

THE SPECIAL COURT FOR SIERRA LEONE

BEFORE THE PRESIDENT OF THE APPEALS CHAMBER

Judge Robertson: President

Registrar: Robin Vincent

Date: 25th November 2003

The Prosecutor

V.

Sam Hinga Norman

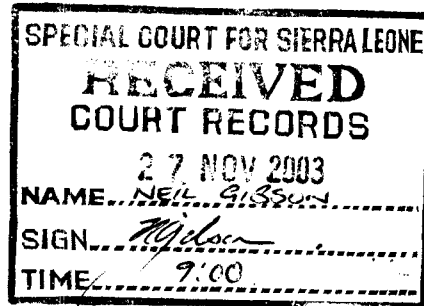
Case SCSL - 2003-08-PT

**ADDITIONAL SUBMISSIONS ON BEHALF OF CHIEF
HINGA NORMAN ON HIS APPLICATION TO APPEAR
BEFORE THE TRUTH AND RECONCILIATION
COMMISSION OF SIERRA LEONE**

Office of the Prosecutor:

David Crane
Luc Cote
Marcus Johnson

Defence Counsel
James Jenkins-Johnson
Tim Owen QC
Quincy Whitaker



His Honour Geoffrey Robertson QC
President of the Special Court for Sierra Leone
Jomo Kenyatta Road
New England
Freetown

12th November 2003

**CHIEF SAM HINGA NORMAN – APPLICATION TO
TESTIFY IN PUBLIC AT THE TRUTH &
RECONCILIATION COMMISSION**

Your Honour,

This submission is made further to your invitation to provide additional submissions at the appeal hearing of the joint application by the Truth & Reconciliation Commission and Chief Sam Hinga Norman, on whose behalf we act, to allow the Chief to testify publicly before the Commission and further to the additional submissions of the Prosecution dated the 11th of November 2003.

Chief Hinga Norman is prepared to testify at the Truth & Reconciliation Commission only on the basis that he appears under the same conditions as other relevant figures have, namely a public hearing with a radio and television broadcast. We submit that as a man presumed innocent of the charges on which he is indicted, fairness requires that he be allowed to testify publicly as others have. Many other members of the government of Sierra Leone have testified in public, including President Kabbah as well as members of the RUF who have publicly made allegations against Chief Hinga Norman. Further RUF members indicted in the national courts on charges of mass murder and facing the death penalty have testified publicly without any suggestion that their trial will be rendered unfair.

We maintain our primary submission, consistent with the principles established in *Raymond v Honey*¹ (and more recently applied in *R v Home Secretary ex parte Simms*²), that the Special Court should only take steps to prevent Chief Hinga Norman from giving public testimony to the TRC if it concludes that such testimony will render it impossible for the court itself to give the Chief a fair trial. We submit that absent the Special Court being so satisfied, it is a matter for the TRC as to how it can best carry out its statutory functions. Considerations of public security (“the fragile equilibrium” cited by the Prosecution) potentially arising from the conduct of hearings before the TRC are matters entrusted by the Parliament of Sierra Leone to the TRC itself. We respectfully submit that the Special Court has no jurisdiction to take decisions on the TRC’s behalf.

¹ [1983] 1 AC 1
² [1999] 3 WLR 328

It is submitted that there can be no credible argument that Chief Hinga Norman will be unable to receive a fair trial if he testifies publicly at the TRC. It is submitted that the suggestion of the prosecution that the Chief will “use the public forum as a method of intimidating witnesses” is, frankly, ludicrous. The Prosecution have made no link between alleged instances of intimidation and the public testimony of the Chief.

The only relevant matter contained in the Security report update dated the 7th of November 2003 on which the prosecution rely states that former CDF fighters “do not pose a significant military threat” but are “capable of conducting pro-Norman demonstrations in villages in the Bo area”. It is submitted that a lawful exercise of freedom of expression should not be a concern for the prosecution and should not be relied upon as a reason for restricting Chief Hinga Norman’s own rights of freedom of expression. We submit it is wholly inappropriate for the prosecution to rely on the destabilisation that is alleged to be occurring in Sierra Leone as a response to “the failure of government to significantly improve social and economic conditions” as a reason for restricting the Chief’s legitimate access to the unique process of participation in the Truth & Reconciliation Commission, an opportunity which will not arise again.

We reiterate our submission that under the common law a prisoner retains all rights other than those taken away expressly or by necessary implication of his detention. Chief Hinga Norman’s right to give evidence on equal terms before the TRC is, we submit, a “high value” right in the context of the current situation in Sierra Leone, and indeed, the people of Sierra Leone have an equally “high value” right to receive the fullest possible account of their recent history from a key individual whose actions have been called into question. We submit that no necessary implication destructive of those rights has been demonstrated by the Prosecution.

Tim Owen QC
Quincy Whitaker