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SCSL-2003-11-PT  
(3012-3015)

3012



**SPECIAL COURT FOR SIERRA LEONE**

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**THE TRIAL CHAMBER**

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

**Registrar:** Robin Vincent

**Date:** 3<sup>rd</sup> day of December 2003

**The Prosecutor against**

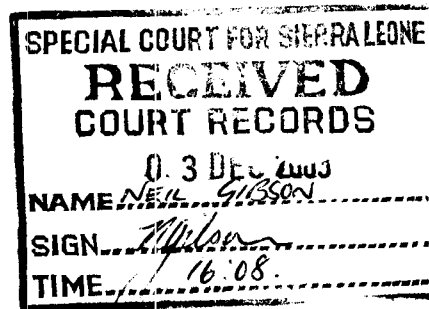
Moinina Fofana  
(Case No.SCSL-2003-11-PT)

**ORDER PURSUANT TO RULE 72 (E)**

**PRELIMINARY DEFENCE MOTION ON THE LACK OF JURISDICTION:  
ILLEGAL DELEGATION OF JURISDICTION BY SIERRA LEONE**

**Office of the Prosecutor:**  
Desmond De Silva, Q.C, Deputy Prosecutor  
Luc Côté, Chief of Prosecutions  
Walter Marcus-Jones, Senior Appellant Counsel  
Christopher Staker, Senior Appellant Counsel  
Abdul Tejan-Cole, Appellate Counsel

**Defence Counsel**  
Michiel Pestman, Lead Counsel  
Victor Koppe, Co-Counsel  
Arrow John Bockarie, Co-Counsel  
André Nollkaemper, Co-Counsel  
Liesbeth Zegveld, Co-Counsel



**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;

**BEING SEIZED** of the Preliminary Defence Motion on the Lack of Jurisdiction: Illegal Delegation of Jurisdiction by Sierra Leone, filed on the 14<sup>th</sup> day of November 2003 (“the Motion”), in relation to the criminal suit against **Moinina Fofana** (“the Accused”);

**CONSIDERING** the Prosecution’s Response to the Motion filed on the 21<sup>st</sup> day of November 2003 (“the Response”);

**CONSIDERING** the Reply of the Defence thereto, filed on the 1<sup>st</sup> day of December 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 state 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 Indictment charges the Accused on several counts of Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“the Statute”), Violations 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 Defence makes the following submissions in support of its objection that the Special Court lacks jurisdiction over the Accused, namely,

1. That the Special Court was established by a treaty between Sierra Leone and the United Nations, both of whom delegated their power to prosecute the Accused to the Special Court. However, it is a well-established principle of international law that States cannot transfer powers that they do not possess.
2. That Sierra Leone, by virtue of Article IX of the Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone of the 7<sup>th</sup> July 1999 (“the Lomé Accord”), “gave up its right to prosecute the defendant, who is covered by Article IX of this Agreement, and thereby disabled itself to transfer the right to prosecute these persons to the Special Court”<sup>1</sup>. Accordingly, the Special Court therefore lacks jurisdiction over the Accused.

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<sup>1</sup> Paragraph 13 of the Motion.



NOW THEREFORE,

THE CHAMBER,

PURSUANT TO RULE 72 (B) (i) and 72 (E) OF THE RULES,

FINDS that the foregoing submissions relate to an objection based on lack of jurisdiction which raises a serious issue relating to the jurisdiction of the Special Court to try the Accused.

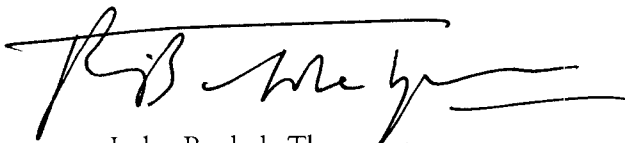
ACCORDINGLY REFERS this Motion, Response and Reply to the Appeals Chamber of the Special Court for determination pursuant to Rule 72 (E) of the Rules;

ORDERS

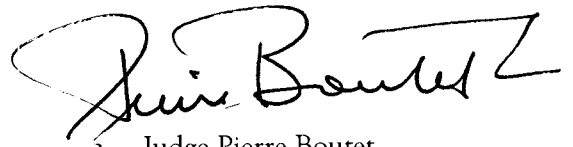
1. That the Defence file with the Appeals Chamber additional written submissions within 14 days of the receipt of this Order;
2. That any response to submissions filed under paragraph 1 above be filed with the Appeals Chamber within 14 days thereof;
3. That any reply thereto be filed with the Appeals Chamber within 7 days; and
4. 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 3<sup>rd</sup> day of December 2003

The Trial Chamber



Judge Bankole Thompson,  
Presiding Judge

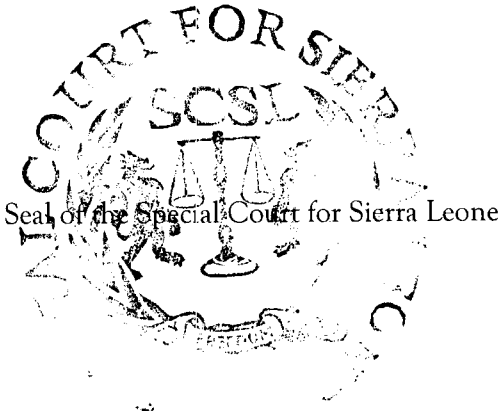


Judge Pierre Boutet



Judge Benjamin Mutanga Itoe

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Seal of the Special Court for Sierra Leone