

THE SPECIAL COURT FOR SIERRA LEONE**THE TRIAL CHAMBER**

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

Registrar: Robin Vincent

Date: 16 April 2004

THE PROSECUTOR

Against

**SAM HINGA NORMAN
 MOININA FOFANA
 ALLIEU KONDEWA**

CASE NO: SCSL-2004-14-PT

**RESPONSE OF DEFENCE COUNSEL FOR CHIEF SAM
 HINGA NORMAN TO PROSECUTION'S MOTION FOR
 JUDICIAL NOTICE AND ADMISSION OF EVIDENCE**

Office of the Prosecutor:

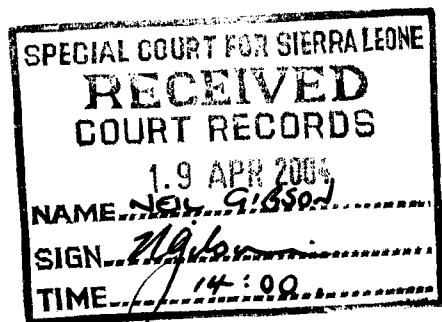
Mr Luc Cote, Chief of Prosecutions
 Mr James C. Johnson
 Mr Charles Caruso

Defence Counsel for Sam Hinga Norman:

J. B. Jenkins-Johnston Esq.
 Sulaiman Tejan-Sie Esq.
 Adiatu Tejan

Defence Counsel for Moinina Fofana

Mr Michael Pestman

Defence Counsel for Allieu Kondewa

COUNSEL for Chief Sam Hinga Norman hereby submit this response to the Prosecution Motion for judicial Notice and Admission of Evidence filed on 5th April 2004.

- (1) The Defence concedes that the following matters stated in Annex A of the Prosecutor's Motion can be Judicially Noticed, as being "facts of common knowledge".
 - (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 are located in the Country of Sierra Leone: Kenema, Bo, Bonthe, Moyamba.
 - (E) Sierra Leone acceded to the Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions on 21 October 1986.
 - (P) The Organized Armed Group that became known as the RUF was founded in about 1988 in Libya. The RUF began organized armed operations in Sierra Leone in or about March 1991.
 - (Q) 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. Shortly after the AFRC seized power the RUF joined with the AFRC.

- (W) The Junta was forced from power on or about 14 February 1998. President Kabbah's Government returned in March 1998.
- (2) The Defence submits that all the other Statements contained in 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, but rather are contestable and/or disputed assertions which the prosecution must prove by evidence beyond reasonable doubt.
- (3) The Defence submits that if the Court were to take Judicial Notice of the contestable and/or disputed assertions mentioned in (2) above, the Accused's right to the presumption of innocence until proof of guilt, and also his right to protection from self-incrimination will be seriously violated thereby denying him a fair trial.
- (4) The Defence submits that the need to expedite proceedings and to 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.
- (5) The Defence adopts the interpretation of the phrase "facts of common knowledge" given in SEMANZA Decision on Judicial Notice-3 November 2000 (para 23), to wit;
- "... 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....,"
- by reason of which Defence has conceded that the following can be Judicially Noticed.

- A - Historical Fact
- B - Geographical Fact
- E - Historical Fact
- P - Historical Fact (Universally known)
- Q - Historical Fact (Universally known)
- W - Historical Fact (Universally Known)

Defence submits that all the rest are assertions or statements or conclusions by the Prosecution seriously in dispute, and are neither factual findings nor legal conclusions, but are rather elements tending to support the indictment and to prove the guilt of the Accused, of which the Chamber cannot take Judicial Notice, but must be proved by the Prosecution.

- (6) The Defence submits that where the Chamber decides not to take Judicial Notice of any alleged "facts of common knowledge" because they are found to be reasonably disputed, or because they are facts which the Prosecution must prove in order to establish the guilt of the Accused, that the Court should resist the invitation to admit same in evidence pursuant to Rules 89 and 92 bis, because this will be neither in consonance with the spirit of the Statute, or with the general principles of Law as adumbrated by Rule 89 (b).
- (7) Defence submits that with regard to the Documents in Annex B, only the U.N. Security Council Resolutions, that is to say 22,23, 24, 25, 26, 27, 28,29,and 30 and the maps, Peace Agreements,

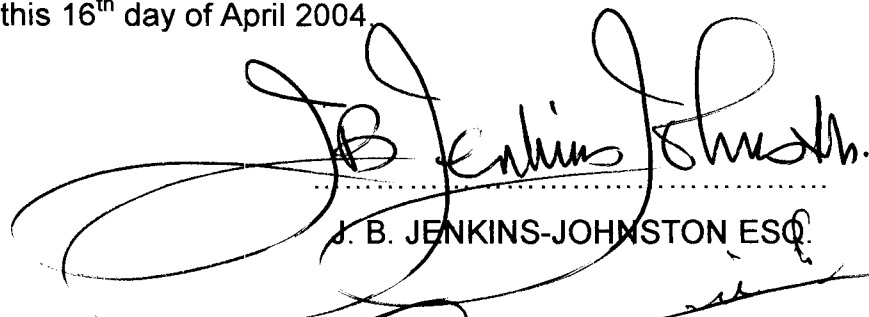
Treaties in 34, 35, 36, 37, 38, 39, and 40 can be properly admitted in Evidence. Counsel submits that notwithstanding the characterisation of these documents as coming from

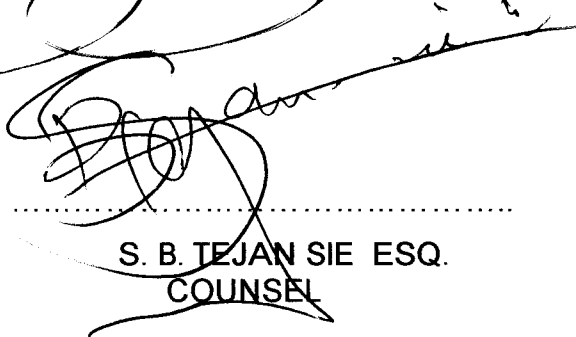
“...authoritative sources such as the United Nations and reputable International organizations...”

these documents are substantially reports and other pieces written by individuals containing their own personalised and highly coloured opinions, impressions and conclusions which include multiple violations of the rule against hearsay; violations of the universally accepted audi alteram partem rule; which fail to satisfy the need for corroboration in some cases, and generally which any Court of Law ought not to admit in evidence without having the author in Court to be cross-examined and his/her veracity tested particularly having regard to the seriousness of the charges against the Accused.

- (8) In Conclusion, Counsel submits that with the exception of the contents of A, B, E, P, Q, and W in annex A; and 22, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39 and 40 in Annex B, the Chamber is urged not to either take Judicial Notice of or to admit in evidence all the other material for the reasons given in this Response.

Dated this 16th day of April 2004.


.....
J. B. JENKINS-JOHNSTON ESQ.


.....
S. B. TEJAN SIE ESQ.
COUNSEL