

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

Before: The Trial Chamber
Judge Bankole Thompson
Judge Benjamin Itoe
Judge Pierre Boutet

Registrar: Mr. Robin Vincent

Date filed: 26 April 2004

THE PROSECUTOR

Against

SAM HINGA NORMAN**MOININA FOFANA****ALLIEU KONDEWA****Case No. SCSL – 2004 – 14 – PT**

**REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION FOR JUDICIAL
NOTICE OR ADMISSION OF EVIDENCE**

Office of the Prosecutor:

Mr. Luc Côté

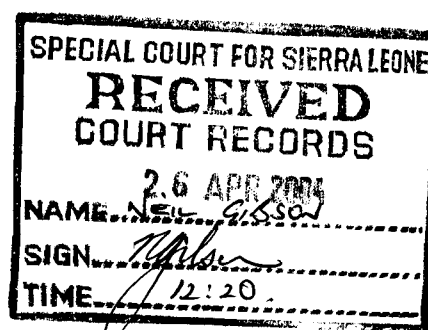
Mr. James C. Johnson

Defence Counsel:

Mr. J.B. Jenkins-Johnston

Mr. Suliaman Tejan-Sie

Ms. Adiatu Tejan



SPECIAL COURT FOR SIERRA LEONE**OFFICE OF THE PROSECUTOR****FREETOWN-SIERRA LEONE****THE PROSECUTOR****Against****SAM HINGA NORMAN****MOININA FOFANA****ALLIEU KONDEWA****Case No. SCSL – 2004 – 14 – PT**

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The Prosecution files this reply to the Response of the Accused, Sam Hinga Norman, to its Motion for Judicial Notice and Admission of Evidence.

I. BACKGROUND

1. On 2 April 2004, the Prosecution filed a Motion for Judicial Notice and/or Admission of the facts stated in the Annexes attached to the said Motion. Counsel for Norman (“Accused”) filed a response (“Response”) on 16 April 2004 agreeing that the Court can take judicial notice of the facts stated in paragraphs A, B, E, P, Q and W of the Prosecution’s Annex A and can admit into evidence the documents numbered 22, 23, 24, 25, 26, 27, 28, 29, 30 and the maps, peace agreements and treatises numbered 34, 35, 36, 37, 38, 39 and 40 of Annex B and asking the court to reject the other facts stated in the said Annex A and the other documents in Annex B.. The Prosecution files this reply to the Defence Response.

II. DEFENCE SUBMISSIONS

2. The Defence objections are as follows:

- a. that the facts are not facts of common knowledge as envisaged in Rule 94 as they are contestable and/or disputed assertions which the prosecution must prove by evidence beyond reasonable doubt;
- b. that taking judicial notice of contestable or disputed assertions will violate the Accused' right to the presumption of innocence;
- c. that his right to protection from self-incrimination will be infringed thereby denying him a fair trial;
- d. and 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.

III. ARGUMENTS

Facts of common knowledge

3. The Defence submits that the facts contained in Annex A, namely C, D, F, G, H, I, J, K, L, M, N, O, R, S, T, U, V, X and Y are not facts of common knowledge as envisaged by Rule 94. The Defence asserts that these facts are contestable and/or disputed assertions which the Prosecution must prove by evidence beyond reasonable doubt. The Defence advances no reasons or authority in support of its assertion that said facts are contestable or disputed.
4. The Prosecution submits that said facts are matters of common knowledge. It further submits that the test is not whether the facts are contestable or disputed but rather, as was stated in *Semanza*, whether they are "subject to reasonable dispute." Any flimsy dispute or contest will not prevent the Court from taking judicial notice of the facts. It must be reasonable.
5. The Prosecution submits that the facts contained in Annex A which the Defence requests the Court to reject are not subject to reasonable dispute. For example, the Defence requests the Court to reject statement H of Annex A, to wit, "The organized armed factions involved in the armed conflict included the Revolutionary Armed Front (RUF),

the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC).” Although the Defence advances no reason to support its contention that the same is contestable or disputed, the Prosecution respectfully submits that it is not. The Security Council resolution, UN and NGO reports cited in Annex A all confirm the said fact.

6. The Prosecution submits that the said fact and all the other facts in Annex A are facts of common knowledge as envisaged by Rule 94.
7. As regards the documents contained in Annex B, the Defence submits that notwithstanding the characterization of the documents as coming from authoritative sources such as the United Nations and reputable international organizations the said documents ought not to be admitted in evidence as they include multiple violations of the rule against hearsay, violations of the universally accepted *audi alteram partem* rule, fail to satisfy the need for corroboration and ought not be admitted in evidence without having the author cross-examined and his or her veracity tested.
8. The Defence does not state that the said documents are not admissible in evidence but submits that they violate certain rules of evidence or that the veracity of the author ought to be tested. The Prosecution submits that unlike national courts, international jurisprudence embodies the principle of “extensive admissibility of evidence.” Rule 89 (A) provides that the Chambers shall not be bound by national rules of evidence and Rule 89 (C) provides that the Chamber may admit any relevant evidence. Further, Rule 92bis (A) provides a Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
9. In *Blaskic*, the Trial Chamber authorised the presentation of evidence without it being submitted by a witness. The Trial Chamber relied on various criteria for this and stated that “[a]t the outset, it is appropriate to observe that the proceedings were conducted by professional Judges with the necessary ability for first hearing a given piece of evidence and then evaluating it so as to determine its due weight with regard to the circumstances in which it was obtained, its actual contents and its credibility in light of all the evidence tendered. Secondly, the Trial Chamber could thus obtain much material of which it might otherwise have been deprived. Lastly, the proceedings restricted the compulsory resort to a witness serving only to present documents. In summary, this approach allowed the proceedings to be expedited whilst respecting the fairness of the trial and contributing to

the ascertainment of the truth.”¹ The Prosecution submits that the same reasoning applies to this case and urges the Trial Chamber to apply the same.

10. The Prosecution notes that admitting the said documents in evidence under Rule 89 or 92bis does not preclude the Defence from adducing evidence to contradict the facts contained in the said documents. It therefore submits that the Defence has not advanced any cogent reason why the said documents should not be admitted in evidence and as a result urges the Court to admit the same evidence.

Burden of Proof

11. The Defence states that the need to expedite proceedings and promote judicial economy or even the limited temporal existence and resources of the Court cannot override the burden of proof on the Prosecution to prove every allegation against each Accused beyond reasonable doubt to the satisfaction of the Trial Chamber.
12. The Defence asserts without illustrating how the same, if at all, overrides the burden to prove every allegation against each Accused beyond a reasonable doubt. The Prosecution asserts that taking judicial notice or admitting the said facts and documents will not shift the burden of proof or remove that burden from the Prosecution. Even with judicial notice, the burden still remains on the Prosecution to prove the guilt of the Accused.
13. The Defence also asserts that the limited temporal existence and resources of the Court cannot override the burden of proof. The Prosecution does not in its Motion or in this reply assert that the same overrides the burden of proof. On the contrary, it maintains that the same will not affect the burden of proof as the Prosecution will still be required to discharge the burden of proof beyond reasonable doubt at the trial. However, the Prosecution submits that the limited temporal existence and the resources of the Court are factors which the Court must take into consideration in arriving at its decision.
14. The Prosecution submits that the judicial process does not take place in a vacuum. It is dependant on the realities within which it is exercised and the factual issues raised in the

¹ *Prosecutor v. Blaškić*, IT-95-14-T, Judgement, 3 Mar. 2000 para 35. Similarly, in *Prosecutor v. Delalić et al.*, (Celebici) IT-96-21-T, Decision on the Motion of the Prosecutor for the Admissibility of Evidence, 19 Jan. 1998, para. 20, the ICTY explained that “[t]he threshold standard for the admission of evidence...should not be set excessively high, as often documents are sought to be admitted into evidence, not as ultimate proof of guilt or innocence, but to provide a context and complete the picture presented by the evidence gathered.” The Tribunal relied on the notion that “the trials before the International Tribunal are conducted before professional judges, who by virtue of their training and experience are able to consider each piece of evidence which has been admitted and determine its appropriate weight.”

Prosecution's Motion should be part of this consideration. In the instant case, the fact that the mandate of the Special Court is of limited duration is a reality. The Prosecution urges the Court to find the balance between the principle of judicial economy and the right of the Accused to a fair trial.²

15. The Prosecution submits that taking judicial notice of the facts in Annex A will not adversely, or at all, affect the Accused's right to the presumption of innocence until proof of guilt and or his right to protection from self-incrimination. The Prosecution reiterates the fact stated in its Motion that it does not request the Court take judicial notice of facts which directly attest to the alleged guilt of any of the Accused. It submits that the facts and documents contained in the Annexes do not directly implicate any of the Accused in the commission of criminal acts. It therefore submits that taking judicial notice of the said facts will not adversely or at all affect the Accused's right to the presumption of innocence until proof of guilt and or his right to protection from self-incrimination.
16. The Prosecution also reiterates its submission in its Motion that taking judicial notice of these facts or admitting the same into evidence is consistent with the spirit of the Statute and general principles of law and with a fair determination of the matter before the Court, as it would promote judicial economy without adversely affecting the rights of the Accused to a fair trial.

IV. CONCLUSION

17. As regards paragraph 1 of the Defence Response, the Prosecution agrees with the Defence that the Court can take judicial notice of the facts stated in the paragraphs mentioned in the same as they are facts of common knowledge within the meaning of Rule 94.
18. However, the Prosecution disputes the Defence claim that the other facts stated in Annex A but not mentioned in paragraph 1 of the Defence Response are not proper subjects for judicial notice as they are not matters of common knowledge within the meaning of Rule 94. The Prosecution most respectfully submits that they are. The Prosecution also submits the documents listed in Annex B are admissible in evidence under Rule 89 and Rule 92bis.

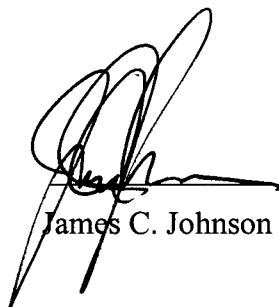
² *Simic* Decision on Judicial Notice, 25 Mar. 1999, para. 17; *Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002, para. 36.

19. For the foregoing reasons, the Prosecution submits that the Trial Chamber dismiss the Defence Response in so far as it seeks to have the Prosecution Motion dismissed.

Freetown, 26 April 2004.

For the Prosecution,



Luc Cote

James C. Johnson