

SCSL - 2003 - 08 - PT
(1753 - 1755)



SPECIAL COURT FOR SIERRA LEONE

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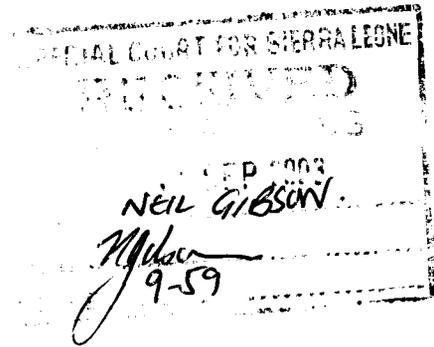
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 17th of September 2003



The Prosecutor against

Samuel Hinga Norman
(Case No.SCSL-2003-08-PT)

ORDER PURSUANT TO RULE 72 (E)

**DEFENCE PRELIMINARY MOTION ON LACK OF JURISDICTION:
LAWFULNESS OF THE COURT'S ESTABLISHMENT**

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:
Mr. James Blyden Jenkins-Johnston
Mr. Sulaiman Banja Tejan-Sie

THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”)

SITTING as the Trial Chamber (“the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

SEIZED of the Defence Preliminary Motion of the 26th day of June 2003 on Lack of Jurisdiction: Lawfulness of the Court’s Establishment (“the Preliminary Motion”), in relation to the criminal suit against **Samuel Hinga Norman** (“the Accused”);

CONSIDERING the Prosecution’s Response to “the Preliminary Motion” dated the 7th day of July, 2003 (“the Response”);

CONSIDERING the Order on the Defence Request for Extension of Time within which to File Defence Reply to Prosecutor’s Response to Defence Preliminary Motions of the 17th day of September 2003;

CONSIDERING the Defence Reply to “the Preliminary Motion” of the 14th day of July 2003 (“the Reply”);

CONSIDERING the entire provisions of Rule 72 of the Rules of Procedure and Evidence (“The Rules”);

CONSIDERING, in particular, the provisions of Rule 72 (E) of “the Rules” which provide that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

CONSIDERING that the Defence “Preliminary Motion” objects to the jurisdiction of “the Special Court” to try “the Accused” on all the charges contained into the Indictment;

CONSIDERING that the Indictment charges “the Accused” with several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“the Statute”), Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of “the Statute”, and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of “the Statute”;

CONSIDERING that “the Accused” submits that in establishing “the Special Court” the Government of Sierra Leone acted unlawfully and in contravention of the Constitution of Sierra Leone, 1991;

CONSIDERING, in particular, that “the Accused” submits that the concurrent jurisdiction and primacy of “the Special Court” with respect to the national courts of the Republic of Sierra Leone by virtue of Article 8 of “the Statute” is *ultra vires* the Constitution of Sierra Leone, 1991 and in particular of Sections 122 and 125 thereof;

CONSIDERING, furthermore, that "the Accused" submits that the Government of Sierra Leone as a party of the Agreement establishing "the Special Court" acted unconstitutionally;

CONSIDERING that "the Accused" also submits that in May 2000 the absence of effective control and obedience from the bulk of the population of Sierra Leone have the effect of rendering nugatory the Agreement establishing "the Special Court";

GIVEN that "the Accused", in light of the above, argues that "the Special Court" lacks jurisdiction to try him for any of the counts contained in the Indictment on the basis that its statutory powers of concurrent jurisdiction and primacy are *ultra vires* the Constitution of Sierra Leone

GIVEN FURTHER that "the Accused" argues that that the illegal establishment of "the Special Court" by the Government of Sierra Leone renders "the Special Court" illegal and lacking of lawful jurisdiction;

THE CHAMBER

FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of "the Special Court" to try "the Accused" on all the counts of the Indictment that has been preferred against him;

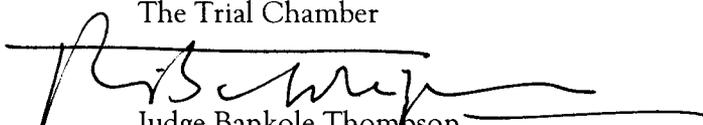
AND THEREFORE, PURSUANT TO RULE 72 (E) OF THE RULES,

REFERS this Defence "Preliminary Motion", together with the Prosecution's "Response" and the Defence "Reply" thereto, to the Appeals Chamber of "the Special Court" for determination;

ORDERS that the reference of this Motion to the Appeals Chamber shall not operate as a stay of the trial of "the Accused";

Done in Freetown, this 17th of September 2003

The Trial Chamber


Judge Bankole Thompson
Presiding Judge

