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SCSL-2003-11-PT
(3033-3036)

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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: 10th day of December 2003

The Prosecutor against

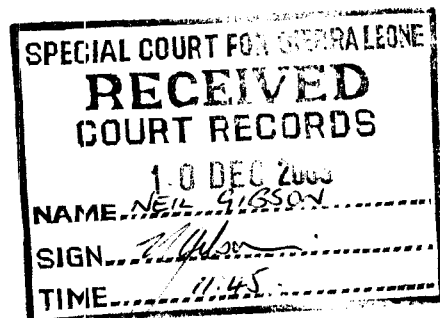
Moinina Fofana
(Case No.SCSL-2003-11-PT)

ORDER PURSUANT TO RULE 72 (E)

**PRELIMINARY DEFENCE MOTION ON THE LACK OF JURISDICTION
MATERIAE: NATURE OF THE ARMED CONFLICT**

Office of the Prosecutor:
Desmond de Silva Q.C, Deputy Prosecutor
Luc Côté, Chief of Prosecutions
Walter Marcus-Jones, Senior Appellate Counsel
Abdul Tejan-Cole, Appellate Counsel
Alain Werner, Legal Advisor
Sigall Horowitz, Legal Intern

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”)

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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 *Materiae*: Nature of the Armed Conflict, filed on the 14th 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 24th day of November 2003 (“the Response”);

CONSIDERING the Defence Reply thereto, filed on the 1st 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 pursuant to Rule 72 of the Rules the Defence makes the following submissions based on the Special Court’s lack of subject-matter jurisdiction under Articles 3 and 4 of the Statute of the Special Court over the Accused:

1. The jurisdiction under Articles 3 and 4 of the Statute of the Special Court is limited to internal armed conflicts. Article 3 refers to two instruments applicable only in internal armed conflicts. Article 4 does not refer explicitly to the nature of the underlying conflict, however, on closer analysis the Defence submits that it becomes clear that it is concerned with internal armed conflicts only. The Special Court is intended to be empowered to adjudicate violations of international humanitarian law that occurred in the context of an internal armed conflict.
2. However, there is ample evidence that the armed conflict in Sierra Leone during the period covered by the Accused’s Indictment undoubtedly attest that the conflict was of an international nature:
 - a. First, Liberia’s involvement in the conflict in Sierra Leone as a party to the conflict and because of its involvement in controlling the

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Revolutionary United Front ("RUF") and the Armed Forces Revolutionary Council ("AFRC"). Moreover the forces of the RUF acted under the control of and/or may be assimilated with the organs of the State of Liberia;

- b. Second, the control of the Government of Sierra Leone/ECOMOG over the CDF and role of ECOMOG and Nigeria as a party to the conflict;
- c. Third, the parties to the conflict being on the one hand Liberia, the RUF and the AFRC and on the other hand, the Government of Sierra Leone, ECOMOG/Nigeria and the CDF renders the conflict international.

AND

GIVEN that in light of the foregoing, the Defence submits that Articles 3 and 4 of the Statute of the Special Court are not applicable and therefore the Special Court has no jurisdiction to try the Accused on the basis of these Articles.

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.

REFERS this Motion, Response and Reply to the Appeals Chamber of the Special Court for determination pursuant to Rules 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

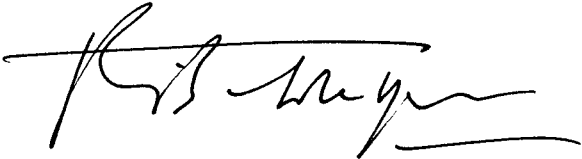


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4. That the reference of this Motion to the Appeals Chamber shall not operate as a stay of the trial of the Accused;

Done in Freetown, this 10th day of December 2003

The Trial Chamber



Judge Bankole Thompson,
Presiding Judge



Judge Benjamin Mutanga Itoe



Judge Pierre Boutet

