

TRIAL CHAMBER I ("The Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Pierre Boutet, Presiding Judge, Hon. Justice Bankole Thompson and Hon. Justice Benjamin Mutanga Itoe;

SEIZED OF the "Urgent Fofana Request for Leave to Appeal the 7 December 2005 Decision of Trial Chamber I", filed by Court Appointed Counsel for the Second Accused on the 12th of December, 2005 ("Motion");

NOTING the "Prosecution Response to Urgent Fofana Request for Leave to Appeal the 7 December 2005 Decision of Trial Chamber I", filed by the Prosecution on the 12th of December, 2005;

NOTING the "Fofana Reply to Prosecution Response to Urgent Fofana Request for Leave to Appeal the 7 December 2005 Decision of Trial Chamber I", filed by Court Appointed Counsel for the Second Accused on the 14th of December, 2005;

MINDFUL OF The Chamber's "Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case" of the 7th of December, 2005;

NOTING The Chamber's "Order Concerning the Preparation and Presentation of the Defence Case" of the 21st of October, 2005 ("Order of the 21st of October, 2005");

NOTING The Chamber's "Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case" of the 28th of November, 2005 ("Order of the 28th of November, 2005");

NOTING the "Additional Fofana Materials Filed Pursuant to the Disclosure Orders of Trial Chamber I", filed on the 16th of December, 2006;¹

NOTING that leave to appeal is being sought pursuant to Rule 73(B) of the Rules of Procedure and Evidence of the Special Court ("Rules") which provides that:

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

NOTING in this respect The Chamber's prior ruling in the case of *Prosecutor against. Sesay, Kallon and Gbao*, where it stated that:

[T]he overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant's case must reach a level of exceptional circumstances and irreparable prejudice. Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the

¹ Counsel for Fofana thereby filed the names of their proposed witnesses in compliance with paragraph 2(a)(i) and an evidentiary chart in compliance with paragraph 2(d) of the Order of the 21st of October, 2005.

rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals.²

NOTING that Rule 73(B) of the Rules does not confer a right of interlocutory appeal but only grants leave to appeal where this two limbs' test of exceptional circumstances and irreparable prejudice has been established; the criteria of the test are conjunctive and both must be satisfied;³

NOTING that "the probability of an erroneous ruling by the Trial Chamber does not, of itself constitute "exceptional circumstances" for the purposes of a Rule 73(B) application";⁴

CONSIDERING that the existence of exceptional circumstances in this case is said to be the alleged abuse of discretion by The Chamber resulting in an alleged erroneous ruling by The Chamber;⁵

CONSIDERING that Court Appointed Counsel's attempt to justify such an alleged abuse of discretion by The Chamber is based on the *prima facie* misapplied concepts of the principle of equality of arms and presumption of innocence;⁶

CONSIDERING that such an allegation would not be sufficient to constitute exceptional circumstances;

CONSIDERING that the stay of compliance with The Chamber's Order of the 21st of October, 2005 and Order of the 28th of November, 2005, requested by Court Appointed Counsel, is no longer necessary, given the subsequent compliance of Counsel with the said Orders of The Chamber;

PURSUANT TO Rule 73(B) of the Rules;

THE CHAMBER FINDS that the criteria of exceptional circumstances has not been satisfied and therefore **DENIES** the Motion.

Done in Freetown, Sierra Leone, this 8th day of June 2006.

[Handwritten signatures of Hon. Justice Benjamin Mutanga Itoe, Hon. Justice Perce Boutet, and Hon. Justice Bankole Thompson]

Hon. Justice Benjamin Mutanga Itoe Hon. Justice Perce Boutet
Presiding Judge
Hon. Justice Bankole Thompson



² *Prosecutor against Sesay, Kallon and Gbao*, Case No. SCSL-04-15-PT, Decision on Prosecution Application for Leave to File an Interlocutory Appeal against Decision on Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, 1 June 2004, para. 21.

³ *Inter alia, Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-PT, "Decision on Prosecution's Application for Leave to File an Interlocutory Appeal against the Decision of the Prosecution's Motions for Joinder", 13 February 2004, para. 10.

⁴ *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, "Decision on Application by the Second Accused for Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9th December 2004 on Issue of Urgent Concern to the Accused Morris Kallon", 2 May 2005, para. 20.

⁵ Motion, para. 2.

⁶ *Ibid.*, paras 14-16.