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SCSL-04-14-T
(14171-14181)

14171

SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

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

Interim Registrar: Mr Lovemore Munlo

Date: 29 November 2005

THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

SCSL-2004-14-T

URGENT FOFANA MOTION FOR RECONSIDERATION OF THE 25 NOVEMBER 2005 ORAL RULING AND THE 28 NOVEMBER 2005 CONSEQUENTIAL ORDER OF TRIAL CHAMBER I OR, ALTERNATIVELY, REQUEST FOR LEAVE TO APPEAL BOTH

For the Office of the Prosecutor:
Mr Luc Côté
Mr James C. Johnson
Ms Nina Jørgensen
Mr Mohammed Bangura

For Moinina Fofana:
Mr Victor Koppe
Mr Arrow Bockarie
Mr Michiel Pestman
Mr Andrew Ianuzzi

For Samuel Hinga Norman:
Mr John Wesley Hall
Dr Bu-Buakei Jabbi
Ms Clare DaSilva
Mr Kingsley Belle

For Allieu Kondewa:
Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana
Ms Susan Wright
Mr Martin Michael

SPECIAL COURT FOR SIERRA LEONE
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NAME Neil Gibson
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TIME 9:47

INTRODUCTION

1. Considering the oral ruling delivered at the 25 November 2005 status conference[1] (the "Oral Ruling") and the consequential order dated 28 November 2005[2] (the "Consequential Order"), directing court-appointed counsel for Mr Fofana (the "Defence") to file certain materials by 5 December 2005, the Defence hereby moves the Chamber to reconsider both the Oral Ruling and certain aspects of the Consequential Order. In the alternative, the Defence hereby seeks leave of the Chamber to appeal those aspects of the Oral Ruling and Consequential Order it finds objectionable.

2. Acknowledging the Chamber's strong disinclination to address the legal submissions advanced by the Defence—first by formal written request and later orally in open court—the Defence respectfully submits that it is duty-bound to object to rulings that it considers contrary to law and to ensure that, in the interests of its client, matters are litigated with the benefit of full briefing by both sides in order to assist the Chamber to arrive at reasoned decisions. Full participation by the parties is crucial to an effective judicial process.

3. Further, the Defence respectfully submits that aspects of the Consequential Order are contrary to certain fundamental rights afforded to criminal defendants. To wit, paragraph (a)(i) of the Consequential Order, directing the Defence to disclose the names of its intended witnesses by 5 December 2005, violates the principle of equality of arms. Further, paragraph (d) of the same document, ordering the creation of a detailed chart outlining the proposed defence case, offends the presumption of innocence enjoyed by Mr Fofana.

4. The Defence submits that a failure by the Chamber to address these novel and important legal questions amounts to exceptional circumstances, and that consequently the Office of the Prosecutor (the "Prosecution") would gain an unfair procedural advantage while the Defence would be forced to undertake tasks not commensurate with the presumption of innocence. Accordingly, the Defence, in the alternative, seeks leave to appeal the Oral Ruling and Consequential Order.

5. Again, the Defence assures the Chamber that it will be ready to commence its case promptly on 17 January 2006.

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[1] *Prosecutor v Norman et al.*, SCSL-2004-14-T, Transcript of 25 November 2005 Status Conference (the "25 Nov. Tr.") at 18:8-19.

[2] *Norman et al.*, SCSL-2004-14-T-489, Trial Chamber I, 'Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case', 28 November 2005.

BACKGROUND

6. On 21 October 2005, the Chamber issued its 'Order Concerning the Preparation and Presentation of the Defence Case' (the "Original Order") directing the Defence to submit the following items by 17 November 2005: (i) a list of witnesses including their names, summaries of their respective testimony, relevant points in the Indictment to which they will testify, and estimated length and manner of such testimony; (ii) a list of expert witnesses; (iii) a list of exhibits; and (iv) a detailed chart outlining and categorizing all proposed defence evidence[3].

7. A status conference was held pursuant to the Original Order on 27 October 2005[4].

8. On 17 November 2005, the deadline for compliance with the Original Order, counsel for the three accused submitted their 'Joint Defence Materials Filed Pursuant to 21 October 2005 Order of Trial Chamber I and Request for Partial Modification Thereof'[5] (the "Joint Materials and Request"). That document largely contained reasoned objections in support of a request for modification of the Original Order, though it also included some of the materials sought by the Original Order.

9. The following day, the Chamber issued a scheduling order for a status conference to be held on 23 November 2005[6]. Upon request of the Defence and subsequent order of the Chamber, the conference was rescheduled to 25 November 2005 and the Prosecution was invited to file submissions in response to the Joint Materials and Request by 24 November 2005[7], which it did[8].

10. At the 25 November 2005 status conference, the Defence reiterated certain arguments contained in the Joint Materials and Request and suggested that that document be deemed a motion, the Prosecution's materials be deemed a response, and the Defence be given an

[3] *Norman et al.*, SCSL-2004-14-T-474, Trial Chamber I, 'Order Concerning the Preparation and Presentation of the Defence Case', 21 October 2005.
[4] *Norman et al.*, Transcript of 27 October 2005 Status Conference (the "27 Oct. Tr.").
[5] *Norman et al.*, SCSL-2004-14-T-482, 'Joint Defence Materials Filed Pursuant to 21 October 2005 Order of Trial Chamber I and Request for Partial Modification Thereof', 17 November 2005.
[6] *Norman et al.*, SCSL-2004-14-T-484, Trial Chamber I, 'Scheduling Order for Status Conference', 18 November 2005.
[7] *Norman et al.*, SCSL-2004-14-T-485, Trial Chamber I, 'Order Re-Scheduling Status Conference and Order for Submission by the Prosecution', 21 November 2005.
[8] *Norman et al.*, SCSL-2004-14-T-486, 'Prosecution Submissions on the Joint Defence Materials Filed Pursuant to 21 October 2005 Order of Trial Chamber I and Request for Partial Modification Thereof', 23 November 2005 (the "Prosecution Submissions").

opportunity to reply by the end of the day[9]. After some deliberation, the Chamber made the following oral ruling (the "Oral Ruling"):

> After deliberating on the Defence request for converting their written joint submissions dated 17 November 2005 interim [*sic*] motion, the Bench is strongly disinclined to accede to the said request on two grounds. Namely, one, that the document amounts to a contravention of the Court's order of 21 October 2005; and two, that there is no legal or statutory basis for such a request.
>
> Further, the Bench strongly opines that the Defence, having failed to comply with the Court's order, cannot now seek to benefit from such non-compliance. Orders issued by the Court must be complied with[10].

11. The Consequential Order was issued by the Chamber on 28 November 2005.

SUBMISSIONS

The Defence Complied with the Original Order

12. As noted above, the Defence sought modification of the Original Order by written request and upon subsequent oral motion[11]. However, the Chamber denied the request on the grounds that it amounted to "a contravention of the" Original Order and that there exists no "legal or statutory basis for such a request"[12]. Further, the Chamber indicated that the Defence, given its alleged failure to comply with the Original Order, would not be permitted "to benefit from such non-compliance"[13]. The Defence respectfully takes exception to each of these aspects of the Oral Ruling.

The Filing of Reasoned Objections is a Form of Compliance

13. The Defence submits that a request for modification of an order, based on clearly articulated legal objections and filed within the time-limit prescribed by such order, is a form of compliance. Accordingly, the Defence objects to the propositions—advanced by the Prosecution and the Chamber—that it "disregarded"[14] certain aspects of the Original Order or

[9] 25 Nov. Tr. at 15:3-7.
[10] *Ibid.* at 18:8-19. The Defence notes that it did not request the Chamber to "convert" the Joint Materials and Request into a motion, but rather asked the Chamber to "deem" it such. The choice of wording was deliberate, and the Defence submits that the difference is significant: Where *convert* connotes a change in the nature or form of the document, *deem* simply indicates regarding the document as what it already is.
[11] *See* Joint Materials and Request and 25 Nov. Tr. at 15:3-7.
[12] 25 Nov. Tr. at 18:11-14.
[13] *Ibid.* at 18:15-17.
[14] Prosecution Submissions, ¶ 7.

that its submissions were "in contravention"[15] thereof. To the contrary, where the Defence found certain portions of the Original Order objectionable, it advanced reasoned arguments in support of their reconsideration; otherwise, compliance was complete. The Joint Materials and Request do not signal bad faith or insubordination, but rather the Defence's desire to protect its client's rights and its belief, upon reflection, that aspects of the Original Order—as well as the Consequential Order—are contrary to certain bedrock principles of criminal law.

There are Both Legal and Statutory Bases for a Request for Modification

14. In seeking to protect the rights of its client, the Defence is duty-bound to raise objections it feels are based on legitimate legal grounds. There are both legal and ethical aspects to this duty: While the Defence has not only contracted with the Special Court to defend Mr Fofana, its individual team members are further bound by the ethical obligations imposed upon them by their municipal jurisdictions as well as those mandated by the Special Court. The Defence acts pursuant to these duties when it seeks modification or reconsideration of orders it finds objectionable as infringing upon the rights of its client.

15. Further, there is a statutory basis in the Special Court's own Rules of Procedure and Evidence (the "Rules) for such a request. Rule 73 provides, in pertinent part, that "either party may move before ... a Trial Chamber for *appropriate* ruling or relief"[16]. The Defence submits that it is not only appropriate, but imperative, to seek modification of orders it finds contrary to law.

16. Finally, both the International Criminal Tribunal for the Former Yugoslavia (the "ICTY") and the International Criminal Tribunal for Rwanda (the "ICTR") have acknowledged that a Trial Chamber possesses the inherent discretionary power to reconsider its own decision[17]. This is also the case in most common-law municipal legal systems of the world. Accordingly, the Defence takes issue with the Chamber's position that there is no legal or statutory basis for its repeated request.

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[15] 25 Nov. Tr. at 18:11-12.
[16] Rule 73 ("Motions") (emphasis added).
[17] *See, e.g., Prosecutor v. Bagosora et al.*, ICTR-98-41-A, Appeals Chamber, 'Interlocutory Appeal From Refusal to Reconsider Decisions Relating to Protective Measures and Application for a Declaration of Lack of Jurisdiction', 2 May 2002 (*citing Ibid*, Trial Chamber, 'Decision on Defence Motion for Reconsideration of the Decision Rendered on 29 November 2001 and 5 December 2001 and for a Declaration of Lack of Jurisdiction', 28 March 2002, ¶¶ 21-22. *See also Prosecutor v. Hadzihasanovic et al.*, IT-01-47-PT, Trial Chamber II, 'Decision on Joint Defence Oral Motion for Reconsideration', 18 July 2003 (implicitly recognizing such power by entertaining the motion).

The Defence Should Not Be Estopped From Advancing Its Arguments

17. The Defence submits that the third and final aspect of the Oral Ruling—that the Defence should not be permitted to benefit from its alleged non-compliance[18]—is somewhat enigmatic. It is unclear to the Defence whether the Chamber is simply reiterating its belief that parties may never object to its orders[19] or, rather, relying on a theory of estoppel by laches[20] or implied waiver[21] as articulated by the Prosecution[22].

18. As noted above, the Defence takes the position that it may object to orders, provided it advances colourable legal arguments in support thereof. With respect to the equitable doctrines of laches and waiver, the Defence submits that these generally do not apply to criminal proceedings[23]. Even assuming they had some limited application here, *laches* would likely require a showing of both unreasonable and unexcused delay coupled with material prejudice as a result of such delay[24] and *waiver* a clear intent to waive some right. Not only has the Chamber failed to give the Defence an opportunity to explain the alleged delay, there has been no claim—let alone a showing—of prejudice to any party to the proceedings. As the Defence has mentioned several times, it will be ready for trial on 17 January 2005. Further, concerning a potential waiver, there is nothing in the transcript of the 27 October 2005 status conference to indicate an unequivocal intent to waive the Defence's right to subsequently move the Chamber for reconsideration of its Original Order. Mere attendance at that conference and the comments made therein are inconclusive on that point.

19. In any event, the question as to whether either one of these somewhat nuanced municipal doctrines has application within the contours of international criminal law is—as far as

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[18] 25 Nov. Tr. at 18:15-17 ("Further, the Bench strongly opines that the Defence, having failed to comply with the Court's order, cannot now seek to benefit from such non-compliance".)

[19] *Ibid.* at 11:18-20 ("The rules are quite clear and explicit in this respect, and do not give any leeway unless the Court so authorizes".)

[20] *Estoppel by laches* is "an equitable doctrine by which some courts deny certain relief to a claimant who has unreasonably delayed or been negligent in asserting a claim." Bryan A. Garner, Ed., BLACK'S LAW DICTIONARY, 8TH ED, (West 2004) at 590.

[21] *Implied waiver* is "a waiver evidenced by a party's decisive, unequivocal conduct reasonably inferring the intent to waive". *Ibid.* at 1611.

[22] *See* Prosecution Submissions, ¶ 9.

[23] In fact, the Rules appear to reject such theories of preclusion as evidenced by Rule 67(B) which does not prevent a defendant from relying on a defence of alibi or other special defence if he fails to notify the Prosecutor of such intent prior to the commencement of the trial.

[24] *See, e.g., Rizzo v. United States*, 821 F.2d 1271 (7th Cir. 1987) (Before the doctrine of *laches* could be applied in a criminal case, the delay must have been inexcusable and must have prejudiced the government.); *People v. Bell*, 179 Misc. 2d 410 (N.Y. 1998) (New York law is consistent that *laches* requires unreasonable delay resulting in actual prejudice or disadvantage to another.)

the Defence can tell—a novel one. Accordingly, the Chamber should not have dismissed a colourable claim on such grounds without the assistance of full briefing[25] on the issue by both parties.

20. Although the Defence acknowledges that its request for modification, ideally, ought to have been made at an earlier stage in the proceedings, Mr Fofana should not now be penalized because the objections have come before the Chamber at what it considers to be an inconvenient time, especially without giving the Defence an opportunity to be sufficiently heard on the matter[26]. The Defence submits that procedural regularity—what the Chamber often refers to as the "tidiness of the record"—should not take precedence over the rights of the accused to have legitimate legal arguments disposed of in the "normal fashion"[27]. Although not technically styled as such, the document filed with the Court by the Defence on 17 November 2005 was undoubtedly an application to the Chamber for appropriate ruling and relief, *i.e.*, a motion[28]. Accordingly, the Defence submits that it would be manifestly unfair to disregard reasoned arguments advanced on behalf of an accused person because they were not filed as soon as they might have been or because they were somehow mis-captioned[29].

Paragraph (a)(i) of the Consequential Order
Violates the Principle of Equality of Arms

21. The Defence hereby adopts, by reference, the arguments advanced in the Joint Materials and Request[30] and only briefly reiterates them below. However, the Defence concedes the point raised by the Prosecution with respect to the number of days prior to the testimony of its witnesses it was required to disclose their biographical data—21 rather than 14[31]. The Defence modifies its previous submissions accordingly.

[25] By this, the Defence means the filing of a motion, response, and reply as well as, if possible, oral argument.
[26] Following Justice Thompson's delivery of the Chamber's ruling, the Defence sought leave to make two brief comments, one of which was meant to provide an explanation for the timing of the Joint Materials and Request. However, the Presiding Justice refused to allow further discussion of the matter: "No, we have dealt with that and we are not prepared to entertain any more comments. So we have disposed of it". 25 Nov. Tr. at 22:12-14.
[27] *See* 28 Nov. Tr. at 11:24-27 ("In compliance with an order there is no rule, *per se*, for objection. If objections are to be made, they must be made in the normal fashion by a motion or application to the Court, and we will dispose of it in due course".) The Defence submits that it had already complied with this directive.
[28] A motion is "a written or oral application requesting a court to make a specified ruling or order". Bryan A. Garner, Ed., BLACK'S LAW DICTIONARY, 8TH ED, (West 2004) at 1036.
[29] Most respectfully, if the Chamber intends to rely on certain talismanic words or phrases in the course of the proceedings, the Defence submits that such terms should be clearly made known to the parties well in advance.
[30] *See* ¶¶ 12-19, 22.
[31] *See* Prosecution Submissions, ¶ 19.

22. The principle of equality of arms imposes a requirement for procedural equality between the accused and the accuser[32]. The Defence, therefore, takes the categorical position that any procedural advantage afforded to the Prosecution operates as a procedural disadvantage to the Defence. The Defence submits that the Prosecution should not enjoy a collateral procedural benefit because its witnesses were afforded protective measures.

Paragraph (d) of the Consequential Order
Offends the Presumption of Innocence

23. Again, the Defence adopts, by reference, the arguments advanced in the Joint Materials and Request[33] and at the recent status conference[34] and briefly summarises them here.

24. The presumption of innocence governs the application of the burden of proof[35]. While the Defence acknowledges that International Tribunals require a degree of disclosure on the part of accused persons, it submits that the materials called for in paragraph (d) of the Consequential Order are so broad as to violate the presumption. Simply put, this aspect of the order seeks to compel the Defence to undertake a task not commensurate with its burden of proof[36]. Given the materials called for in paragraphs 2(a-c) of the Original Order, the Defence fails to see how the production of an additional chart will further enhance the Chamber's control of the trial proceedings—which should be concerned with issues of orderliness and efficiency[37], but not with where and how the Defence seeks to allocate its evidence. That, the Defence submits, is a matter for final submissions. In addition to being unduly burdensome, the Chamber appears to impress an obligation upon Mr Fofana to raise a defence—something he is clearly not required to do[38].

25. Accordingly, the Defence respectfully requests the Chamber to reconsider its Oral Ruling and Consequential Order in light of the arguments advanced above. Should the Chamber

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[32] *See* Richard May and Marieke Wierda, INTERNATIONAL CRIMINAL EVIDENCE, (Transnational 2002), § 8.16.
[33] *See* ¶¶ 4-6, 30-32.
[34] 25 Nov. Tr. at 29:16-23.
[35] *See* May and Wierda, *supra* at n.32, § 8.67.
[36] Having raised a defence—which the Defence adds, the accused is under no obligation to do—an accused person is "usually not obliged to prove beyond a reasonable doubt that the defence applies; rather, once the accused has discharged the evidentiary burden—that is, the burden of proving that the defence might apply—the burden shifts back to the prosecution to prove beyond a reasonable doubt that the defence does not apply. On another view, having raised the defence, the accused has the persuasive burden of proving, usually on a balance of probabilities, that the defence applies". John Jones and Richard Powles, INTERNATIONAL CRIMINAL PRACTICE, 3RD ED, (Oxford 2003), § 6.3.4.
[37] The test for whether a Chamber should issue an order under the Rules is whether to do so is "necessary for … the preparation or conduct of the trial". Rule 54; *see also* Jones and Powles, *supra* at n.36, § 8.4.3.
[38] *See* n.36 *supra.*

chose to deny the instant motion for reconsideration, the Defence hereby seeks leave to appeal the Oral Ruling and Consequential Order.

Leave to Appeal

26. While there is no right to appeal the denial of a motion under Rule 73, the Rules provide that leave to make an interlocutory appeal may be granted by the Trial Chamber "in exceptional circumstances and to avoid irreparable prejudice to a party"[39]. The Defence acknowledges that the Appeals Chamber has construed Rule 73(B) very narrowly[40] and that this Chamber has consistently noted that Rule 73(B)'s two-prong test is a conjunctive one, obliging the moving party to show *both* "exceptional circumstances" and "irreparable prejudice" before leave can be granted[41].

Exceptional Circumstances

27. The CDF trial is the first to have reached the defence-case stage at the Special Court. Accordingly, the effects of orders and decisions of this Chamber will not be limited to Mr Fofana and his co-defendants, but are likely to be felt by the six other accused persons currently facing trial before this Court. While Mr Fofana's rights are of paramount concern to the Defence, as counsel committed to championing the rights of the accused and interested in the comprehensive development of international criminal law, we cannot ignore—to use Justice Itoe's words—the "wider ramifications and fall-outs"[42] of decisions of this Chamber.

28. Two very important and heretofore unanswered questions of law have been raised by the Joint Materials and Request: First, does a procedural advantage afforded to the Prosecution—as a collateral effect of the provision of protective measures to its witnesses—amount to a procedural disadvantage to the Defence thereby violating the

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[39] Rule 73(B).
[40] *Norman et al.*, SCSL-2004-14-AR73-397, Appeals Chamber, 'Decision on Amendment of the Consolidated Indictment', 18 May 2005, ¶ 43 (emphasis added).
[41] *See Norman et al.*, SCSL-2004-14-406, Trial Chamber I, 'Decision on Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on First Accused's Motion on Abuse of Process', 24 May 2005, at p.2. *quoting Prosecutor v. Sesay et al.*, SCSL-2004-15-014, Trial Chamber I, 'Decision on Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution's Motions for Joinder', 13 February 2004, ¶ 10 ("[T]his rule involves a high threshold that must be met before this Chamber can exercise its discretion to grant leave to appeal. The two limbs to the test are clearly conjunctive, not disjunctive; in other words, they must *both* be satisfied") (emphasis in original); *see also Prosecutor v. Brima et al.*, SCSL-2004-16-308, Trial Chamber II, 'Decision on Joint Defence Application for Leave to Appeal Against the Ruling of Trial Chamber II of 5 April 2005', 15 June 2005, ¶ 14.
[42] 25 Nov. Tr. at 8:23-25.

principle of equality of arms? And further, can the production of certain material—putatively ordered pursuant to Rule 54 to enable the Chamber to affect control over the proceedings—offend the presumption of innocence?

29. The Defence submits that to leave these novel questions unanswered at this crucial stage of the proceedings without the benefit of full briefing by both parties would amount to exceptional circumstances.

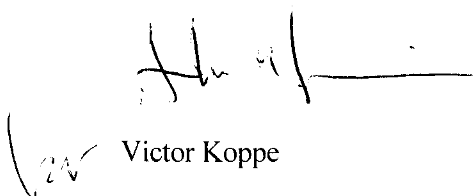
Irreparable Prejudice

30. As a result of the Oral Ruling and compliance with the Consequential Order as it stands, the Prosecution would have more time to prepare for the cross-examination of Defence witnesses than the Defence had to prepare for Prosecution witnesses. Further, the Defence would be forced to spend precious time—at a critical moment of its case preparation—producing a document to which the Prosecution is not entitled and which will not materially aid the Chamber it its trial-management role. The Defence submits that the danger of such prejudice is self-evident.

CONCLUSION

31. For the reasons stated above, the Defence respectfully requests the Chamber to reconsider its Oral Ruling and Consequential Order and adopt the proposals previously advanced by the Defence. Alternatively, the Defence seeks leave to appeal both the Oral Ruling and Consequential Order. Given the time-sensitive nature of the issues, the Defence respectfully requests that the Prosecution file its response, if any, as soon as possible and that the Chamber treat the instant motion with the urgency the Defence submits it deserves. Finally, the Defence requests that the filing of this Motion operate as a stay of the disputed portions of the Consequential Order pending a final determination of the matter.

COUNSEL FOR MOININA FOFANA



Victor Koppe

DEFENCE LIST OF AUTHORITIES

Statutes & Rules

1. SCSL Rules of Procedure and Evidence: Rules 54, 67, and 73

Jurisprudence

2. *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73-397, Appeals Chamber, 'Decision on Amendment of the Consolidated Indictment', 18 May 2005

3. *Prosecutor v. Norman et al.*, SCSL-2004-14-406, Trial Chamber I, 'Decision on Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on First Accused's Motion on Abuse of Process', 24 May 2005

4. *Prosecutor v. Brima et al.*, SCSL-2004-16-308, Trial Chamber II, 'Decision on Joint Defence Application for Leave to Appeal Against the Ruling of Trial Chamber II of 5 April 2005', 15 June 2005

5. *Prosecutor v. Sesay et al.*, SCSL-2004-15-014, Trial Chamber I, 'Decision on Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution's Motions for Joinder', 13 February 2004

6. *Prosecutor v. Bagosora et al.*, ICTR-98-41-A, Appeals Chamber, 'Interlocutory Appeal From Refusal to Reconsider Decisions Relating to Protective Measures and Application for a Declaration of Lack of Jurisdiction', 2 May 2002

7. *Prosecutor v. Hadzihasanovic et al.*, IT-01-47-PT, Trial Chamber II, 'Decision on Joint Defence Oral Motion for Reconsideration', 18 July 2003

8. *Rizzo v. United States*, 821 F.2d 1271 (7th Cir. 1987)

9. *People v. Bell*, 179 Misc. 2d 410 (N.Y. 1998) (New York law is consistent that *laches* requires unreasonable delay resulting in actual prejudice or disadvantage to another.)

Other Authorities

10. Bryan A. Garner, Ed., BLACK'S LAW DICTIONARY, 8TH ED, (West 2004)

11. John Jones and Richard Powles, INTERNATIONAL CRIMINAL PRACTICE, 3RD ED, (Oxford 2003)

12. Richard May and Marieke Wierda, INTERNATIONAL CRIMINAL EVIDENCE, (Transnational 2002)