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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 29th of July 2006

PROSECUTOR Against ISSA HASSAN SESAY
 MORRIS KALLON
 AUGUSTINE GBAO
 (Case No. SCSL-04-15-T)

Public Document

**DECISION ON PROSECUTION MOTION FOR JUDICIAL NOTICE
OF SIGNIFICANT DAYS OF THE ISLAMIC CALENDAR**

Office of the Prosecutor:

Christopher Staker
James Johnson
Peter Harrison
Wendy Van Tongeren

Defence Counsel for Issa Hassan Sesay:

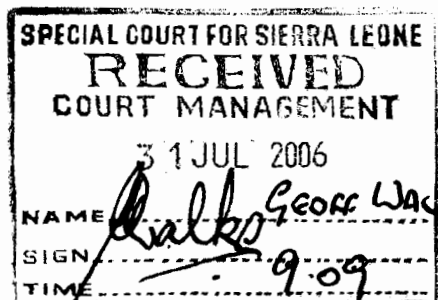
Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Court Appointed Counsel for Augustine Gbao:

Andreas O'Shea
John Cammegh



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

SEIZED of the *Prosecution Notice for Judicial Notice* filed by the Office of the Prosecutor ("Prosecution") on the 15th of June 2006 in which the Prosecution applies for judicial notice to be taken of a series of significant days of the Islamic calendar for the years 1997 to 2000, inclusive ("Application");

NOTING the *Sesay Defence Response to "Prosecution Motion for Judicial Notice" of Significant Days of the Islamic Calendar* filed by Counsel for the Accused Issa Hassan Sesay ("Defence") on the 26th of June 2006 ("Response");

NOTING FURTHER that Counsel for the Accused Morris Kallon and for the Accused Augustine Gbao have not filed any response to this Application;

NOTING the *Prosecution Reply to the Sesay Response to the Prosecution Motion for Judicial Notice* filed on the 3rd of July 2006 ("Reply");

MINDFUL of this Chamber's decisions in this case¹ and the decision of the Appeals Chamber² on judicial notice;

MINDFUL that Rule 94(A) of the Rules of Procedure and Evidence ("Rules") provides that:

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

CONSIDERING that the Appeals Chamber confirmed that:

[T]he Trial Chamber correctly identified the criteria for facts of common knowledge as follows:

- a) the facts are relevant to the case of the accused person;
- b) the facts are not subject to reasonable dispute;
- c) the facts do not include legal findings; and
- d) the facts do not attest to the criminal responsibility of the accused;³

¹ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 24 June 2004 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consequential Order Regarding Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 24 May 2005.

² *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-AR73, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005.

CONSIDERING that the significant dates of the Islamic calendar during the years of 1997 to 2000 are relevant to this case in that at least five Prosecution witnesses who have already testified have made reference, in some form, to a date of the Islamic calendar respected in Sierra Leone⁴;

SATISFIED that dates of the Islamic calendar that were respected in Sierra Leone during the years of 1997 to 2000 can be definitively identified in such a way as to not be subject to reasonable dispute and that these dates would be capable of being judicially noticed;

NOTING, HOWEVER, that the Prosecution has appended to its Application and its Reply, print-outs of lists of tentative dates of the Islamic calendar from Islamic organisations in South Africa and the United States;

CONSIDERING that these tentative dates do not provide the required degree of certainty for this information to be judicially noticed at this time;

NOTING that dates of the Islamic calendar that were respected in Sierra Leone during the years of 1997 to 2000 can be definitively identified by the appropriate authorities within Sierra Leone;

PURSUANT to Rules 89 and 94(A) of the Rules;

THIS CHAMBER HEREBY DENIES the Prosecution's present Application for judicial notice of significant dates of the Islamic calendar.

Done at Freetown, Sierra Leone, this 29th day of July 2006

Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Bankole Thompson
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

³ *Id.*, at para. 28.

⁴ Witness TF1-172 referred to the month of Ramadan (Response, paras 6-7; Witnesses TF1-156, TF1-031 and TF1-028 referred to an Islamic "praying day" called "Youghbenteh", "Jombenteh" or "Youghbenten" in Madingo, (Reply, paras 1-4) and Witness TF1-129 referred to a Muslim holiday in the Transcripts of 10 May 2005 at 5:78, line 27 and 12 May 2005 at p. 26, line 20.