

SCSL-2004-16-T

(9352-9363)

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**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Justice Teresa Doherty, Presiding Judge  
Justice Richard Lussick  
Justice Julia Sebutinde

Registrar: Robin Vincent

Date filed: 6 June 2005

**THE PROSECUTOR**

**-against-**

**ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU**  
(Case No. SCSL-2004-16-T)

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**CONSEQUENTIAL SUBMISSIONS ON THE MOTION FOR JUDICIAL NOTICE AND  
ADMISSION OF EVIDENCE FILED ON 2 APRIL 2004**

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**Office of the Prosecutor:**

Mr. Luc Côté  
Ms. Lesley Taylor  
Ms. Wambui Ngunya

**Defence Counsel for Alex Tamba Brima:**

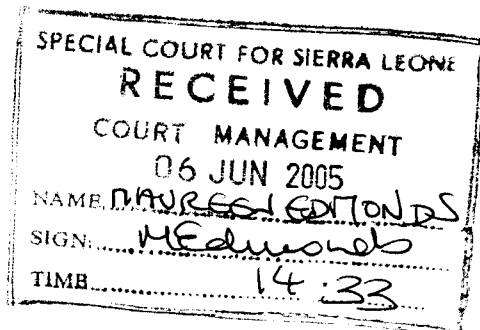
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**I. INTRODUCTION**

1. Pursuant to an Order of this Trial Chamber dated 27 May 2005 (the “Order”), the Prosecution hereby files Consequential Submissions to the Motion for Judicial Notice and Admission of Evidence filed 2 April 2004 (the “original motion”).

**II. PROCEDURAL HISTORY**

2. On 4 March 2004, the Prosecution filed a “Request to Admit” in the instant case, requesting the Defence to admit, deny, refuse, or admit/deny in part the statements contained in the said request.
3. The Defence for the 1<sup>st</sup> and 2<sup>nd</sup> Accused filed responses to the ‘Request to Admit’ on 2 March 2005 and 7 March 2005 respectively. The 3<sup>rd</sup> accused filed two responses, on 19 March 2004 and 4 March 2005.
4. On 2 April 2004 the original motion was filed.
5. To date the defence has not responded to this motion.<sup>1</sup>

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<sup>1</sup> Noted at para. 5 of the Order.

### III. SUBMISSIONS

6. After consideration of the Appeals Chamber decision on judicial notice in *Prosecutor v Norman and others*<sup>2</sup> and the ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’ in *Prosecutor v Issa Hassan Sesay and others*<sup>3</sup>, and pursuant to the Order, the Prosecution amends the relief sought in the original motion.
7. Particularly, the Prosecution has amended the original Annex A. Amended Annex A is attached to these consequential submissions. For the reasons articulated in the original motion, the Prosecution requests that the Trial Chamber take judicial notice of the facts listed in Amended Annex A pursuant to Rule 94(A) as being facts of common knowledge.
8. Further, the Prosecution requests not that the documents listed in Annex B be judicially noticed, but that the information contained in those documents be admitted pursuant to Rules 89(B) and (C) and 92bis, as being information of facts that are both relevant to the allegations detailed in the Indictment and susceptible of confirmation, and being a course which will best favour a fair determination of the matter.
9. The Prosecution notes that the Appeals Chamber has stated that technical rules of evidence designed to guard against unfairness in trials by jury but which prevent a judge having access to relevant information are otiose with respect to Rule 89(C).<sup>4</sup> The Fofana Judicial Notice Decision stated that Rule 92bis, as amended specifically for the limited mandate of the Special Court and peculiar to it, envisioned reception of information about the concluded hostilities collected by authoritative bodies. The Appeals Chamber said in terms that proof of reliability is not a condition of admission.<sup>5</sup>
10. The majority of the documents listed in Annex B originate from the United Nations and well respected Non-Government Organizations, or are public documents. The Prosecution submits that given the source of the documents, the information in them is “susceptible of confirmation” within the meaning of Rule 92bis.
11. The Prosecution submits that no prejudice or unfairness to the Accused will arise from the

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<sup>2</sup> *Prosecutor v Norman and others*, Case No. SCSL-04-14-AR-73, ‘Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”’, 16 May 2005 (the “Fofana Judicial Notice Decision”).

<sup>3</sup> *Prosecutor v Sesay and others*, Case No. SCSL-04-15-PT, ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, 24 June 2004.

<sup>4</sup> *Prosecutor v. Norman and others*, Case No. SCSL-04-14-AR65, “Fofana – Appeal against Decision Refusing Bail”, 11 March 2005, para. 24.

<sup>5</sup> The Fofana Judicial Notice Decision, para 26.

admission of the information in the documents listed in Annex B. The admission of the documents will not displace the burden of proof. If facts contained in the documents listed in Annex B have not been proven beyond reasonable doubt – a finding that can only be made at the conclusion of all of the evidence – trial judges sitting alone will exercise the appropriate forensic judgement.

## V. CONCLUSION

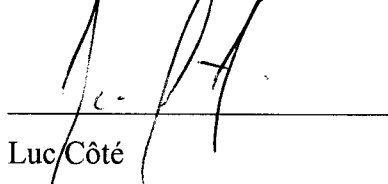
12. The Prosecution amends the relief sought in the original motion and respectfully requests the Trial Chamber to:

- a) Take judicial notice of the facts listed in Amended Annex A; and
- b) Admit the information contained in the documents listed in Annex B pursuant to Rules 89(B) and (C) and 92*bis*.

Filed this 6<sup>th</sup> day of June 2005.

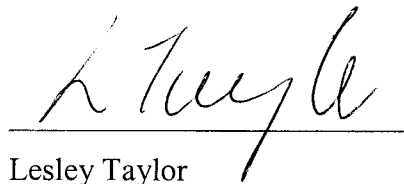
In Freetown.

For the Prosecution



Luc Côté

Chief of Prosecutions



Lesley Taylor

Senior Trial Counsel

**PROSECUTION INDEX OF AUTHORITIES**

*Prosecutor v Norman and others*, Case No. SCSL-04-14-AR-73, ‘Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”’, 16 May 2005.

*Prosecutor v Sesay and others*, Case No. SCSL-04-15-PT, ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, 24 June 2004.

*Prosecutor v. Norman and others*, Case No. SCSL-04-14-AR65, ‘Fofana – Appeal against Decision Refusing Bail’, 11 March 2005.

**AMMENDED ANNEX A**

**PROSECUTORS MOTION FOR JUDICIAL NOTICE AND ADMISSION OF EVIDENCE**

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

No	Document
1.	Thirteenth Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 14 March 2002 [S/2002/267] Para 2.
2.	Speech by the President of Sierra Leone His Excellency Alhaji Dr. Ahmed Tejan Kabbah at the ceremony marking the conclusion and disarmament and destruction of weapons – Lungi, Freetown 18 January 2002
3.	International Crisis Group “Sierra Leone, Time for a New Military and Political Strategy,” ICG Africa Report N 28, 11 April 2001, Appendix A

**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 and Bo.**

4.	Map of Sierra Leone, Scale 1: 350, 000 UNAMSIL Geographic Information Services – 6 May 2002
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**C. Sierra Leone acceded to the Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions on 21 October 1986.**

5.	ICRC, States party to the Geneva Conventions and their Additional Protocols Geneva conventions of 12 August 1949 and their Additional Protocols of 8 June 1977
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**D. Groups commonly referred to as the RUF, AFRC and CDF were involved in the armed conflict in Sierra Leone.**

6.	Fourth Report of the Secretary General on the Situation in Sierra Leone, S/1998/249 [18 March 1998] Para 6, 20
7.	UNHCR Background Paper on Refugees and Asylum Seekers from Sierra Leone [November 1998], Centre for Documentations and Research, Geneva-November 1998, pp 5
8.	‘Sowing Terror’, Human Rights Watch, Vol. 10, No. 3 [A], July 1998, pp 4,5
9.	‘Sierra Leone: Time for a New Military and Political Strategy’, 11 April 2001 International Crisis Group Africa Report No. 28, Appendix A
10.	United States Department of State, ‘Human Rights Practices for 1998 Report’, Sierra Leone Country Report, February 1999, pp. 1
11.	Amnesty International, ‘Sierra Leone: Childhood-a casualty of conflict’, AI Index: AFR 51/69/00, 31 August 2000, pp. 1
12.	The Coalition to Stop the Use of Child Soldiers, ‘Child Soldiers: Global

	Report', Sections : Child soldiers, an Overview; Sierra Leone, May 2001
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**E. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991.**

18.	Report of the Secretary-General on the Situation in Sierra Leone, 21 November 1995, S/1995/975, Para 2
19.	'Getting Away with Murder, Mutilation and Rape: New Testimony from Sierra Leone', Human rights Watch, Vol. 11, No. 3[A], June 1999, pp 7
20.	UNHCR Background Paper on Refugees and Asylum Seekers from Sierra Leone [November 1998], Centre for Documentations and Research, Geneva, November 1998 pp. 5
21.	'Sierra Leone: Time for a New Military and Political Strategy', 11 April 2001, International Crisis Group Africa Report No. 28 pp. 2 and Appendix A

**F. 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.**

22.	SLBS Radio Broadcast, 30 May 19:22 GMT ['Special Message' by the Revolutionary United Front Spokesman Lieutenant David Collings] [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
23.	UN Department of Humanitarian Affairs, Situation Report, pp. 1 [Reference throughout to rebels as the 'Peoples Army']
24.	'Sierra Leone: Time for a New Military and Political Strategy'. 11 April 2001, International Crisis Group Africa Report No. 28, Appendix A

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

29.	The Abidjan Accord [30 November 1996]
30.	Statement by the President of the Security Council, 4 December 1996, S/PRST/46, Para 2

**H. However, the active hostilities thereafter recommenced.**

31.	UNHCR Background Paper on Refugees and Asylum Seekers from Sierra Leone [November 1998], Centre for Documentations and Research, Geneva, November 1998, pp.5
32.	Resolution 1132 [1997], Adopted by Security Council at its 3822 <sup>nd</sup> meeting on 8 October 1997
33.	Resolution 1181 [1998], Adopted by the Security Council at its 3902 <sup>nd</sup> meeting, on 13 July 1998
34.	'Getting Away with Murder, Mutilation and Rape: New Testimony



	from Sierra Leone', Human Rights Watch, Vol. 11, No. 3[A], June 1999, pp.7
35.	'Sierra Leone: Time for a New Military and Political Strategy', 11 April 2001, International Crisis Group Africa Report No. 28 pp. 11 Appendix A.

**I. 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'etat on 25 May 1997. Soldiers of the Sierra Leone Army [SLA] comprised the majority of the AFRC membership.**

36.	Sierra Leone Broadcasting Service, Radio Announcement , 25 May 1997, 19:30 GMT and 25 May 1997, 18:42 GMT [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a>
37.	The Sierra Leone Gazette, Vol. CXXVIII, Thursday, 18 <sup>th</sup> September , 1997, No. 54, government Notice No. 215, 'The Administration of Sierra Leone [Armed Forces Revolutionary Council] proclamation, 1997'
38.	'The Administration of Sierra Leone [Armed Forces Revolutionary Council] Proclamation, 1997', Supplement to the Sierra Leone Gazette Extraordinary Vol. CXXVIII, No. 34 dated 28 May 1997
39.	Resolution 1132 [1997], Adopted by the Security Council at its 3822 <sup>nd</sup> meeting on 8 October 1997
40.	United States Department of State, 'Sierra Leone Country Report on Human Rights Practices for 1997', Released by the Bureau of Democracy, Human Rights and Labour, January 30 1998 pp. 1
41.	'Sierra Leone: Time for a New Military and Political Strategy', 11 April 2001, International Crisis Group Africa Report No. 28, Appendix A
42.	Amnesty International 1998 Annual Report on Sierra Leone [the Republic of], pp. 1

**J. On 25 May 1997 JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC.**

43.	Sierra Leone Humanitarian Situation Report 4-5 June 1997, UN office for the Coordination of Humanitarian Affairs, Para 5
44.	UNHCR Background Paper on Refugees and Asylum Seekers form Sierra Leone [November 1998], Centre for Documentations and Research, Geneva, November 1998, pp. 8
45.	1997 Human rights Report: Sierra Leone, US Department of State, Bureau of Democracy, Human Rights and Labour, January 30, 1998 pp.1
46.	Amnesty International Annual Report 1998, 'AI Report 1998: Sierra Leone' Para 3
47.	Administration of Sierra Leone [Armed Forces Revolutionary Council] Proclamation 1997, published in Sierra Leone Gazette, Extraordinary Vol. CXXVIII, No. 34, 28 May 1997

48.	P.N. No. 3 of 1997, Dated: 3 September 1997. Published in the Sierra Leone Gazette, Vol. CXXVIII, No. 54, 18 September 1997 pp. 324
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**K. The AFRC forced were commonly referred to as 'Junta' by the population of Sierra Leone.**

49.	UNHCR Report on Atrocities Committed Against the Sierra Leone Population, UNHCR Conakry Branch Office, 28 January 1999, Victim reports Cases No. 1-38
50.	Human Rights Watch, 'Sowing Terror, Atrocities against civilians in Sierra Leone' Vol. 10, No 3 [A] July 1998 p 18 fn 25, p 20, 23
51.	Human Rights Watch, 'Getting Away with Murder, Mutilation and Rape' Vol. 11, No 3 [A] June 1999, pp 10-41

**L. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, the leader of the RUF, the RUF formed an alliance with the AFRC.**

52.	1997 Human Rights Report: Sierra Leone, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, January 30, 1998 pp. 1
53.	SLBS Radio Broadcast, 28 May 10:00 GMT. Message from the Revolutionary United Front Command to all RUF combatants. [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
54.	SLBS Radio Broadcast, 30 May 19:22 GMT ['Special Message' by the Revolutionary United Front Spokesman Lieutenant David Collins] [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
55.	Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997, Para 7 [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
56.	UNHCR Background Paper on Refugees and Asylum Seekers from Sierra Leone [November 1998], Centre for Documentations and Research, Geneva, November 1998, pp. 8
57.	Amnesty International Annual Report 1998, 'AI Report 1998: Sierra Leone' para 2,3
58.	Human Rights Watch, 'Getting Away with Murder, Mutilation and Rape' Vol, No, 3 [A] June 1999 pp. 5
59.	Human Rights Watch, 'Sowing Terror, Atrocities against civilians in Sierra Leone' Vol. 10, No. 3[A] July 1998 pp 11 fnl.

**M. The AFRC/RUF Junta forces (Junta) were also commonly referred to as 'Junta', 'rebels' 'soldiers', 'SLA', 'ex-SLA', and 'People's Army' by the population of Sierra Leone.**

60.	Human Rights Watch, 'Getting Away with Murder, Mutilation and Rape' Vol. 11, No 3 [A] June 1999, pp 10-41
61.	Human Rights Watch, 'Sowing Terror, Atrocities against civilians in Sierra Leone' Vol. 10, No 3 [A] July 1998 p 18 fn 25, p 20, 23

62.	SLBS Radio Broadcast, 30 May 19:22 GMT ['Special Message' by the Revolutionary United Front Spokesman Lieutenant David Collins] [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
63.	AFRC Press Release, 3 January 1998 located at AFRC press releases – Sierra Leone Web [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
64.	UNHCR Report on Atrocities Committed Against the Sierra Leone Population, UNHCR Conakry Branch Office, 28 January 1999, Victim reports Cases No. 1-38
65.	UNHCR Background Paper on Refugees and Asylum Seekers from Sierra Leone [November 1998], Centre for Documentations and Research, Geneva, November 1998, pp. 8

**N. After 25 May 1997 coup d' etat, a governing body was created within the Junta that was the sole executive and legislative authority within Sierra Leone during the Junta.**

66.	Administration of Sierra Leone [Armed Forces Revolutionary Council] Proclamation 1997, in Freetown on 28 May 1997], published in Sierra Leone Gazette, Extraordinary Vol. [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]
67.	SLBS Radio Broadcast, 29 May 15:26 GMT. [Proclamation issued by the Administration of Sierra Leone Armed Forces Revolutionary Council Proclamation 199, in Freetown on 28 May 1997 [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]

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

68.	P.N. No. 3 of 1997, Dated: 3 September 1997, Published in The Sierra Leone Gazette, vol. CXXVIII No. 54 18 September p. 324
69.	Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11 August 1997 dated 16 August 1997

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

70.	Fourth Report of the Secretary General on the Situation in Sierra Leone, 18 March 1998 [S/1998/249] Para 6,9,17
71	UNHCR Background Paper on Refugees and Asylum Seekers from Sierra Leone [November 1998], Centre for Documentations and Research, Geneva pp. 9
72.	International Crisis Group, 'Sierra Leone, Time for a New Military and Political Strategy,' ICG Africa Report N 28, 11 April 2001, Appendix A
73.	Human Rights Watch, 'Sowing Terror, Atrocities against Civilians in Sierra Leone,' Vol. 10, No. 3 [A] July 1998 pp.4

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

74.	Sierra Leone Humanitarian Situation Report 17 July – 10 August 1999, Section 1,2,3,5
75.	Sierra Leone Humanitarian Situation Report 03-09 October 1999, section 1,2,3
76.	Fifth Report of the Secretary General on the Situation in Sierra Leone 9 June 1998 [S/1998/486] Para 14
77.	First Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 12 August 1998 [S/1998/750] paras 10, 12, 13, 14, 33, 26, 37, 38
78.	Second Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 16 October 1998 [S/1998/960] Para 21
79.	Third Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 16 December 1998 [S/1998/1176] Para 18
80.	Fifth Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 4 March 1999 [S/1999/237] Para. 2
81.	Sixth Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 4 June 1999 [S/1999/645] pp. 7, 19, 20, 30, 31, 32
82.	First report on the United Nations Mission in Sierra Leone [UNAMSIL] 6 December 1999 [S/1999/1223] Para 3,4,7 [note this para and other areas of report of fighting between RUF and AFRC forces in Port Loko and Makeni
83.	Human Rights Watch, 'Sowing Terror, Atrocities against civilians in Sierra Leone,' Vol. 10, No. 3 [A] July 1998 pp. 4, 5, 11, 12
84.	Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999 [available at <a href="http://www.sierra-leone.org/index.html">www.sierra-leone.org/index.html</a> ]

**R. On or about 7 July 1999 FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah signed a peace agreement in Lome, Togo.**

85.	The Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone [RUF/SL] [Article XXXVII Entry into Force] signed by Alhaji Ahmad Tejan Kabbah, President of Sierra Leone and Corporal Foday Saybana Sankoh, Leader of the Revolutionary United Front.
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