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SCSL-04-14-AR73(B)-662

(18842 - 18854)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Justice George Gelaga King, Presiding
Justice Geoffrey Robertson
Justice Emmanuel Ayoola
Justice Renate Winter
Justice Raja Fernando

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 13 July 2006

THE PROSECUTOR **Against** **Samuel Hinga Norman**
Moinina Fofana
Allieu Kondewa

Case No. SCSL-04-14-AR73(B)

PUBLIC

PROSECUTION RESPONSE TO NORMAN NOTICE OF APPEAL AND SUBMISSIONS AGAINST THE TRIAL CHAMBER'S DECISION ON THE ISSUANCE OF A SUBPOENA

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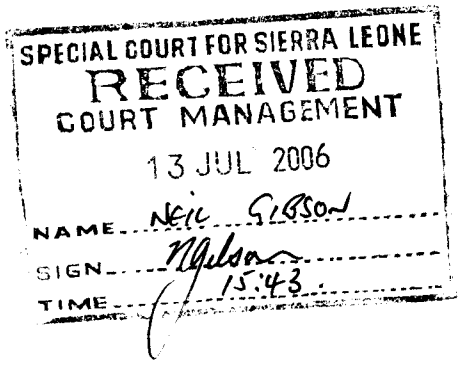

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I. INTRODUCTION

1. The Prosecution files this Response to the Notice of Appeal and submissions ("**Norman Appeal**") filed on behalf of the First Accused ("**Defence**") on 6 July 2006.[1]
2. The Defence appeals against the Trial Chamber's 14 June 2006 decision, denying a Defence motion for the issuance of a subpoena to H.E. Alhaji Dr Ahmad Tejan Kabbah, President of the Republic of Sierra Leone ("**Impugned Decision**").[2] The Impugned Decision has attached to it a separate concurring opinion by Justice Itoe ("**Separate Concurring Opinion**") and a dissenting opinion by Justice Thompson ("**Dissenting Opinion**").
3. The Trial Chamber granted the Defence leave to appeal against the Impugned Decision on 28 June 2006 ("**Decision on Leave to Appeal**").[3]
4. The original motion requesting the issuance of a subpoena ("**Motion**") was filed on 15 December 2005,[4] with the Prosecution response, response of the Attorney-General, and Defence reply filed on 13 January 2006[5], 23 January 2006[6] and 18 January 2006[7] respectively. An oral hearing was held on 14 February 2006.[8]

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[1] *Prosecutor v Norman, Fofana, Kondewa*, SCSL-2004-14-T-649, "Norman Notice of Appeal and Submissions against the Trial Chamber's Decision on the Issuance of a *Subpoena ad Testificandum* to H.E. Alhaji Dr. Ahmed Tejan Kabbah, President of the Republic of Sierra Leonef", 6 July 2006 ("**Appeal**").

[2] *Prosecutor v Norman, Fofana, Kondewa*, SCSL-2004-14-T-617, "Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H. E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone", 14 June 2006 ("**Impugned Decision**"), and "Separate Concurring Opinion of Hon. Justice Benjamin Mutanga Itoe on the Chamber Majority Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H. E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone", 14 June 2006 ("**Separate Concurring Opinion**"), and "Dissenting Opinion of Hon. Justice Bankole Thompson on Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H. E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone", 14 June 2006 ("**Dissenting Opinion**").

[3] *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-15-T-643, "Decision on Motions by the First and Second Accused for Leave to Appeal the Chamber's Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone", 28 June 2006 ("**Decision on Leave to Appeal**").

[4] *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-523, "Norman Motion for Issuance of a *Subpoena Ad Testificandum* to President Ahmed Tejan Kabbah, President of the Republic of Sierra Leone", 15 December 2005 ("**Motion**").

[5] *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-529, "Prosecution Response to Norman Motion for Issuance of a Subpoena ad Testificandum to President Ahmad Tejan Kabbah", 13 January 2006 ("**Response to Motion**").

[6] *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-541, "The Response of the Attorney-General and Minister of Justice to the Applications Made by Moinina Fofana and Samuel Hinga Norman for the Issuance of a Subpoena ad Testificandum to President Alhaji Dr Ahmad Tejan Kabbah", 23 January 2006.

[7] *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-532, "First Accused Reply to the Prosecution Response to Norman Motion for Issuance of a Subpoena ad Testificandum to President Ahmed Tejan Kabbah", 16 January 2006.

[8] *Prosecutor v Norman, Fofana, Kondewa*, Trial Transcript, 14 February 2006.

5. The Prosecution submits that the Appeal should be denied, for the reasons given below.

II. URGENCY OF THE APPEAL

6. The Prosecution would request that the Appeals Chamber deal with the Appeal as a matter of urgency, in view of the present stage of the proceedings before the Trial Chamber. After the parties have completed the presentation of all of their evidence, the case cannot be closed unless and until this appeal has been decided.

III. STANDARD OF REVIEW ON APPEAL

7. The Prosecution repeats and relies on the submissions in paragraphs 7-12 of the "Prosecution Response to Fofana Notice of Appeal of the Subpoena Decision and Submissions in Support Thereof", filed by the Prosecution in this case on 13 July 2006 ("**Prosecution's Response to the Fofana Appeal**").

IV. PRINCIPLES OF PRECEDENT

8. The Prosecution repeats and relies on the submissions in paragraphs 13-16 of the Prosecution's Response to the Fofana Appeal.

V. THE DEFENCE'S FIRST AND SECOND GROUNDS OF APPEAL

9. The Defence's first ground of appeal is that:

> The Separate Concurring Opinion contains an error of law in its finding that President Kabbah enjoys immunity not only against criminal or civil action, but also against the issuance against him or service on him of legal processes such as a subpoena.[9]

10. The Defence's second ground of appeal is that:

> The Separate Concurring Opinion contains an error in its holding that since the Special Court would not have the means of enforcing a subpoena order against President Kabbah as a sitting Head of State, it would not make such an order so as to avoid acting in vain or engaging in an exercise in futility or be thereby exposed to ridicule and contempt.[10]

11. The majority of the Trial Chamber, in rendering the Impugned Decision, did not address the issue of whether the President of Sierra Leone can be subject to the subpoena power

[9] Norman Appeal, para 22.
[10] Norman Appeal, para 25.

of the Special Court. Although Judge Itoe dealt with this issue in a Separate Concurring Opinion, this separate opinion does not form part of the decision of the Trial Chamber. The actual decision of the Trial Chamber (the Impugned Decision) does not address this issue at all. The part of the Separate Concurring Opinion dealing with the immunity of the President is what would be described in a majority opinion as an *obiter dictum*, and cannot as such be the subject of an appeal.

12. In the proceedings before the Trial Chamber, the Prosecution position was that it was unnecessary for the Trial Chamber to address this issue, since the motion for a subpoena should be rejected on the ground that the Defence had not satisfied the requirements for the issuance of a subpoena.[11] The Prosecution additionally submits that it is unnecessary for the Appeals Chamber to address this question, since the appeal should be denied for the reasons given below.

V. THE DEFENCE'S THIRD GROUND OF APPEAL

13. The Defence's third ground of appeal is that:

> The Majority Decision and the Separate Concurring Opinion contain errors in the application of too high a threshold for the standard for compliance with Rule 54 of the Rules of Procedure and Evidence ["**Rules**"] with the result that the rights of the Accused were undermined. The errors include the following:
>
> (a) The extension of the "necessity" requirement to the relevant testimony and not merely to the order or subpoena as such;
>
> (b) The random or even indiscriminate requirement of a high degree of specificity for both the relevant testimony and the issue or charges it relates to;
>
> (c) The application of the same high threshold irrespective of the type of material or kind of evidence that is the subject of the subpoena application;
>
> (d) The rigid and indiscriminate application of a test of whether the relevant testimony may be obtained from another source ('last resort requirement'), which is not stipulated in the Rule.

14. Rule 54 of the Special Court's Rules states:

> At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

15. The essence of the Defence argument is that the Trial Chamber applied an unduly high

[11] Response to Motion, paras. 20-21.

standard for the issuance of a subpoena pursuant to Rule 54, with the result that the rights of the Accused were undermined.

16. The Prosecution repeats and relies on the submissions in the Prosecution's Response to the Fofana Appeal, and makes the following additional submissions.

17. **Paragraph 26 of the Norman Appeal** argues that the approach taken by the Impugned Decision involves an "unrealistically too high a threshold of the standard and test for compliance" with Rule 54. For the reasons given in the Prosecution's Response to the Fofana Appeal, it is submitted that there is nothing unrealistically high about the standard, and on the contrary, the approach of the Trial Chamber is one of common sense.[12]

18. **Paragraph 26(a) of the Norman Appeal** argues that the approach adopted by the Trial Chamber emphasizes the *necessity of the evidence*, rather than the *necessity of the subpoena*. For the reasons given in paragraph 31 of the Prosecution's Response to the Fofana Appeal, it is submitted that this is not the case. When considering an application for a subpoena, the Trial Chamber is concerned with the necessity *of the subpoena*, but this requires a consideration of whether anticipated evidence may materially assist the applicant's case. The question is not whether the evidence is *necessary* to the applicant, but whether the evidence may materially assist the applicant's case.

19. **Paragraph 26(b) of the Norman Appeal** argues that the approach adopted by the Trial Chamber involves a "random or even indiscriminate requirement of a high degree of specificity for both the relevant testimony and the issue(s) or charge(s) it relates to". This argument appears to be linked to the argument in the last part of paragraph 27 of the Norman Appeal, in which it is suggested that as the Defence has no disclosure obligations under the Rules, the Defence should not be required to disclose the evidence that it is seeking (at least not in any great detail) when applying for a subpoena. It is submitted that this argument must be rejected for the reasons given in paragraph 34 of the Prosecution's Response to the Fofana Appeal. In relation to some issues in a case (such as the issue whether or not there was an armed conflict in Sierra Leone at the material times), the number of witnesses capable of giving relevant evidence is likely to number in the tens or hundreds of thousands. Even in relation to more specific issues such as the

[12] Prosecution's Response to the Fofana Appeal, para. 34.

command structure of one of the parties to the conflict, or the existence of a joint criminal enterprise within one party to the conflict, the number of persons potentially capable of giving relevant evidence will be very large. The Defence cannot be the sole arbiter of whether a subpoena is necessary. An applicant for a subpoena must expect to be required to demonstrate to the Trial Chamber why the subpoena is necessary, which involves showing how the anticipated evidence may materially assist the applicant's case, and why the party cannot obtain the evidence it seeks without a subpoena. In order to be satisfied of this, the Trial Chamber may expect the applicant to indicate the nature of the testimony that it is expected that the addressee of the subpoena can give. There is nothing "random" or "indiscriminate" about this. The requirements of Rule 54 are not intended to put the Defence to a procedural disadvantage by requiring the Defence to disclose its strategy for the presentation of its case. What the applicant for a subpoena is required to do is to demonstrate a reasonable basis for the belief that the prospective witness is likely to give information that will materially assist the applicant's case with regards to clearly identified issues.[13]

20. **Paragraph 26(c) of the Norman Appeal** argues that the approach adopted by the Trial Chamber wrongly applies the same high standard to all forms of evidence, whether the evidence is a document or the testimony of a witness with whom the Defence has not yet spoken. The Prosecution submits that this is not correct. The Impugned Decision expressly acknowledges that the test it enunciates needs to be applied in a "reasonably liberal way" especially where the applicant has been unable to interview the witness, but as the Trial Chamber pointed out, an applicant can not be permitted to undertake a "fishing expedition".[14]

21. **Paragraph 26(d) of the Norman Appeal** argues that the approach adopted by the Trial Chamber wrongly contains a requirement that the anticipated evidence not be available by other non-coercive measures. The Norman Appeal argues that this requirement is not contained in the text of Rule 54. However, Rule 54 expressly contains the word "necessary", and a subpoena is not necessary if the anticipated evidence can be obtained by other means. (See, in particular, Prosecution's Response to the Fofana Appeal,

[13] *Ibid.*, para. 31.
[14] Impugned Decision, para. 19.

paragraph 27.) The issuance of a subpoena, which is a coercive measure potentially entailing a criminal sanction, goes against the traditional preference for cooperation. Such coercion is only justified if it is *necessary* to the truth finding process. In order to justify the necessity of a subpoena, the requesting party must meet a certain standard in terms of explaining how and why the anticipated evidence, if adduced, would assist that party's case, and why the anticipated evidence could not be obtained without a subpoena.

22. There is nothing to suggest that the Trial Chamber applied "the so-called 'last resort' requirement" rigidly or indiscriminately. In relation to two of the issues on which, according to the Defence, President Kabbah could testify, the Trial Chamber was not satisfied that the anticipated evidence could not be obtained by other means. These were the issue of the structures of the CDF and the issue of who exercised effective control over the CDF for the purposes of Article 6(3) of the Statute.[15]

23. The Prosecution submits that the Trial Chamber was entitled, in the exercise of its discretion, to so decide. Indeed, the Majority Decision did not use the phrase "last resort" in its deliberations but was simply guided by the consideration that "it would be inappropriate to issue a subpoena if the information sought to be obtained is obtainable through other means".[16]

24. **Paragraph 28 of the Norman Appeal** argues that the Impugned Decision applies an even higher standard to applicants for a subpoena than the "basic exposition" of the standard under Rule 54 by the ICTY Appeals Chamber in the *Krstić* case.[17] In that case the ICTY Appeals Chamber held:

> By analogy with applications for access to confidential material produced in other cases (where a legitimate forensic purpose for that access must be shown), ***an order or a subpoena pursuant to Rule 54 would become "necessary" for the purposes of that Rule where a legitimate forensic purpose for having the interview has been shown***. An applicant for such an order or subpoena before or during the trial would have to demonstrate a reasonable basis for his belief that there is a good chance that the prospective witness will be able to give information which will materially assist him in his case, in relation to clearly identified issues relevant to the forthcoming trial.[18]

The Prosecution submits that the Impugned Decision in fact applied the principles in the

[15] Impugned Decision, para. 53.
[16] Impugned Decision, para. 30.
[17] *Prosecutor v. Krstić*, IT-98-33-A, "Decision on Application for Subpoenas", Appeals Chamber, 1 July 2003, para 10-12.
[18] *Krstić* Appeal Decision, para. 10, emphasis added.

ICTY Appeals Chamber decisions that it relied upon. The Trial Chamber applied the chosen standard in a detailed and systematic manner as the extracts set out by the Defence in paragraph 27 of the Norman Appeal demonstrate. The *Krstić* decision did not apply a more liberal standard. The Appeals Chamber in *Krstić* expressly held that "an Applicant for such an order or subpoena (...) would have to demonstrate a reasonable basis for his belief that there is a good chance that the prospective witness will be able to give information which will materially assist him in his case, in relation to clearly identified issues relevant to the forthcoming trial."[19] It is this standard that the Impugned Decision explicitly subscribed to.[20] The position of the Defence is therefore not supported by the *Krstić* decision. Moreover, the Defence does not explain how a "disinterested application"[21] of the *Krstić* criteria could have led to the Motion being "easily granted in its entirety".[22]

25. The fact that the Appeals Chamber in *Krstić* drew an analogy with applications for access to confidential material does not alter the position. Indeed, it is logical that the standard and terminology to be applied in applications pursuant to Rule 54 is consistent.[23] The application of the test to the particular circumstances of an individual case is a matter for the Trial Chamber's discretion.

26. The Defence argues that the decision of the ICTR Trial Chamber in the *Bagosora* case provides the basis for a "disinterested application" of the relevant criteria, without suggesting that the *Bagosora* interpretation of the applicable criteria under Rule 54 should be preferred to the *Krstić* interpretation.[24] This argument is dealt with in paragraphs 21-24 of the Prosecution's Response to the Fofana Appeal, and should be rejected for the reasons there given.

27. The *Bagosora* decision[25] concerned a request by the defence for a subpoena to be issued to a former sector commander and military observer of the United Nations Assistance

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[19] Krstić Appeal Decision, para 10.
[20] Impugned Decision, para 31: "The Chamber subscribes to the determination made by the ICTY Appeals Chamber in the Kristic case."
[21] Norman Appeal, para. 28 (p. 14).
[22] *Ibid.*
[23] The Appeals Chamber referred to e.g.: *Prosecutor v Hadzihasanovic et al*, IT-01-47, "Decision on Motion by Mario Cerkez for Access to Confidential Supporting Material", Trial Chamber, 10 Oct 2001, par 10.
[24] Norman Appeal, para. 28.
[25] *Prosecutor v Bagosora* et al., ICTR-98-41-T, "Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana", 23 June 2004.

Mission in Rwanda (UNAMIR) and, at the time of the application, chief of staff of the Ghanaian army, with the assistance of the Republic of Ghana. The Trial Chamber stated that the defence first had to demonstrate that it had made reasonable attempts to obtain the voluntary cooperation of the parties involved and had been unsuccessful, and additionally had to have a reasonable belief that the prospective witness could materially assist in the preparation of the case.[26] It is noted also that the ICTR Trial Chamber went on to say in that decision:

> The Trial Chamber notes that Major General Yaache's prospective testimony is based on events he may have witnessed while serving as a member of UNAMIR. As such, he may be treated somewhat differently than as a member of his government operating in an official capacity. Consequently, he may be subpoenaed by the Tribunal. The Chamber emphasizes that the United Nations has indicated that it has no objections to an interview between major General Yaache and the Defence.[27]

This statement suggests that the outcome may have been different had the person sought to be subpoenaed been a member of the government operating in an official capacity and testifying as to events witnessed while operating in that capacity. This is a further reason why the case cannot be relied upon as providing a general statement of the test applicable for the issuance of a subpoena under Rule 54. Indeed, the suggestion is that the test may alter depending on who it is sought to subpoena and what capacity the individual was operating in at the time of the relevant events.

28. For the reasons given in paragraphs 7-12 and 39 of the Prosecution's Response to the Fofana Appeal, it is submitted that the power of a Trial Chamber to issue a subpoena, or to decline to issue a subpoena, is a discretionary power. In an appeal against an exercise of this discretionary power, the question on appeal is not whether the subpoena should or should not have been granted, but rather, whether the decision taken by the Trial Chamber was a proper exercise of its discretion. The Impugned Decision reasoned that "to require an applicant to clearly identify the issues in the forthcoming trial in relation to which the proposed testimony would be of material assistance is more in keeping with the criteria found in Rule 54 that a subpoena must be 'necessary for the purposes of an investigation or for the preparation or conduct of the trial'".[28] The Prosecution submits

[26] *Ibid*, para. 4.
[27] *Ibid*, para. 5.
[28] Majority Decision, footnote 78.

that this was correct as a matter of principle, and that it was within the discretion of the Trial Chamber to reach the conclusion that it did in this case.

29. **Paragraph 29 of the Norman Appeal** argues that it is "instructive to resort ... to the "incomparable judicial balance and astuteness" of the Dissenting Opinion.[29] However, the fact that the Dissenting Opinion took a different view from the majority does not mean that the Majority Decision is flawed.

30. **Paragraph 30 of the Norman Appeal** argues that the application of the criteria of Rule 54 by the Trial Chamber in the Impugned Decision is "stiff and over-restrictive". This paragraph of the Norman Appeal appears to complain that the Trial Chamber relied too heavily on the practice of other international criminal tribunals, thereby failing to give sufficient consideration to "the differences of the context and circumstances of the Special Court ... from those of other international criminal tribunals". However, the only relevant difference between the Special Court and other international criminal tribunals that is identified by the Norman Appeal is the fact that the Special Court operates within the country where the crimes allegedly took place. The Norman Appeal fails to explain how this difference should lead to a difference in the interpretation or application of Rule 54 in the practice of the Special Court.

31. For the reasons given in paragraphs 13-16 of the of the Prosecution's Response to the Fofana Appeal, the Prosecution submits that the established case law of the Appeals Chamber of the ICTY and ICTR should generally be applied by the Special Court where it is directly on point, and that departure from such previous decisions by the Special Court should occur only exceptionally, where there are cogent reasons in the interests of justice for so doing, and only after the most careful consideration by the Appeals Chamber of the Special Court. The Prosecution again submits that it was within the discretion of the Trial Chamber to reach the conclusion that it did in this case.

IV. CONCLUSION

32. The Prosecution does not dispute the fundamental importance of the right to examine, or have examined, witnesses, and to obtain the attendance and examination of witnesses under the same conditions as the opposite party, enshrined in Article 17(4)(e) of the

[29] Norman Appeal, para 29.

Special Court Statute. However, it is submitted that no violation of the Accused's fair trial rights have been identified in this appeal. The Defence has not been denied access to any of the applicable procedures for calling witnesses. If a potential defence witnesses refuses to appear voluntarily, the Defence may request a subpoena. In order for such a request to be successful, a certain standard under the Rules must be satisfied. If the Defence fails to satisfy that standard, it cannot argue that there has *ipso facto* been a breach of a fundamental right.

33. Rule 54 provides that a Trial Chamber "may issue ... subpoenas ... as may be ***necessary*** for the ***purposes*** of an investigation or for the preparation or conduct of the trial". In order to determine whether the criteria of Rule 54 are met, the Trial Chamber must inevitably consider the purposes of a requested subpoena and the necessity of the requested subpoena. This logically requires an inquiry into whether the evidence anticipated as a result of the subpoena could materially assist the applicant's case, and whether the anticipated evidence might be obtained by other non-coercive means. The application of these considerations to the particular circumstances of an individual case is a matter within the discretion of the Trial Chamber, looking at all of the circumstances as a whole.
34. For these reasons the Prosecution submits that the Appeal should be dismissed.

Filed in Freetown,
13 July 2006

For the Prosecution,

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A. MOTIONS, ORDERS, DECISIONS AND JUDGMENTS

SCSL Cases

Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-AR73-397, "Decision on Amendment of the Consolidated Indictment", 16 May 2005.

Prosecutor v Norman, Fofana, Kondewa, SCSL-04-14-T-523, "Norman Motion for Issuance of a *Subpoena Ad Testificandum* to President Ahmed Tejan Kabbah, President of the Republic of Sierra Leone", 15 December 2005.

Prosecutor v Norman, Fofana, Kondewa, SCSL-04-14-T-529, "Prosecution Response to Norman Motion for Issuance of a Subpoena ad Testificandum to President Ahmad Tejan Kabbah", 13 January 2006

Prosecutor v Norman, Fofana, Kondewa, SCSL-04-14-T-532, "First Accused Reply to the Prosecution Response to Norman Motion for Issuance of a Subpoena ad Testificandum to President Ahmed Tejan Kabbah", 16 January 2006.

Prosecutor v Norman, Fofana, Kondewa, SCSL-04-14-T-541, "The Response of the Attorney-General and Minister of Justice to the Applications Made by Moinina Fofana and Samuel Hinga Norman for the Issuance of a Subpoena ad Testificandum to President Alhaji Dr Ahmad Tejan Kabbah", 23 January 2006.

Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-14-T-617, "Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H. E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone", 14 June 2006.

Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-14-T-617, "Separate Concurring Opinion of Hon. Justice Benjamin Mutanga Itoe on the Chamber Majority Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H. E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone", 14 June 2006.

Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-14-T-617, "Dissenting Opinion of Hon. Justice Bankole Thompson on Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H. E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone", 14 June 2006.

Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-15-T-643, "Decision on Motions by the First and Second Accused for Leave to Appeal the Chamber's Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone", 28 June 2006.

Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-14-T-649, "Norman Notice of Appeal and Submissions against the Trial Chamber's Decision on the Issuance of a *Subpoena ad Testificandum* to H.E. Alhaji Dr. Ahmed Tejan Kabbah, President of the Republic of Sierra Leonef", 6 July 2006.

ICTY and ICTR Cases

Prosecutor v. Krstić, IT-98-33-A, "Decision on Application for Subpoenas", Appeals Chamber, 1 July 2003, (http://www.un.org/icty/krstic/Appeal/decision-e/030701.htm).

Prosecutor v Bagosora et al., ICTR-98-41-T, "Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana", 23 June 2004, ((http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040623.htm).

Prosecutor v Hadzihasanovic et al, IT-01-47, "Decision on Motion by Mario Cerkez for Access to Confidential Supporting Material", Trial Chamber, 10 Oct 2001, (http://www.un.org/icty/hadzihas/trialc/decision-e/11010AC216586.htm).