 November 2006, p. 26, line 8 to p. 28, line 18):**

- *Prosecutor v Bagosora et al.*, ICTR-98-41-T, “Decision on Admissibility of Proposed Testimony of Witness DBY,” Trial Chamber 18 September 2003, para. 13 (referring to a separate opinion of Judge Shahabuddeen in an earlier case)  
<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/180903.htm>

**c. Corroboration is not required (Transcript, 28 November 2006, p. 28, line 20 to p. 29, line 12; p. 44, line 11 to p. 45, line 11):**

See Prosecution Final Trial Brief, para. 41 and Norman Brief, paras 124-127.

**d. Hearsay evidence may be taken into account to the prejudice of an accused (Transcript, 28 November 2006, p. 29, lines 13-19):**

See Prosecution Final Trial Brief, para. 43 and Norman Brief, paras 128-131.

**e. The fact that evidence of a witness is internally contradictory, or contradicted by other evidence, does not mean that the Trial Chamber cannot accept it in whole or in part (Transcript, 28 November 2006, p. 34, lines 4-25):**

See Prosecution Final Trial Brief, paras 35-40 and Kondewa Brief, pp. 5-9.

**f. In the cross-examination of a Prosecution witness who is able to give evidence relevant to the Defence case, Defence counsel is required put to that witness the nature of the Defence case which is in contradiction of the evidence given by the Prosecution witness; where this requirement is not complied with, it can be taken into account by the Trial Chamber in assessing the credibility and reliability of any Defence evidence that contradicts the evidence of the Prosecution witness (Transcript, 28 November 2006, p. 34, line 26 to p. 35, line 19):**

- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-560, “Prosecution Authorities on the Duty of a Party to Put its Case to Witnesses in Cross-Examination,” 16 February 2006 (and the authorities cited therein).
- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-561, “Fofana Response to Prosecution Authorities on the Duty of a Party to Put its Case to Witnesses in Cross Examination,” 17 February 2006.

**2. There is no legal requirement that the accused make a substantial contribution to the joint criminal enterprise (Transcript, 28 November 2006, p. 42, line 27 to p. 44, line 6):**

- *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, “Judgement,” Appeals Chamber, 28 February 2005, paras. 97-99.  
<http://www.un.org/icty/kvocka/appeal/judgement/index.htm>
- *Prosecutor v. Krajisnik*, IT-00-39-T, “Judgment,” Trial Chamber, 27 September 2006, para. 883(iii).  
<http://www.un.org/icty/krajisnik/trialc/judgement/kra-jud060927e.pdf>

**3. Defects in the form of the Indictment cannot be raised by the Defence at this stage (Transcript, 28 November 2006, p. 45, line 12 to p. 50, line 9):**

*Cf.* Norman Brief, paras 53-112, specifically 53, 54.  
Fofana Brief, p. 9 footnote 43, 44; paras 23-48, 212-223, specifically 23, 48.  
Kondewa Brief, pp. 13-17.

- *Prosecutor v. Kondewa*, SCSL-03-12-PT-050, “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment,” 27 November 2003.
- *Prosecutor v. Brdjanin*, IT-99-36-T, “Judgement,” Trial Chamber, 1 September 2004, para. 48.

<http://www.un.org/icty/brdjanin/trialc/judgement/index.htm>

- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-279, “Decision on Renewed Defence Motion for Defects in the Form of the Indictment and Application for Extension of Time,” Trial Chamber, 24 May 2005.
- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-164, “Decision on the Defence Motion for Defects in the Form of the Indictment,” Trial Chamber, 3 March 2005.
- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-46, “Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment,” Trial Chamber, 1 April 2005.

**4. “Those bearing greatest responsibility” is not a matter that is required to be proved at trial in order to secure a conviction (Transcript, 28 November 2006, p. 50, line 10 to p. 52, line 23):**

*Cf.* Kondewa Brief, pp. 16-17.

- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-469, “Decision on Defence Motions for Acquittal Pursuant to Rule 98,” Trial Chamber, 31 March 2006, paras. 26-39, especially para. 31. (This authority is cited in connection with the Prosecution’s alternative submission that even if the Trial Chamber was required to determine whether an accused is one of “those bearing the greatest responsibility”, that category is relatively broad, and can include, for instance, children between the ages of 15 and 18).

**5. The Trial Chamber may consider evidence concerning events outside the temporal and geographic timeframe of the indictment if it is relevant to material issues in the case (Transcript, 28 November 2006, p. 52, line 24 to p. 57, line 8):**

*Cf.* Norman Brief, paras 140-141.

Fofana Brief, pp. 13-15.

Kondewa Brief, pp. 13-15.

- *Prosecutor v. Strugar*, IT-01-42-T “Decision on the Defence Objection to the Prosecution’s Opening Statement Concerning Admissibility of Evidence”, Trial Chamber, 22 January 2004, p. 3.  
<http://www.un.org/icty/strugar/trialc1/decision-e/040122.htm>
- *Prosecutor v. Kupreškić et al*, IT-95-16-A, “Appeal Judgement”, Appeals Chamber, 23 October 2001, paras 321, 323.  
<http://www.un.org/icty/kupreskic/appeal/judgement/index.htm>

**6. A date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; and the accused may be convicted although the Trial Chamber finds that the offence was committed on a date other than that specified in the indictment (Transcript, 28 November 2006, p. 54, line 14 to p. 57, line 8):**

- *R. v. Dossi*, 13 CR.App.R. 158 (CCA), at pp. 159-160 quoted in *Archbold Criminal Pleading, Evidence and Practice*, 2002 Edition, paras. 127 to 128.
- *Prosecutor v. Rutaganda*, ICTR-96-3-A, “Judgement”, Appeals Chamber, 26 May 2003, paras 296-306, especially para. 306.  
<http://69.94.11.53/ENGLISH/cases/Rutaganda/decisions/030526%20Index.htm>
- *Prosecutor v. Rutaganda*, ICTR-96-3-T, “Judgement”, Trial Chamber, 6 December 1999, para 201.  
<http://69.94.11.53/ENGLISH/cases/Rutaganda/judgement/index.htm>
- *Prosecutor v. Kunarac et al.*, IT-96-23&23/1-A, “Judgement”, Appeals Chamber, 12 June 2002, para. 217.  
<http://www.un.org/icty/kunarac/appeal/judgement/index.htm>
- *Prosecutor v. Tadic*, IT-94-1-T, “Opinion and Judgement”, 7 May 1997, para. 534.  
<http://www.un.org/icty/tadic/trialc2/judgement/index.htm>
- *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Judgement and Sentence”, 21 May 1999, paras. 81-86.  
<http://69.94.11.53/ENGLISH/cases/KayRuz/judgement/index.htm>

**7. The Defence complaint that the Amended Indictment was not properly served has already been ruled upon in this case (Transcript, 28 November 2006, p. 57, lines 15-28):**

*Cf.* Norman Brief, para. 7.  
Kondewa Brief, p. 16.

- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-282, “Decision on the First Accused’s Motion for Service and Arraignment on the Indictment,” 29 November 2004.
- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-AR72-397, “Decision on Amendment of the Consolidated Indictment,” 16 May 2005, para. 65.

**8. The crimes within the jurisdiction of the Special Court are consistent with the principle of *nullum crimen sine lege* (Transcript, 28 November 2006, p. 57, line 29 to p. 59, line 2):**

*Cf.* Kondewa Brief, pp. 15, 79-81, 83.

- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-AR72-131, “Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) 31 May 2004, para 25.
- *Prosecutor v. Aleksovski*, IT-95-14/1-A, “Judgement”, Appeals Chamber, 24 March 2000, paras 126-127.  
<http://www.un.org/icty/aleksovski/appeal/judgement/index.htm>
- *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Judgement”, Appeals Chamber, 20 February 2001, paras 173, 573-579.  
<http://www.un.org/icty/celebici/appeal/judgement/index.htm>
- *Prosecutor v. Hadzihasanovic et al*, IT-01-47-PT, “Decision on Joint Challenge to Jurisdiction,” Trial Chamber, 12 November 2002, para 62  
<http://www.un.org/icty/hadzihas/trialc/decision-e/021112.pdf>

**9. The destruction and burning of houses falls within the crime of pillage (Transcript, 28 November 2006, p. 59, lines 3-28):**

See Prosecution Final Trial Brief, paras. 137-140 and Norman Brief, paras 94-97.

**10. For joint criminal enterprise liability, it need not be shown that the accused as well as the physical perpetrator of the crime were both parties to the agreement to commit criminal activity (Transcript, 28 November 2006, p. 59, line 29 to p. 61, line 15):**

*Cf.* Fofana Brief, paras 225-234, specifically para. 227.

- *Prosecutor v Krajisnik*, IT-00-39-T, “Judgment,” Trial Chamber, 27 September 2006, para. 883.  
<http://www.un.org/icty/krajisnik/trialc/judgement/kra-jud060927e.pdf>
- *Prosecutor v Milutinovic et al.*, IT-05-87-PT, “Decision on Ojdanic’s Motion Challenging Jurisdiction: Indirect Co-Perpetration”, Trial Chamber, 2 March 2006, Separate Opinion of Judge Bonomy, especially para. 13.  
<http://www.un.org/icty/milutino87/trialc/decision-e/060322.htm>
- *Prosecutor v. Stakic* IT-97-24-A, “Judgement,” Appeals Chamber 22 March 2005, paras 68-85 (where the participants in the joint criminal enterprise were found (at para. 69) to include “the leaders of political bodies, the army, and the police who held power in the Municipality of Prijedor”, but where the Appeals Chamber did not look to establish whether the physical perpetrators were also individually parties to an agreement with the accused to commit crimes.  
<http://www.un.org/icty/stakic/appeal/judgement/index.htm>

**11. The inclusion of the words “those bearing the greatest responsibility” in the Statute of the Special Court is not inconsistent with the presumption of innocence (Transcript, 29 November 2006, p. 24, line 7 to p. 25, line 1):**




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- *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-A, “Judgment (Reasons),” Appeals Chamber, 1 June 2001, paras. 75-78.  
<http://69.94.11.53/ENGLISH/cases/KayRuz/appeal/index.htm>

**12. The Appeals Chamber has in this case already ruled upon the Defence argument that the Special Court Statute and Agreement are inconsistent with the Constitution of Sierra Leone (Transcript, 29 November 2006, p. 25, line 2 to p. 27, line 2):**

- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-AR72-35, “Decision on Constitutionality and Lack of Jurisdiction”, 13 March 2004, paras. 42-53.

Filed in Freetown,  
1 December 2006  
For the Prosecution,



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