SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 24 June 2004

PROSECUTOR Against Issa Hassan Sesay
Morris Kallon
Augustine Gbao
(Case No.SCSL-04-15-PT)

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

Office of the Prosecutor:
Luc Côté
Robert Petit

Defence Counsel for Issa Hassan Sesay:
Timothy Clayson
Wayne Jordash

Defence Counsel for Morris Kallon:
Shekou Touray
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:
Girish Thanki
Andreas O'Shea

TH E TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") con posed of Judge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson, and Judge Pier re Boutet;

SEI ZED of the Motion for Judicial Notice and Admission of Evidence ("Motion") filed on 2 April 20C 4, by the Office of the Prosecutor ("Prosecution") pursuant to Rules 73, 89, 92bis and 94 of the Rul es of Procedure and Evidence of the Special Court ("Rules");

NC TING the Response of Defence Counsel for Mr. Augustine Gbao to Prosecution's Motion for Jud cial Notice and Admission of Evidence filed on 21 April 2004 ("Gbao Response") and the Reply the eto, filed 26 April 2004 ("Prosecution Reply to Gbao");

NC TING that on 26 April 2004, Defence Counsel for Mr. Morris Kallon was granted an extension of ime to file a Response of 10 days from Saturday 1 May 2004;

NC TING the Response of Defence Counsel for Kallon to the Prosecution's Motion for Judicial Nc tice and Admission of Evidence was filed on 11 May 2004 ("Kallon Response") and the Reply the reto, filed on 17 May 2004 ("Prosecution Reply to Kallon");

NC TING further that no Response was filed on behalf of Mr. Issa Hassan Sesay within prescribed tir e limits although Counsel had indicated orally at the Pre-Trial Conference on 29 April 2004 that he wished to adopt the submissions of Counsel for Gbao;

N(TING 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 A nnex A of the Motion and the facts contained in the documents listed in Annex B of the Motion as 'f cts of common knowledge' under Rule 94(A). In the alternative, it requests that these facts be ac mitted into evidence under Rules 89(B) and (C) and 92*bis*.[1]

[1] Motion, paras 6-8.

2. 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'.[2]

3. 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', which was interpreted by the International Criminal Tribunal for Rwanda ("ICTR") in the *Semanza* case 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'.[3] 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[4] 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.[5]

4. 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.[6]

5. 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.[7]

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[2] *Ibid.*, paras 9 and 13.

[3] *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*"), para 25.

[4] *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.

[5] Motion, paras 15-16, 19-20.

[6] *Ibid.*, para 23.

[7] *Ibid.*, paras 28-30.

6. 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.[8]

7. 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.[9]

Gbao Response

8. The Defence submits that the Prosecution Motion is premature and that questions of evidence should only be addressed after the commencement of trial. The Defence argues with regard to Rule 89 that it is not in a position at this stage to consider the admissibility, relevance, source, availability of better evidence, purpose of admission and probative value of the documents referred to by the Prosecution.[10]

9. The Defence argues that judicial notice is exceptional given its mandatory nature.[11] The Defence submits that taking judicial notice of facts of common knowledge should not remove the possibility of rebuttal in all circumstances.[12]

10. In order to respect the rights of the accused, the Defence submits that facts of common knowledge should be non-controversial, indisputable, non-legal and not involve assertions of criminal activity covered by the indictment.[13]

11. The Defence accepts that the Court can usefully be guided by the principles developed in the prior jurisprudence of ad hoc international criminal tribunals but favours the essentially restrictive approach whereby judicial notice is necessarily a tool of the most exceptional application.[14]

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[8] *Ibid.*, para 31.
[9] *Ibid.*, para 33.
[10] Gbao Response, para 2.
[11] *Ibid.*, para 3.
[12] *Ibid.*, para 5.
[13] *Ibid.*, para 7.
[14] *Ibid.*, para 8.

12. The Defence proposes the following principles:

a) A court should not take judicial notice of matters that are subject to reasonable dispute.
b) A court should not take judicial notice of legal conclusions or conclusions of mixed law and fact.
c) Judicial notice should not be taken of alleged facts which constitute fundamental elements of crimes charged in the indictment.
d) A court should not take judicial notice of matters which are too marginal, indirect or of remote connection to the issues in the case such that taking judicial notice of them does not materially advance the proceedings.[15]

13. The Defence accepts that the facts set out in paragraphs (B), (E), (H), (K), (L), (M), (N), (O), (P) (Q), (S), (T), (U), (V), and (W) and (X) may constitute proper subjects for judicial notice.[16] The Defence details its reasons why the remaining facts are not proper subjects of judicial notice.[17]

14. With respect to documents, the Defence submits that the Court can only take judicial notice of the existence and perhaps authenticity of documents, but not the contents thereof, save where it has been shown in relation to each specific fact that it is a fact of common knowledge.[18]

Prosecution Reply to Gbao

15 The Prosecution submits that its motion is not premature[19] and refers to the *Semanza* decision in which the ICTR took judicial notice of some of the facts before the trial commenced in "the interest of aiding the parties in preparing their respective trial presentations".[20]

16 The Prosecution denies that taking judicial notice or admitting the facts and documents will unfairly interfere with the rights of the Accused and urges the Court to find the balance between the principle of judicial economy and the right of the Accused to a fair trial.[21] It asserts that the entire purpose of judicial notice will be defeated if the Defence is allowed to call evidence at the trial to rebut those facts judicially noticed.[22]

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[15] *Ibid.*, paras 9-12.
[16] *Ibid.*, para 13.
[17] *Ibid.*, para 14.
[18] *Ibid.*, para 15.
[19] Prosecution Reply to Gbao, para 6.
[20] *Semanza, supra* note 3, para 44.
[21] Prosecution Reply to Gbao, paras 9-10.
[22] *Ibid.*, para 13.

17 The Prosecution reiterates that the correct definition of common knowledge is that defined in the *Semanza* case[23] and not that suggested by Defence. It submits that the test by Defence is not supported by any legal authority and is inordinately high.[24]

18 The Prosecution agrees with the Defence that the facts it identified are proper subjects for judicial notice, but submits that the remaining facts also satisfy this test.[25]

Kallon Response

19 The Defence asserts that while the Statute values expedition, this does not change the fact that the Accused is entitled to a fair trial and the right to cross-examine. The Defence submits that the Chamber may grant judicial notice of a fact or document where the Prosecution has demonstrated that:

a) the facts are relevant to the question of the guilt or innocence of the Accused;
b) the facts are not the "ultimate facts in issue in the case";
c) the facts are not disputed; and
d) it is not seeking notice of "unadorned" legal conclusions.[26]

20 The Defence states that it is prepared to accept that the facts set out in Paragraphs (B), (E), (M), (N), (O), (T), (U), (V), and (X) of Annex A may be judicially noticed.[27]

21 The Defence submits that the remaining facts in Annex A are not proper subjects for judicial notice and gives detailed reasons concerning each Paragraph.[28]

22 The Defence submits that the criteria for admissibility under Rule 89 and 92*bis* are relevance and additional safeguards, reliability and procedural fairness.[29]

23 Concerning the documents contained in Annex B, the Defence submits that the Chamber may take judicial notice of the fact of the existence of the documents and the authenticity of Security Council Resolutions and official UN Documents and Peace Accords and Agreements between Governments. The Defence submits that the contents of the rest of the documents, in particular the

[23] *Semanza, supra* note 3.
[24] Prosecution Reply to Gbao, para 14.
[25] *Ibid.*, paras 16 and 17.
[26] Kallon Response, paras 13-17.
[27] *Ibid.*, para 18.
[28] *Ibid.*, para 19.
[29] *Ibid.*, para 20.

Reports of the Secretary-General and Non-Governmental Organization ("NGO") and Government Pronouncements, should not be admitted in evidence. It states that the documents concern events in Sierra Leone during the 1990s are replete with disputed allegations concerning the RUF and cannot be said to be impartial. It concludes that to judicially notice these documents would prevent the Accused from defending himself.[30]

Prosecution Reply to Kallon

24 The Prosecution reviews in detail the submissions of the Defence regarding its objections to the admission of the facts in Annex A and submits that the Court should judicially notice these particular facts.[31]

25 The Prosecution notes the Defence objections concerning the documents listed in Annex B. Again, the Prosecution submits that the Court should judicially notice the facts contained in the documents or find that the facts should be admitted as evidence.[32]

II. DELIBERATION

I. Introduction

26 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 doctrine, it is important to note that though the doctrine, as is understood today, can be traced back to its common law origins, it has received recognition in some civil law jurisdictions but not in others.[33] 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.

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[30] *Ibid.*, para 21.

[31] Prosecution Reply to Kallon, paras 3-12.

[32] *Ibid.*, paras 13-15.

[33] 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 provides that "*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.

II. Order Requested

27. 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

28. 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.

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

29. This Court has already addressed the issue of judicial notice in its Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence dated 2 June 2004 in the case of the *Prosecutor v. Sam Hinga Norman, Moinina Fofana and Allieu Kondewa* ("CDF case") and it adopts here in its entirety those comments made therein as to the common and civil law perspectives on the doctrine of judicial notice.

By contrast, the ***Austrian Penal Code*** *1975*, does not contain 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 does 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 1/2004). Also the ***Slovenian Criminal Procedure Act*** does not recognise the doctrine of judicial notice (See Zakon o Kazenskem Postopku, Ur.l RS st 116/2003).

30 Judicial notice is "the means by which a court may take as proven certain facts without hearing evidence.[34] 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* 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).
>
> 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).
>
> 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).[35]

31. 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.[36] 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.[37]

32. 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".

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

[35] *Mullen v. Hackney London Borough Council*, [1997] 1WLR 1103 at paras 10-12.

[36] *Carter v. Eastbourne*, B.C. 164 J.P. 233 DC.

[37] *R. v. Sutton* (1816) 4 M. & S. 532.

V The Doctrine: International Criminal Law Perspectives

33. The Chamber would like to reiterate here that part of its decision in the CDF case dealing with this issue. In the context of international criminal law, it has been observed that the doctrine "has had a significant but unhappy existence".[38] 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.[39] One such viewpoint is that "the failure to exercise [judicial notice] tends to smother trials with technicality and monstrously lengthens them out".[40]

34. 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[41], notably, the International Criminal Tribunal for former Yugoslavia ("ICTY") and the ICTR.

35. 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.

36. 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

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[38] See Stewart, *supra* note 33, p. 245.
[39] *Ibid.*
[40] See Thayer, I, *Preliminary Treatise on Evidence*, 809 (1898) cited in Stewart, *supra* note 33.
[41] 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.

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.[42]

37. Evidently, in the Chamber's opinion, Rule 94(A) of the Rules requires judicial cognisance of only facts which rise to a threshold level of "common knowledge". This 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*[43] and *Prosecutor v Ntagerura et al.*,[44] 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.

38. As a matter of statutory significance, the Chamber finds, as it did in the CDF case, that the expression "common knowledge" has been, and continues to be, the subject of subtle legal interpretation. Instructively, in the *Semanza* decision,[45] 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."[46]

39 The Chamber further notes, as it did in the CDF case, that despite the exacting requirement that facts must rise to a level of "common knowledge" to be judicially noticed, there is authority for the proposition that "a proposition need not to be universally accepted in order to qualify as common knowledge"[47], 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.[48]

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[42] *Semanza, supra* note 3, para. 20. See also *Prosecutor v. Simic et al*, Decision on the pre-trial motion by the Prosecution requesting 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".

[43] IT-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".

[44] 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."

[45] *Semanza, supra* note 3, para. 25.

[46] *The Law of International Criminal Tribunal for the former Yugoslavia*, New York: Transnational Publishers Inc, 1996 (cited with approval in the *Semanza* decision).

[47] *Semanza, supra* note 3, para 31.

[48] Stewart, *supra* note 33, p. 249.

40. 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 cor ımonly be known to qualify for judicial cognisance. On this issue, the Court had this to say:

> ... '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.[49]

41. By logical deduction, in the Chamber's estimation as a matter of statutory construction, cor ımonly known but inaccurate facts cannot be judicially noticed within the meaning and int ndment of Rule 94(A) of the Rules. Therefore, based on the reasoning in the *Semanza* decision, on e a Court makes a preliminary determination that a fact is one of common knowledge within a cou rt's jurisdiction, it must then proceed to a judicial evaluation of whether the fact merits the cha racterization of one that is "reasonably indisputable".

42. Guided, therefore, persuasively by the *Semanza* decision as to the legal criteria applicable un ler Rule 94(A) of the Rules in determining the merits of applications for judicial notice brought bef ore international criminal tribunals, the Chamber will now proceed to evaluate the merits or oth erwise of the Prosecution's Motion for judicial notice.

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

43. Having determined the applicable jurisprudence on the subject of judicial notice in reference to his Chamber's previous findings in the CDF case, the Chamber now undertakes an evaluation of the merit or otherwise of the Motion based on the foregoing exposition of the law in the int ernational criminal law field, evidently recognising the doctrine's contribution in the national cri ninal law systems as a basis for its application in the international criminal law field.

44 The Chamber has carefully examined and reviewed each of the alleged facts enumerated in An nex A of the Prosecution's Motion. The Chamber notes that there are few challenges by the Co ınsel for the Accused Gbao and Kallon to some of the alleged facts. The Accused Gbao agrees tha t the alleged facts (B), (E), (H), (K), (L), (M), (N), (O), (P), (Q), (S), (T), (U), (V), (W) and (X) may be juc icially noticed and the Accused Kallon agrees that the alleged facts (B), (E), (M), (N), (O), (T), (U), (V), and (X). The Chamber further notes that no response was filed on behalf of the Accused Sesay, alt ıough his Counsel indicated orally that he adopted the submissions of Gbao.

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[49] S manza, *supra* note 3, para 23.

45. 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 to the Motion:

(i) that alleged facts (A), (B), (D), (E), (J), (K), (M), (N), (O), (P), (U), (V), (W), and (X) do qualify for judicial notice as formulated;

(ii) that alleged facts (H), (Q), (R), (S), and (T) 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 to the Motion 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 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 hereby deemed conclusively proven.

46. 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 10-29 do qualify for judicial notice;

(b) Documents 51 (repeated at 65), 62, 64, 76 and 77 do qualify for judicial notice;

(c) Documents 67-72 do qualify for judicial notice;

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

(a) Documents 1-9 do qualify for judicial notice;

(b) Documents 55-58 do qualify for judicial notice;

(c) Documents 88-92 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 be, are 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.

47. 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

48. 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 24th day of June 2004

Judge Pierre Boutet	Judge Benjamin Mutanga Itoe Presiding Judge, Trial Chamber I	Judge Bankole Thompson

[Seal of the Special Court for Sierra Leone]

Annex I

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

B. The city of Freetown, the Western Area, and the following districts are located in the country of Sierra Leone: Port Loko, Bombali, Koinadugu, Kono, Kailahun, Kenema, Bo.

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.

J. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991.

K. During the ensuing armed conflict, the RUF forces were also commonly referred to as "RUF", "rebels", and "People's Army" by the population of Sierra Leone.

M. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities.

N. However, the active hostilities thereafter recommenced.

O. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership.

P. On 25 May 1997 JOHHNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC.

Q. The AFRC forces were commonly referred to as "Junta" by the population of Sierra Leone.

R. Shortly after the AFRC seized power, at the invitation of Johnny Paul Koroma, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF formed an alliance with the AFRC.

S. The AFRC/RUF Junta forces (Junta) were also commonly referred to as "Junta", "rebels", and "People's Army" by the population of Sierra Leone.

T. After the 25 May 1997 coup d' état, a governing body was created within the Junta that was the sole executive and legislative authority within Sierra Leone during the Junta.

U. The governing body included leaders of both the AFRC and the RUF.

V. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah's government returned in March 1998.

W. After the Junta was removed from power, the AFRC/RUF alliance continued.

X. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH, and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement.

Annex II

(I) As To Their Existence and Authenticity

Secretary General Reports on the Situation in Freetown

Tab 10: 21 November 1995 (S/1995/975), paragraph 2.
Tab 11: 18 March 1998 (S/1998/249) paragraphs 6, 20.
Tab 12: June 1998 (S/1998/486) paras 26, 27, 35-37

Reports of the United Nations Observer Mission in Sierra Leone (UNOMSIL)

Tab 13: First Progress Report 12 August 1998 (S/1998/750) paras. 10, 12, 13, 14, 33, 36, 37, 38
Tab 14: Second Progress Report 16 October 1998 (S/1998/960) para. 21.
Tab 15: Third Progress Report 16 December 1998 (S/1998/1176) para. 18.
Tab 16: Fifth Report 4 March 1999 (S/1999/237) paras 2, 21-27
Tab 17: Sixth Report 4 June 1999 (S/1999/645) para. 7, 19, 20, 30, 31, 32.

Reports of the United Nations Mission in Sierra Leone (UNAMSIL):

Tab 67: Thirteenth Report 14 March 2002 (S/2002/267) para 2.
Tab 68: 6 December 1999 (S/1999/1223) para 3, 4, 7
Tab 69: 19 May 2000 (S/2000/455)

Official Statements by President of the Security Council

Tab 70: Statement by the President of the Security Council, United Nations Security Council S/PRST/2000/14 (4 May 2000)
Tab 71: Statement by the President of the Security Council, United Nations Security Council S/PRST/2000/24 (17 July 2000)

Humanitarian Situation Reports – UN Office for the Coordination of Humanitarian Affairs:

Tab 18: Sierra Leone Humanitarian Situation Report 5 June 1997, para. 5.
Tab 19: Sierra Leone Humanitarian Situation Report 14 July 1997.
Tab 20: Sierra Leone Humanitarian Situation Report 8 September 1997.
Tab 21: Sierra Leone Humanitarian Situation Report 17 May 1999 Sections 2, 3.
Tab 22: Sierra Leone Humanitarian Situation Report 10 August 1999, Section 1,2,3,5.
Tab 23: Sierra Leone Humanitarian Situation Report 9 October 1999, Section 1,2,3.
Tab 24: Sierra Leone Humanitarian Situation Report 20 November 1999, Section 2.
Tab 25: Sierra Leone Humanitarian Situation Report 7 August 2000, Section A.

Other Miscellaneous UN Reports

Tab 26: Human Rights Assessment Mission to Freetown 25 January and 1 to 4 February 1999, Findings and Recommendations, pages 3-9.
Tab 27: Report of the Panel of Experts Appointed Pursuant to the United Nations Security Council Resolution 1306 (2000), December 2000, paragraph180.
Tab 28: Report of the Panel of Experts Appointed Pursuant to UN Security Council

Resolution 1343 (S/2001/1015), 26 October 2001

Tab 29: UNHCR Report on Atrocities Committed Against the Sierra Leone Population, UNHCR Conakry Branch Office, 28 January 1999, Victim reports Cases #1-38.

Tab 72: UNCHR Background Paper on Refugees and Asylum Seekers from Sierra Leone, Geneva, November 1998

Sierra Leone Official Documents

Tab 51 and 65: Government Notices No 215 (P.N. No. 3 of 1997) of 3 September 1997 published in gazettes nos. 52 and 54 of 4 September 1997 & 18 September respectively. Sierra Leone Gazette Nos. 52 and 54.

Tab 62: AFRC Proclamation - PN no.3 of 1997, Supplement to Sierra Leone Gazette Vol. CXXVIII, No. 34, dated 28 May 1997.

Tab 64: Constitution of Sierra Leone 1991 - Sections 55, 156

Tab 76: Government Notice 272 (P.N. No. 3 of 1997), Sierra Leone (SL) Gazette No. 69.

Tab 77: Decrees 1, 4, 5, 6 and 7 of 1997. Dec 1 - SL Gazette No. 41; Dec 5 - SL Gazette No. 49; Dec 6 - SL Gazette No. 63; Dec. 7 - SL Gazette No. 66.

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

UN Security Council Resolutions

Tab 1. Resolution 1132 (8 October 1997)

Tab 2. Resolution 1181 (13 July 1998), para. 1

Tab 3. Resolution 1220 (12 January 1999)

Tab 4. Resolution 1270 (22 October 1999) para 6.

Tab 5. Resolution 1289 (7 February 2000) para 4.

Tab 6. Resolution 1299 (19 May 2000)

Tab 7. Resolution 1306 (5 July 2000)

Tab 8. Resolution 1313 (4 August 2000)

Tab 9. Resolution 1346 (30 March 2001)

Maps, Peace Agreements, Treaties

Tab 55: The Lomé Peace Accord, the Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 7 July 1999.

Tab 56: 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.

Tab 57: The Conakry Accord: ECOWAS Six-Month Peace Plan For Sierra Leone 23 October 1997 - 22 April 1998, 23 October 1997.

Tab 58: Ceasefire Agreement Between Government and the Revolutionary United Front, 18 May 1999

Tab 88: Map of Sierra Leone, Scale 1:350,000, UNAMSIL Geographic Information Service, 6 May 2002.

Tab 89: Article 3(1) of the Convention (IV) to the Protection of Civilian Persons in the Time of War Geneva 12 August 1949.

Tab 90: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

Tab 91: ICRC List of States party to the Geneva Conventions and their Additional Protocols

Tab 92: Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977