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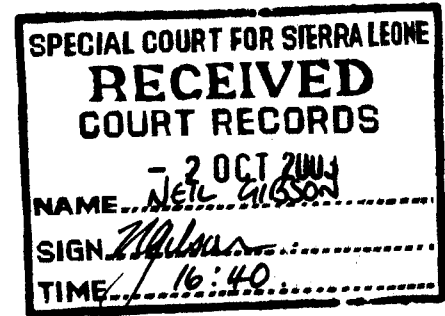
THE SPECIAL COURT FOR SIERRA LEONE

APPEAL CHAMBER

Judge Robertson: President
Judge King: Vice-President
Judge Ayoola
Judge Winter
Judge [unknown at time of drafting]

Registrar: Robin Vincent

Date: 2nd October 2003



The Prosecutor

V.

Sam Hinga Norman

Case SCSL - 2003-08-PT

**APPLICATION TO STAY DETERMINATION OF ALL
PRELIMINARY MOTIONS - DENIAL OF RIGHT TO
APPEAL**

Office of the Prosecutor:

David Crane
Luc Cote

Defence Counsel

James Blyden Jenkins-Johnston
Sulaiman Banja Tejan-Sie
Quincy Whitaker

INTRODUCTION

1. The accused is charged on an indictment with the following crimes under the *Statute of the Special Court for Sierra Leone* (the *Statute*):

COUNTS 1-2: UNLAWFUL KILLINGS

Count 1: Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute of the Court;

Count 2: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

Count 3-4: PHYSICAL VIOLENCE AND MENTAL SUFFERING

Count 3: Inhumane Acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute;

Count 4: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of Statute.

Count 5: LOOTING AND BURNING

Count 5: Pillage, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.f. of the Statute.

COUNTS 6-7: TERRORIZING THE CIVILIAN POPULATION and COLLECTIVE PUNISHMENTS

COUNT 6: Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute.

Count 7: Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.b. of the Statute.

COUNT 8: USE OF CHILD SOLDIERS

Count 8: Conscripting or enlisting children under the age of 15 years into armed force or groups or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

2. The accused applies to stay determination of all Preliminary Motions filed on his behalf and scheduled for hearing before the Appeals Chamber until the Motion concerning the *vires* of the proposed procedure has been determined by the Trial Chamber and thereafter the Appeals Chamber. Further the accused applies to stay all relevant time limits under Rule 72G pending the

determination of the said Motion. This application is made without prejudice to the submission that the Appeals Chamber has no jurisdiction to determine a matter before it has been determined in the Trial Chamber.

3. The accused submits that Rule 72 of the Rules of Procedure and Evidence whereby all Preliminary Motions which raise a serious issue of jurisdiction must be referred directly to the Appeals Chamber is *ultra vires* the Statute of the Special Court for Sierra Leone and violates the ICCPR and basic International Human Rights norms.
4. Rule 72 (as amended) provides:
 - (A) *Preliminary Motions by either party shall be brought within 21 days following disclosure by the Prosecution to the Defence of all the material envisaged by Rule 66(A)(i).*
 - (B) *Preliminary Motions by the accused are:*
 - (i) *Objections based on lack of jurisdiction;*
 - (ii) *Objections based on the form of the indictment;*
 - (iii) *Applications for severance of crimes joined in one indictment under Rule 49, or for separate trial under Rule 82(B);*
 - (iv) *Objections based on the denial of request for assignment of counsel; or*
 - (v) *Objections based on abuse of process.*
 - (C) *Objection to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Trial Chamber.*
 - (D) *The Trial Chamber shall, except as provided by Sub-Rules (E) and (F) below, dispose of preliminary motions before the trial, and its decisions thereon shall not be subject to interlocutory appeal.*
 - (E) *Preliminary motions made in the Trial Chamber prior to the Prosecutor's opening statement which raise a serious issue relating to jurisdiction shall*

be referred to the Appeals Chamber, where they will proceed to a determination as soon as practicable.

(F) Preliminary Motions made in the Trial Chamber prior to the Prosecutor's opening statement which, in the opinion of the Trial Chamber, raise an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial shall be referred to the Appeals Chamber, where they will proceed to a determination as soon as practicable.

(G) Where the Trial Chamber refers a motion to the Appeals Chamber pursuant to Sub-Rules (E) and (F) above,

- (i) the party who filed the motion shall file any additional written submission within 14 days of the date of the reference to the Appeals Chamber;*
- (ii) any response to submissions filed under Sub-paragraph (i) above shall be filed within 14 days;*
- (iii) any reply to the response shall be filed within 7 days.*

Any extension of time may be granted by the Appeal Chamber.

(H) References by the Trial Chamber pursuant to Sub-Rules (E) and (F) above shall not operate as stay of proceedings. Such references shall not operate as a stay of the trial itself unless the Trial or Appeal Chamber so orders.

(I) This Rule shall be deemed to have entered into force on the 7th of March 2003.

5. The accused submits that the consequence of this Rule is that all Preliminary Motions relating to jurisdiction are not subject to review of any kind contrary to basic human rights norms. Thus potentially all issues relating to whether the court is legally established, the independence of the judiciary, whether the crimes detailed in the indictment are validly included within the Special Court's jurisdiction, whether the liability

alleged is in accordance with international criminal law and whether the amnesty granted pursuant to the Lome Accord is valid will not be subject to appeal.

6. The Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council Resolution 1315 (2000) of 14 August 2000 determined that the Special Court would function in accordance with the provisions of the Statute of the Special Court for Sierra Leone (“SSCSL”).

7. Article 20 of the SSCSL provides, *inter alia*, that
(1) *The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:*
a. *A procedural error;*
b. *An error on a question of law invalidating the decision;*
c. *An error of fact which has occasioned a miscarriage of justice.*

(2) *The Appeals Chamber may affirm, reverse or revise decisions taken by the Trial Chamber*

8. The accused submits that pursuant to the SSCSL the Appeal Chamber has the jurisdiction to “*affirm, reverse or revise*” decisions of the Trial Chamber. It does not have jurisdiction to hear motions at first instance nor, as a creation of statute, does it have an inherent jurisdiction through which such a capacity could be implied. In the instant case the Appeals Chamber is not being asked to “*affirm, reverse or revise*” a decision of the Trial Chamber as there have been no decision of the Trial Chamber on these motions. The amendment to the Rules agreed at the August plenary session of the Judges of the Special Court has effectively assigned to the Appeals Chamber a first instance jurisdiction that is not provided for in the SSCSL.

9. Further or alternatively the accused submits that Article 20 of the SSCSL provides him with a right to appeal on a question of law that is being denied by Rule 72. In the instant case the Trial Chamber will be bound by decisions of the Appeals Chamber on the questions of law referred to at paragraph 4 above and yet pursuant to the SSCSL the accused is entitled to appeal on these issues *after conviction* to the Appeals Chamber.

10. However, the SSCSL only provides for the establishment of a single Appeal Chamber (as does the Agreement between the UN and the Government of Sierra Leone establishing the Special Court) and clearly it cannot satisfy any of the basic requirements of justice, fairness or procedural propriety for an appeal to be heard by the Chamber which reached the original decision under appeal. The accused submits that for the procedure to be lawful, the Agreement between the United Nations and the Government of Sierra Leone and the SSCSL will have to be amended to provide for the creation of a second Appeals Chamber to hear an appeal from the decision of the current Appeals Chamber.

11. The right of appeal on questions of law in a criminal trial is established in international law by Article 14(5) of ICCPR which provides that “*everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law*” and is found in all criminal systems that respect fundamental human rights principles. It is submitted that as a court established by the United Nations by an Agreement pursuant to a Security Council resolution, the Special Court is required to adhere to the UN Covenant on Civil and Political Rights and norms of international law.

12. Pursuant to Article 20(3) of the SSCSL, the Judges of the Appeals Chamber of the Special Court must “*be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda*”. In the appeal judgment on allegations of contempt against prior counsel in the Tadic case, *Milan Vujin*, the Appeals Chamber of the ICTY held that their Rules must “*respect the internationally*

recognised standards regarding the rights of the accused including Article 14 of the International Covenant on Civil and Political Rights” and further held that “Article 14 of the International Covenant reflects an imperative norm of international law to which the tribunal must adhere”.

13. In considering whether the Appeals Chamber had jurisdiction to hear an Appeal from a differently constituted Appeals Chamber which had reached a first instance decision relating to contempt of court by former counsel, the Appeals Chamber noted that *“the preferred course...would have been for the contempt trial to have been initially referred to a Trial Chamber, thereby providing for the possibility of appeal, rather than being heard by the Appeals Chamber ruling in the first instance”*, however in the *“special circumstances”* of the case and recognising the guaranteed right of appeal under international law, the Chamber held that their duty *“to guarantee and protect the rights of those who appear as accused before it”* required them to consider the Appeal.
14. Further or alternatively the power to amend the rules under Article 14 of the SSCSL only arises where *“the applicable Rules do not, or do not adequately, provide for a specific situation”*. It is submitted that the effective abolition of the right to appeal on issues of law relating to jurisdiction cannot properly be described as remedying a situation whereby the Rules did not provide for a situation.

Orders Sought

15. The grant of a stay:
- (1) Of the determination of all Preliminary Motions filed on behalf of the accused pending determination of the motion in the Trial Chamber concerning the *vires* of the proposed procedure.
 - (2) Of all time limits pursuant to Rule 72G.
16. Further or alternatively a declaration that:

- (3) The amendment to Rule 72 agreed at the August plenary session of the Judges of the Special Court is *ultra vires* the Statute of the Special Court and/or violates the ICCPR and basic international human rights norms.

17. An Oral hearing on this matter

James Blyden Jenkins-Johnston

A handwritten signature in black ink, appearing to read 'Sulaiman Banja Tejan-Sie', written over a horizontal line.

Sulaiman Banja Tejan-Sie

Quincy Whitaker

Dated this 2nd day of October 2003