SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 2nd June, 2004

PROSECUTOR Against Sam Hinga Norman
Moinina Fofana
Allieu Kondewa
(Case No.SCSL-04-14-PT)

DECISION ON PROSECUTION'S MOTION FOR JUDICIAL NOTICE AND ADMISSION OF EVIDENCE

Office of the Prosecutor:
Luc Côté
Robert Petit

Defence Counsel for Sam Hinga Norman:
James Jenkins-Johnston

Defence Counsel for Moinina Fofana:
Michiel Pestman

Defence Counsel for Allieu Kondewa:
Charles Margai

THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Judge Bankole Thompson, Presiding Judge, Judge Benjamin Mutanga Itoe and Judge Pierre Boutet;

SEIZED of the Motion for Judicial Notice and Admission of Evidence ("Motion") filed on 2 April 2004 by the Office of the Prosecutor ("Prosecution") pursuant to Rules 73, 89, 92*bis* and 94 of the Rules of Procedure and Evidence of the Special Court ("Rules");

NOTING the Response of Defence Counsel for Chief Sam Hinga Norman to Prosecution's Motion for Judicial Notice and Admission of Evidence filed on 19 April 2004 ("Response") and the Reply thereto, filed on 26 April by the Prosecution ("Reply");

NOTING the Defence Motion Requesting an Extension of Time within which to Respond to Prosecution's Motion for Judicial Notice and Admission of Evidence ("Motion for Extension of Time"), filed on 23 April 2004 by Counsel for Kondewa, and the Decision on Motion Requesting an Extension of Time within which to Respond to Prosecution's Motion for Judicial Notice and Admission of Evidence, dismissing the Motion for Extension of Time of 30 April 2004;

NOTING also the Order Rejecting the Filing of the Defence Objection to Prosecution's Motion for Judicial Notice and Admission of Facts of 5 May 2004;

NOTING further that no Responses were filed on behalf of the Accused Allieu Kondewa and Moinina Fofana within prescribed time limits;

NOTING THE SUBMISSIONS OF THE PARTIES

I. THE SUBMISSIONS

A. The Motion:

1. The Prosecution requests the Trial Chamber to take judicial notice of the facts set out in Annex A and the facts contained in the documents listed in Annex B of the Motion as 'facts of

common knowledge' under Rule 94(A) of the Rules. Alternatively, it requests that these facts be admitted into evidence under Rules 89(B) and (C) and 92*bis* of the Rules.[1]

2. Annex A of the Motion contains a list of statements comparable to the facts presented by the Prosecution in the Request to Admit[2]. Annex B enlists -among others- various UN-documents and reports from Non-Governmental-Organisations.

3. The Prosecution emphasises that the function of the doctrine of judicial notice is to expedite proceedings and promote judicial economy which accords with the object and purpose of the Special Court and its limited temporal existence. It is submitted that the Court 'must find the balance between the principle of judicial economy and the right of the Accused to a fair trial'.[3]

4. The Prosecution argues that pursuant to Rule 94(A) of the Rules, the Trial Chamber is under an obligation to take judicial notice of 'facts of common knowledge', interpreted by the ICTR in the *Semanza* case[4] to mean 'those facts which are not subject to reasonable dispute including, common or universally known facts, such as general facts of history, generally known geographical facts and the law of nature'. According to the Prosecution, this includes authoritative documents such as those of the UN and affiliated bodies. The Prosecution also relies on the *Nyiramasuhuko* case[5] where judicial notice was taken only of the existence and authenticity of certain UN Security Council documents. According to the Prosecution, the definition of 'common knowledge' may extend to legal conclusions based on facts established beyond a reasonable doubt.[6]

5. The Prosecution emphasises that it is not seeking from the Court judicial notice of facts which directly attest to the guilt of any Accused but that the Court may only take judicial notice of notorious facts which cannot be reasonably disputed.[7]

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[1] Motion, paras 6-8.
[2] Prosecutor's Request to Admit, 5 March 2004.
[3] *Id.*, paras 9 and 13.
[4] *Prosecutor v. Laurent Semanza*, ICTR-97-20, Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts pursuant to Rules 94 and 54, 3 Nov. 2000 ("*Semanza* Decision"), para. 25.
[5] *Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali*, ICTR-97-21-T, *Prosecutor v. Sylvain Nsabimana, Alphonse Nteziryayo*, ICTR-97-29A and B-T, *Prosecutor v. Joseph Kanyabashi*, ICTR-96-15-T, *Prosecutor v. Elie Ndayambaje* ICTR-96-8-T, Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence, 15 May 2002.
[6] Motion, paras 15-16, 19-20.
[7] *Id.*, para. 23.

6. The Prosecution argues that Rule 89(B) of the Rules provides a legal basis for the Chamber to take judicial notice of, or admit in evidence, certain facts when the interests of justice so require. According to the Prosecution, the Chamber has a broad discretion in determining what is relevant evidence under Rule 89(C) and that there is a principle of 'extensive admissibility of evidence' based on the competence of professional judges to evaluate evidence.[8]

7. The Prosecution submits that under Rule 92*bis* of the Rules, there is a two-prong test of *relevance* and the existence of the *possibility of confirming the reliability* of the evidence. The Prosecution contends that the documents in Annex B are relevant as they refer to the factual allegations as stipulated in the indictments and since they are authoritative sources their reliability can be confirmed by the documents themselves or by oral testimony.[9]

8. The Prosecution submits that, while judicial notice under Rule 94 of the Rules is mandatory, admitting evidence pursuant to Rules 89 and 92*bis* of the Rules is discretionary and urges the Chamber to exercise its discretion in favour of admitting the said documents as evidence.[10]

B. The Response:

9. In its Response, the Norman Defence concedes that the statements in (A), (B), (E), (P), (Q), and (W) in Annex A of the Motion may be judicially noticed. The Defence argues that the remaining statements are contestable and/or disputed assertions which the Prosecution must prove by evidence beyond reasonable doubt. To do otherwise, the Defence argues, would be to deny the Accused's right to the presumption of innocence and to protection against self-incrimination.[11]

10. Moreover, the Defence submits that the need to expedite proceedings and judicial economy cannot override the burden of proof on the Prosecution to prove every allegation against the Accused.[12]

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[8] *Id.*, paras 28-30.
[9] *Id.*, para. 31.
[10] *Id.*, para. 33.
[11] Response, paras 1-3.
[12] *Id.*, para. 4.

11. The Defence adopts the interpretation contained in the *Semanza* Decision of the phrase 'facts of common knowledge', quoted above.[13]

12. According to the Defence, in general the Court should not admit the documents into evidence under Rules 89 and 92*bis* of the Rules as that would be neither in consonance with the spirit of the Statute of the Special Court nor with general principles of law. However, the Defence submits that the UN Security Council resolutions, maps, peace agreements and treaties can properly be admitted into evidence. The other documents, it is argued, are reports and other pieces containing opinions, impressions and conclusions which violate the rule against hearsay, the *audi et alteram partem* rule and which do not satisfy the need for corroboration or cross-examination.[14]

C. The Reply

13. The Prosecution reasserts that all the facts deemed by the Defence as being contestable and/or disputable in Annex A are matters of common knowledge as envisaged by Rule 94 of the Rules and are therefore not issues of reasonable dispute, and that the documents listed in Annex B of the Motion are admissible in evidence under Rule 89 and Rule 92bis of the Rules.[15]

14. The Prosecution, therefore, submits that taking judicial notice of the facts in Annex A will not adversely affect the Accused's right to the presumption of innocence until proof of guilt, nor his right to protection from self-incrimination, as it does not seek from the Court an order to take judicial notice of facts directly attesting to the alleged guilt of any of the Accused. Moreover, the Prosecution reiterates that taking judicial notice of these facts would promote judicial economy without negatively affecting the rights of the Accused.[16]

II. DELIBERATION

I. Introduction

15. This Motion invokes the jurisdiction of this Court with respect to the application of one of the law's oldest doctrines, namely the doctrine of judicial notice. To underscore the universality of the

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[13] *Id.*, para. 5.
[14] *Id.*, paras. 6-7.
[15] Reply, paras 3, 17-18.

doctrine, it is important to note that though the doctrine, as is understood today, can be traced back to its common law origins, yet it has received recognition in some civil law jurisdictions but not in others.[17] It is imperative, therefore, preliminarily, for the court to expound on the nature and scope of the doctrine nationally and internationally as a basis for examining the merits of the Motion.

II. Order Requested

16. The Motion seeks from the Trial Chamber an order judicially noticing the proposed facts recited in **Annex A** as well as those enumerated in the documents listed in **Annex B** as facts of common knowledge, pursuant to Rule 94(A) of the Rules or, **in the alternative** an order admitting the same in evidence pursuant to Rules 89 and 92*bis* of the Rules and in accordance with the spirit of the Statute of the Special Court and the principles of fairness.

III. Legal Basis for Motion

17. The Prosecution's Motion is, as regards the primary or main order, filed pursuant to Rule 94(A) of the Rules which provides that:

> "A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof."

In respect of the secondary or alternative order, the Motion is brought under Rules 89(C) and 92*bis* of the Rules. According to Rule 89(C) of the Rules:

> "A Chamber may admit any relevant evidence."

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[16] *Id.*, paras 15-16.

[17] See an instructive article on the subject entitled: "Judicial Notice in International Criminal Law: A Reconciliation of Potential, Peril and Precedent" by James G. Stewart in *International Criminal Law Review* 3, 2003, p. 245-274. See also a Paper entitled "*Presumptions and Judicial Notice*" by Michael A. Patterson and Edward J. Walters Jr., Baton Rouge Bar Association, 1998 Bench Bar Conference, Alabama. One example of a civil law system adoption of the doctrine is Section 244(3) of the ***German Criminal Procedural Code*** *which promulgates thus: "An application to take evidence shall be rejected if the taking of such evidence is inadmissible. In all other cases, an application to take evidence may be rejected only if the taking of such evidence is superfluous because the matter is common knowledge, if the fact to be proved is irrelevant to the decision or has already been proved...". Article 90 of the recently adopted* ***Russian Penal Code*** *also deals with the theme of previously adjudicated facts.* By contrast, *the* ***Austrian Penal Code*** *1975,* does not embody any provision recognising the doctrine of judicial notice presumably due to the existence of the inquisitorial system which envisages a strong role for the judge in the process of gathering evidence, especially the investigative judge in pre-trial proceedings, which do not allow the parties to request that judicial notice be taken of facts (See Federal Law Gazette, no 631/1975 as amended by the Federal Law Gazette

Further, Rule 92*bis* of the Rules enacts as follows:

> "(A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
>
> (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation."

IV. The Doctrine: Common and Civil Law Perspectives

18. Judicial notice is "the means by which a court may take as proven certain facts without hearing evidence.[18] The principle underlying the doctrine of judicial notice has been variously stated. It was clearly articulated by the English Court of Appeal in the recent case of *Mullen v. Hackney London Borough Council*[19] in these terms:

> "It is well established that the courts may take judicial notice of various matters when they are notorious or clearly established, or susceptible of demonstration by reference to a readily obtainable and authoritative source that evidence of their existence is unnecessary (see Phipson on Evidence, 14th edn., 1990 CL 2/06)."

Continuing, the Court noted:

> "Generally, matters directed by statute, or which have been so noticed by the well-established practice or precedents of the Court, must be recognized by the judges; but beyond this, they have a wide discretion and may notice much which they cannot be required to notice. The matters noticeable may include facts which are in issue or relevant to the issue; and the notice is in some cases conclusive and in others merely prima facie and rebuttable (see Phipson Ch2/07)."

Concluding, the Court remarked:

15/2004). Also the ***Slovenian Criminal Procedure*** Act does not recognise the doctrine of judicial notice (See Zakon o Kazenskem Postopku, Ur.1 RS st 116/2003).

[18] *The Concise Oxford Dictionary of Law*, 2nd ed. 1992 at 223; see also *Black's Law Dictionary*, 7th ed. 1999 at 851

[19] *Mullen v. Hackney London Borough Council*, [1997] 1WLR 1103.

> "Moreover, a judge may rely on his own local knowledge where he does so properly and within reasonable limits". This judicial function appears to be acceptable where "the type of knowledge is of a quite general character and is not liable to be barred by specific individual characteristics of the individual case." This test allows a judge to use what might be called "special" (or local) general knowledge (see Phipson Ch 1/09)."

19. As to its scope in English law, courts are enjoined to be cautious in treating a factual conclusion as obvious, even though the man in the street would unhesitatingly hold it to be so.[20] It is also the law that judges and juries may, in arriving at their decisions, use their general information and that knowledge of the common affairs of life which men of ordinary intelligence possess, they may not act on their own private knowledge or belief regarding the facts of the particular case.[21]

20. By way of comparison, the American version of the doctrine bears significant juridical affinity to the English model. At the federal level, judicial notice is covered by either Rule 44.1 of the **Federal Rules of Civil Procedure** or Rule 26.1 of the **Federal Rules of Criminal Procedure**. Under these provisions, an American court can take judicial notice of a fact if it is "not subject to reasonable dispute" and falls within one of two categories: (a) if it is "generally known within the territorial jurisdiction of the trial court" or (b) if it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned". Federal Rule 201 cover is limited in scope and governs only "adjudicative facts".

V. The Doctrine: International Criminal Law Perspectives

21. In the context of international criminal law, it has been observed that the doctrine "has had a significant but unhappy existence".[22] Despite this profile of the doctrine in international criminal law, its importance in the field is unequivocally acknowledged to be that of significantly expediting trials.[23] One such viewpoint is that "the failure to exercise [judicial notice] tends to smother trials with technicality and monstrously lengthens them out".[24]

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[20] *Carter v. Eastbourne*, B.C. 164 J.P. 233 DC.
[21] *R. v. Sutton* (1816) 4 M. & S. 532.
[22] See Stewart, supra note17, p. 245.
[23] *Id.*, p. 245.
[24] See Thayer, 1, *Preliminary Treatise on Evidence*, 809 (1898) cited in Stewart, supra note17.

22. With the foregoing brief analysis of national criminal and international criminal law perspectives of the doctrine, the Chamber now proceeds to ascertain the evolving applicable jurisprudence as it can be deduced from the practices of international criminal tribunals antecedent to this Court[25], notably, the International Criminal Tribunal for former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR").

23. Briefly, the Chamber notes that the practice of judicial notice in those tribunals revolves around Rule 94 of the Rules of Procedure and Evidence of both tribunals as the statutory authority for the doctrine. Their Rule 94 is *ipssissima verba* with Rule 94 of the Rules which is in these terms:

> "(A) A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
>
> (B) At the request of a party or *proprio motu*, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the court proceedings".

24. As to its scope, the Chamber takes the view that, from a plain and literal construction of Rule 94 of the Rules, the said Rule authorises either the Trial or Appeals Chamber to take judicial notice of three (3) categories of facts: (i) facts of common knowledge, (ii) adjudicated facts from other proceedings before the Court, and (iii) documentary evidence from other proceedings before the Court. The obligation is mandatory. As was stated in the *Semanza* Decision which this Court applies persuasively as being logical and consistent with the plain meaning and intendment of the Rule, the rationale behind the doctrine is twofold: (i) to expedite the trial by dispensing with the need to submit formally proof on issues that are patently indisputable, and (ii) to foster consistency and uniformity of decisions on factual issues where diversity in factual findings would be unfair.[26]

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[25] Historically, it is noteworthy that Article 21 of the Charter of the International Military Tribunal for Germany provided for judicial notice to be taken of facts of common knowledge.

[26] *Semanza* Decision, supra note 4, para. 20. See also *Prosecutor v. Simic et al*, Decision on the pre-trial motion by the Prosecution requestin the Trial Chamber to take judicial notice of the international character of the conflict in Bosnia-Herzegovina, 25 March 1999, p. 3: "The purpose of judicial notice under Rule 94 is judicial economy... and ... a balance should be struck between judicial economy and the right of the accused to a fair trial".

25. Evidently, in the Chamber's opinion, Rule 94(A) of the Rules does require judicial cognisance of only facts which rise to a threshold level of "common knowledge", which interpretation of the rule is clearly supported by case-law authorities from ICTY and ICTR, two such decisions being rendered in the cases of *Prosecutor v. Tadic*[27] and *Prosecutor v Ntagerura et al* [28], which this Chamber finds to be logical and consistent with the plain and literal meaning of the rule and its purpose, and will therefore apply persuasively.

26. As a matter of statutory significance, the Chamber finds that the expression "common knowledge" has been, and continues to be, the subject of subtle legal interpretation. Instructively, in the *Semanza* Decision[29], the Trial Chamber took the view that the phrase includes facts "...so notorious, or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources that evidence of their existence is unnecessary." Professor Bassiouni and Manikas have also suggested that the interpretation of "facts of common knowledge" does cover and extend to all "those facts which are not subject to reasonable dispute, including common or universally known facts, such as general facts of history, generally known geographical facts and the laws of nature."[30]

27. The Chamber further notes that despite the exacting requirement that facts must rise to a level of "common knowledge" to be judicially noticed, yet there is authority for the proposition that "a proposition need not to be universally accepted in order to qualify as common knowledge"[31], implying that courts may take judicial notice of facts that are not scientifically provable or beyond all dispute under Rule 94(A) of the Rules.[32]

28. In the Chamber's view, another key principle for which the *Semanza* Decision is authority as to the scope of Rule 94(A) of the Rules relates to the issue of to whom a fact or proposition must commonly be known to qualify for judicial cognisance. On this issue, the Court had this to say:

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[27] I-94-1-AR72, Transcripts of Hearing on Interlocutory Appeal on Jurisdictional Challenge, 7 September 1995 at p. 108: "the Tribunal *must* in the interests of fairness take judicial notice of notorious facts".
[28] ICTR-99-46-T, 4 July 2002, Oral Decision, p. 9: Accordingly the Chamber must, pursuant to the provisions of Rules 94(A), take judicial notice of this fact of common knowledge."
[29] *Semanza* Decision, supra note 4, para. 25.
[30] *The Law of International Criminal Tribunal for the former Yugoslavia*, New York: Transnational Publishers Inc, 1996 (cited with approval in the *Semanza* Decision).
[31] *Semanza* Decision, supra note 4, para. 31.
[32] Stewart, supra note 17, p. 249.

> "... 'common knowledge' encompasses those facts that are generally known within a tribunal's jurisdiction or capable of accurate and ready determination by resort to sources whose accuracy cannot be called in question."[33]

29. By logical deduction, in the Chamber's estimation as a matter of statutory construction, commonly known but inaccurate facts cannot be judicially noticed within the meaning and intendment of Rule 94(A) of the Rules. Therefore, based on the reasoning in the *Semanza* Decision, once a Court makes a preliminary determination that a fact is one of common knowledge within a court's jurisdiction, it must then proceed to a judicial evaluation of whether the fact merits the characterization of one that is "reasonably indisputable".

30. Guided, therefore, persuasively by the *Semanza* Decision as to the legal criteria applicable under Rule 94(A) of the Rules in determining the merits of applications for judicial notice brought before international criminal tribunals, the Chamber will now proceed to evaluate the merits or otherwise of the Prosecutions Motion for judicial notice.

VI. Evaluation of Application's Merit under Rule 94(A) of the Rules

31. Having determined the applicable jurisprudence on the subject of judicial notice, the Chamber now undertakes an evaluation of the merit or otherwise of the Motion based on the foregoing exposition of the law in the international criminal law field, evidently recognising the doctrine's contribution in the national criminal law systems as a basis for its application in the international criminal law field.

32. The Chamber has carefully examined and reviewed each of the alleged facts enumerated in Annex A of the Prosecution's Motion. The Chamber notes that there are few challenges by the Counsel for the Accused Norman to some of the alleged facts, and that the said Accused agrees that alleged facts (A), (B), (E), (P), (Q), and (W) may be judicially noticed. The Chamber further notes that no responses were filed on behalf of the Accused Fofana and Kondewa. Applying the relevant jurisprudence and being judicially sensitive to the need to protect the right of each Accused to a fair trial in matters of this nature and seeking to strike a balance between judicial economy and the said right, the Chamber finds as follows in respect of Annex A:

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[33] *Semanza* Decision, supra note 4, para. 23.

(i) that alleged facts (A), (B), (D), (E) (F), and (W) do qualify for judicial notice as formulated;

(ii) that alleged facts (H), (K), (L), (M), and (U) do qualify for judicial notice in a judicially modified form as listed in Annex I to this Decision;

(iii) that all other so-called facts of common knowledge listed in Annex A do not qualify for judicial notice for the reason that they are not beyond reasonable dispute;

(iv) that the facts found to qualify for judicial notice:

(a) are relevant to the case against the Accused persons;

(b) are they are not subject to reasonable dispute;

(c) do not include any legal findings or characterizations; and

(d) do not attest to the criminal responsibility of any of the Accused.

The facts judicially noticed are deemed conclusively proven.

33. By parity of reasoning, the Chamber has carefully examined and reviewed each of the documents enumerated in Annex B of the Prosecution's Motion. As regards the enumerated documents, the Chamber, applying the relevant jurisprudence makes the following findings:

(i) As to their existence and authenticity:

(a) Documents 9-21 do qualify for judicial notice;

(b) Documents 31-32 do qualify for judicial notice;

(ii) As to their existence, authenticity and contents:

(a) Documents 22-30 do qualify for judicial notice;

(b) Documents 33-39 do qualify for judicial notice;

(iii) that the rest of the documents so enumerated do not qualify for judicial notice, for the reason that either their existence and authenticity or their existence, authenticity and contents as the case may beare not beyond reasonable dispute.

The documents judicially noticed are also deemed conclusively proven as to their existence and authenticity. The said Documents are annexed to this Decision in Annex II.

34. The foregoing findings of conclusiveness, in the Chamber's view, concludes the evidentiary inquiry in respect of these facts. We rule that these judicially noticed facts of common knowledge

cannot be challenged at the trial of the Accused herein predicated upon our prior finding that they are beyond reasonable dispute.

Evaluation of Application's Merit Under Rule 89 and 92*bis* of the Rules

35. The Trial Chamber finds no basis in law, at this stage, without more, to enable it to assess whether the presumed reliability of the alleged facts and documents not accorded judicial notice in pursuance of Rule 94(A) even if relevant for the purposes in respect of which they are submitted, is susceptible of confirmation.

III. DISPOSITION

Pursuant to Rule 94(A) of the Rules,

HEREBY GRANTS the Prosecution's Motion in respect of the facts enumerated in **Annex I** to this Decision, which **Annex** embodies some of the facts contained in **Annex A** of the Prosecution's Motion; and **DENIES** the said Motion in respect of all other facts as listed in the aforesaid **Annex A;**

GRANTS the Prosecution's Motion in respect of the documents enumerated in **Annex II** part I to this Decision, but only in so far as their existence and authenticity are concerned and in **Annex II** part II in so far as to their existence, authenticity and contents are concerned, which **Annex** embodies some of the documents contained in **Annex B** of the Prosecution's Motion; and **DENIES** the said Motion in respect of all other documents listed in the aforesaid **Annex A.**

Done at Freetown this 2nd day of June 2004

Judge Bankole Thompson — Judge Benjamin Mutanga Itoe — Judge Pierre Boutet

Presiding Judge,
Trial Chamber

[Seal of the Special Court for Sierra Leone]

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THE TRIAL CHAMBER

Before:	Judge Bankole Thompson, Presiding Judge Judge Benjamin Mutanga Itoe Judge Pierre Boutet
Registrar:	Robin Vincent
Date:	2nd June, 2004

PROSECUTOR	Against	**Sam Hinga Norman** **Moinina Fofana** **Allieu Kondewa** (Case No.SCSL-04-14-PT)

ANNEX I TO THE DECISION ON PROSECUTION'S MOTION FOR JUDICIAL NOTICE AND ADMISSION OF EVIDENCE

Office of the Prosecutor:

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Robert Petit

Defence Counsel for Sam Hinga Norman:

James Jenkins-Johnston

Defence Counsel for Moinina Fofana:

Michiel Pestman

Defence Counsel for Allieu Kondewa:

Charles Margai

ANNEX I

A. The armed conflict in Sierra Leone occurred from March 1991 until January 2002.

B. The city of Freetown, the Western Area, and the following districts located in the country of Sierra Leone: Kenema, Bo, Bonthe, Moyamba.

D The Accused and all members of the organized armed factions engaged in fighting within Sierra Leone were required to comply with International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions.

E Sierra Leone acceded to the Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions on 21 October 1986.

H Groups commonly referred to as the RUF, AFRC and CDF were involved in armed conflict in Sierra Leone.

K The Accused, SAMUEL HINGA NORMAN, was the National Coordinator of the CDF.

L The Accused Moinina Fofana was the National Director of War of the CDF.

M The Accused, Allieu Kondewa was the High Priest of the CDF.

U In or about November and/or December 1997, the CDF, including Kamajors, launched an operation called "Black December".

W. The Junta was forced from power on or about 14 February 1998. President Kabbah's government returned in March 1998.

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Date:	2nd June, 2004

PROSECUTOR	Against	Sam Hinga Norman Moinina Fofana Allieu Kondewa (Case No.SCSL-04-14-PT)

ANNEX II TO THE DECISION ON PROSECUTION'S MOTION FOR JUDICIAL NOTICE AND ADMISSION OF EVIDENCE

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Defence Counsel for Moinina Fofana:
Michiel Pestman

Defence Counsel for Allieu Kondewa:
Charles Margai

ANNEX II TO THE DECISION

(I) As To Their Existence and Authenticity

Reports of the UN Secretary General on the Situation in Sierra Leone

9. 21 November 1995 (S/1995/975)
Traces peace efforts at the time of Strasser's government and UN involvement in bringing the government and RUF to negotiations. Reports hostage taking of foreigners and nationals including nuns and advances by the RUF in Kono district. The diamond fields of Kono were retaken by government forces. Reports nearly 2 million IDPs.

10. 5 December 1997 (S/1997/958)
Covers developments since the first report, 21 October 1997. Implementation of 1997 Conakry peace plan. Notably it was to include the provision of immunities and guarantees for coup leaders. Sankoh was to return to Sierra Leone to contribute to the peace process. Mentions reports of difficulties in relationship to AFRC/RUF in South-East and East.

11. 5 February 1998 (S/1998/103)
Reports dispatch of a technical survey team. Junta in control of Freetown. CDU conducting guerrilla-style action against junta and claimed to control all major roads. CDU forces led by Hinga Norman, Deputy Defence Minister in Kabbah's government.

12. 18 March 1998 (S/1998/249)
ECOMOG attack on junta resulting in their expulsion by force from Freetown after heavy fighting. Return of Kabbah to Sierra Leone.

13. 9 June 1998 (S/1998/486)
Restoration of government on 10 March 1998. Trials in Freetown started 6 May of persons accused of plotting coup. 30-31 May 1998, Margai and Norman visited Makeni and Kenema and called on remnants of AFRC/RUF to surrender. Reports that ECOMOG troops approached towns, former junta elements attacked the local civilian population, killing, raping and mutilating and causing tens of thousands to flee into Guinea and Liberia. ECOMOG supported by units of the CDF. See para 30: 5 May 1998, Taylor wrote to the Secretary-General deprecating the "disturbing allegations" that the government of Liberia was involved in the conflict in Sierra Leone and proposing that the border be "cordoned off". See especially paras 35-7 on attacks on civilians.

14. 12 August 1998 (S/1998/750)
Reports on relation between Liberia and Sierra Leone improving. Reports of continued battles between ECOMOG and the rebels. Introduced role of UNAMSIL. Mentions 58 persons being tried for treason, murder and arson against a background of public anger and desire for quick justice.

15. 16 October 1998 (S/1998/960)
Issue of trial of Sankoh after being brought back from Nigeria is highlighted. 17 August 1998, RUF announced a terror campaign against civilians, CDF and ECOMOG if the government failed to release Sankoh but government made it clear Sankoh would stand trial (trial commenced 24 September 1998). See especially paras 21-24 on human rights abuses.

16. 16 December 1998 (S/1998/1176)
Reports executions of 24 officers found guilty of treason after a court martial. On 23 October 1998, Sankoh was found guilty of treason and sentenced to death by hanging but was to appeal. Rebel activities including attacks on civilians are reported to continue (see especially paras 36-39). It is reported that a rift appears to have arisen between the AFRC remnants in the North and the RUF in the East. It is mentioned that frequent reports of children being sent into combat environments are being sent in.

17. 4 March 1999 (S/1999/237)
Describes attack on Freetown on 6 January 1999. Para 21 states: "the ultimate responsibility for the fighting, for most of the civilian casualties and for the related humanitarian emergency in Freetown rested with the rebels". It is reported that much fighting was carried out by child fighters or those under the influence of drugs or alcohol.

18. 4 June 1999 (S/1999/645)
Reports signing of cease fire agreement and Lome negotiations. Sankoh granted absolute and free pardon. Attrocities against civilians reported to continue. Concerns of human rights violations by ECOMOG and CDF, including widespread recruitment of children by CDF.

19. 30 July 1999 (S/1999/836)
Reports singing of Lome peace agreement and main provisions.

20. 6 December 1999 (S/1999/1223)
Post-Lome structure government. Deterioration in human rights situation with an escalation of attacks on civilians by former rebel elements.

21. 19 May 2000 (S/2000/455)
Reports armed attacks on UN peacekeepers and detention of UN personnel by RUF. Mention is made of preliminary reports suggesting child combatants have been used extensively during the conflict.

Other UN Reports

31. UNICEF Press Release, "Stop Using Child Soldiers, Sierra Leone Told," 19 June 1997.

Comments on recruitment of child soldiers by the AFRC and also states that between 1992 and 1996 4500 children were forced to fight on the RUF and government sides.

32. UNICEF Monthly Report, "Events Pertaining to Childen," 31 July 1999.

Refers to CDF pledge on 18 June 1999 to stop recruitment of children: "Kamajor Action Plan" signed by Hinga Norman.

(II) As To Their Existence, Authenticity and Contents.

UN Security Council Resolutions

22. Resolution 1346 (30 March 2001)
23. Resolution 1313 (4 August 2000)
24. Resolution 1306 (5 July 2000)
25. Resolution 1299 (19 May 2000)
26. Resolution 1289 (7 February 2000)
27. Resolution 1270 (22 October 1999)
28. Resolution 1220 (12 January 1999)
29. Resolution 1181 (13 July 1998)
30. Resolution 1132 (8 October 1997)

Maps, Peace Agreements, Treaties

33. The Lome Peace Accord, The Peace Agreement Between the Government of Sierra Leone and Revolutionary United Front of Sierra Leone (RUF/SL), 7 July 1999.

34. The Abidjan Peace Accord, The Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 30 November 1996.

35. The Conakry Accord: ECOWAS SIX-MONTH PEACE PLAN FOR SIERRA LEONE 23 OCTOBER 1997 - 22 APRIL 1998, 23 October 1997.

36. Ceasefire Agreement Between Government and the Revolutionary United Front, 18 May 1999.

37. Map of Sierra Leone, Scale 1:350,000 UNAMSIL Geographic Information Service, 6 May 2002.

38. ICRC List of States party to the Geneva Conventions and their Additional Protocols.

39. Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977.

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 23 June 2004

PROSECUTOR Against Sam Hinga Norman
Moinina Fofana
Allieu Kondewa
(Case No.SCSL-04-14-T)

CORRIGENDUM TO DECISION ON PROSECUTION'S MOTION FOR JUDICIAL NOTICE AND ADMISSION OF EVIDENCE

Office of the Prosecutor:
Luc Côté
James Johnson

Defence Counsel for Sam Hinga Norman:
Sam Hinga Norman

Defence Counsel for Moinina Fofana:
Michiel Pestman

Defence Counsel for Allieu Kondewa
Charles Margai

TH E TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone composed of Jud ge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson and Judge Pierre Boutet;

NC TING the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence of this Chamber dated 2 June 2004;

HE REBY ORDER:

1. That the reference to (F) in subparagraph 32(i) of the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence be deleted.

2. That the reference to Documents 33-39 in subparagraph 33(ii)(b) of the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence be substituted with the reference to Documents 34-40.

3. That the documents listed under the subheading "Maps, Peace Agreements, Treaties" in Annex II of the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence be numbered 34-40 instead of being numbered 33-39.

D one at Freetown this 23rd day of June 2004

Ju dge Pierre Boutet | Judge Benjamin Mutanga Itoe | Judge Bankole Thompson

Presiding Judge,
Trial Chamber

[Seal of the Special Court for Sierra Leone]