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SCSL-04-16-T

17139

(17139-17146)

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

Before: Justice Teresa Doherty, Presiding
Justice Julia Sebutinde
Justice Richard Lussick

Registrar: Lovemore Munlo

Date filed: 16 December 2005

THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

**JOINT DEFENCE REPLY TO PROSECUTION RESPONSE TO URGENT JOINT DEFENCE
REQUEST UNDER RULE 54 WITH RESPECT TO FILING OF MOTION FOR ACQUITTAL**

Office of the Prosecutor:

Luc Coté
Lesley Taylor

Defence Counsel for Kanu:

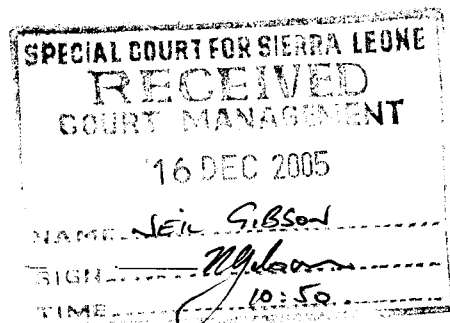
Geert-Jan A. Knoops, Lead Counsel
Cary J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Brima:

Kojo Graham
Glenna Thompson

Defence Counsel for Kamara:

Andrew Daniels
Mohamed Pa-Momo Fofanah



I INTRODUCTION

1. On 15 December 2005, the Defence filed its "Urgent Joint Defence request under Rule 54 With Respect to Filing of Motion for Acquittal" ("**Motion**"). The Prosecution responded to this motion on the same day, with its "Prosecution Response to Urgent Joint Defence Request under Rule 54" ("**Response**"), to which the Defence replies herewith.

II REPLY TO PROSECUTION SUBMISSION AS TO THREE WEEKS TIME LIMIT

2. The Prosecution argues in its Response that a time limit of three weeks (i.e. 21 days), as ordered by the Trial Chamber on 30 September 2005 in the "Scheduling Order on Filing of a Motion for Judgement of Acquittal", will end on a different day of the week as the day the time limit starts running. This means that if Rule 7 (A) is applicable, the day on which the time limit began to run was Tuesday 22 November 2005, and thus the deadline for the filing of the Rule 98 Motions was, according to the Prosecution, Monday 12 December 2005. If, in the alternative, Rule 7(A) was not applicable, the time limit began to run on Monday 21 November 2005 and would end on Sunday, 11 December 2005, which would be automatically extended to Monday 12 December 2005, so is argued by the Prosecution.
3. The Defence is of the view that a three weeks time limit starting, for example, on a Tuesday, will also end on a Tuesday. If the argument of the Prosecution was to be followed, i.e. that the starting day of the time limit is day 1, the consequence of this view would be that a one day time limit would end on the day the time limit began to run. According to the Defence, if a time limit starts running on a Tuesday, it is only on the next day, i.e. Wednesday, that the first day of the time limit has expired. This leads to the conclusion that a time limit of three weeks, and thus 21 days, will end on a day with the same name as the day from which the time-limit runs.

4. This view is corroborated by the interpretation of 'time limits expressed in weeks' in the European Convention on the Calculation of Time-Limits.¹ Article 4 of this Convention states that "where a time-limit is expressed in weeks the *dies ad quem* (the day from which the time-limit runs) shall be the day of the last week whose name corresponds to that of the *dies a quo* (the day on which the time-limit expires). This provision should be applied at least by way of analogy to the current situation as it envisions an international law instrument or, at the least, represents the view of various major law systems in the world.
5. In addition, in the case of the *Prosecutor v. Norman et al.* the Prosecution closed its case on Thursday 14 July 2005, and Motions for Judgment of Acquittal were filed by both the Fofana and Kondewa Defence Teams in time on Thursday 4 August 2005.² This therefore reinforces the Defence view in this case.
6. Therefore, the Defence concludes that the interpretation of the three weeks time limit of the Prosecution is incorrect, in that a time limit of three weeks shall expire on a day whose name corresponds to that of the day from which the time-limit runs. Consequently, when applying Rule 7(A), the Defence filings were timely.

¹ European Convention on the Calculation of Time-Limits, (ETS No. 76) see **Appendix I**, entered into force on April 28, 1983.

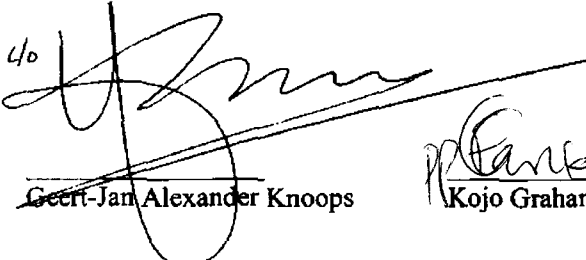
² SCSL-2004-14-T-457, 4 August 2005, Fofana Motion for Judgment of Acquittal, and SCSL-2004-14-T-458, Motion for Judgment of Acquittal of the Third Accused Allieu Kondewa.

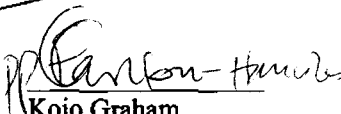
III RELIEF SOUGHT

7. For the abovementioned reasons the Defence praises the honourable Trial Chamber to grant the Motion.

Respectfully submitted,

On 16 December 2005

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~~Geert-Jan Alexander Knoop~~


Kojo Graham


Andrew Daniels



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APPENDIX I

European Convention on the Calculation of Time-Limits, (ETS No. 76), entered into force April 28, 1983.

The member States of the Council of Europe, signatory hereto,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular by the adoption of common rules in the field of law;
Convinced that the unification of rules relating to the calculation of time-limits, both for domestic and international purposes, will contribute to the attainment of this aim,
Have agreed as follows:

Article 1

1. This Convention shall apply to the calculation of time-limits in civil, commercial and administrative matters, including procedure relating to such matters, where such time-limits have been laid down:
 - a. by law or by a judicial or an administrative authority;
 - b. by an arbitral body, where such body has not determined the method of calculating the time-limit; or
 - c. by the parties, where the method of calculating the time-limit neither has been agreed between the parties, whether expressly or by implication, nor is determined by applicable usage or by practices established between the parties.

However, the Convention shall not apply to time-limits calculated retroactively.

2. Notwithstanding the provisions of paragraph 1, any Contracting Party may, by notification addressed to the Secretary General of the Council of Europe, when depositing its instrument of ratification, acceptance or accession or at any time thereafter, declare that it shall exclude the application of all or certain of the provisions of the Convention to all or certain time-limits in administrative matters. Any Contracting Party may, at any time, by means of notification addressed to the Secretary General of the Council of Europe, withdraw, wholly or in part, the declaration made by it; the notification shall take effect on the date of its receipt.

Article 2

For the purpose of this Convention the term *dies a quo* means the day from which the time-limit runs and the term *dies ad quem* means the day on which the time-limit expires.

Article 3

- 1. Time-limits expressed in days, weeks, months or years shall run from the *dies a quo* at midnight to the *dies ad quem* at midnight.
- 2. However, the provisions of the foregoing paragraph do not preclude that an act which is to be performed before the expiry of a time-limit may be performed on the *dies ad quem* only before the expiry of the normal office or business hours.

Article 4

- 1. Where a time-limit is expressed in weeks the *dies ad quem* shall be the day of the last week whose name corresponds to that of the *dies a quo*.
- 2. Where a time-limit is expressed in months or in years the *dies ad quem* shall be the day of the last month or of the last year whose date corresponds to that of the *dies a quo* or, when there is no corresponding date, the last day of the last month.
- 3. Where a time-limit is expressed in months and days or fractions of months, whole months shall be counted first, and afterwards the days or fractions of months; for the purpose of calculating fractions of months, a month shall be deemed to consist of 30 days.

Article 5

Saturdays, Sundays and official holidays shall count when calculating a time-limit. However, where the *dies ad quem* of a time-limit before the expiry of which an act shall be performed is a Saturday, a Sunday, an official holiday or a day which shall be considered as an official holiday, the time-limit shall be extended to include the first working day thereafter.

Article 6

No reservation may be made to the provisions of this Convention.

Article 7

This Convention shall be without prejudice to the provisions of any treaties, conventions or bilateral or multilateral agreements concluded or to be concluded or any regulation made for their application, which govern particular aspects of the matters covered by this Convention.

Final clauses

Article 8

- 1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3. In respect of a signatory State ratifying or accepting subsequently, the Convention

shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 9

Each Contracting Party may take the measures it deems appropriate concerning the application of this Convention to time-limits running at the time of entry into force of the Convention in respect of that Party.

Article 10

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 11

Each Contracting Party shall, when depositing its instrument of ratification, acceptance or accession, by a notification addressed to the Secretary General of the Council of Europe, specify which days are or shall, for the purposes of Article 5 of this Convention, be considered to be official holidays in its territory or in a part thereof. Any changes in respect of the particulars of such notification shall thereafter be notified to the Secretary General of the Council of Europe.

Article 12

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 13 of this Convention.

Article 13

1. This Convention shall remain in force indefinitely.
2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 14

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a. any signature;
- b. any deposit of an instrument of ratification, acceptance or accession;
- c. any date of entry into force of this Convention in accordance with Article 8 thereof;
- d. any notification received in pursuance of the provisions of paragraph 2 of Article 1;
- e. any notification received in pursuance of the provisions of Article 11;
- f. any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 12;
- g. any notification received in pursuance of the provisions of Article 13 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Basle, this 16th day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

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