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SPECIAL COURT FOR SIERRA LEONE  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

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<b>Case Name:</b> <b>Case Number:</b>	The Prosecutor vs. CHIEF SAM HINGA NORMAN + ORS. SCSL-2004-14-T
<b>Classification</b>	<input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> CONFIDENTIAL <input type="checkbox"/> UNDER SEAL (PLEASE COMPLETE SECTION BELOW) <input type="checkbox"/> EX PARTE
<b>Dates:</b>	Filing date: 21st / 9 / 04 Document's date: 20th / 9 / 04
<b>Pages:</b>	Total No. of Pages: 6 No. of Annexes
<b>Annexes:</b>	<b>Please list particulars of annexes:</b>
<b>Document's Full Title</b>	MOTION FOR SERVICE AND ARRAIGNMENT ON SECOND INDICTMENT
<b>Reasons for Confidentiality.</b>  (Please indicate whether all or only part of the document is to be considered confidential, and mark clearly each confidential page accordingly).	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>SPECIAL COURT FOR SIERRA LEONE</p> <p><b>RECEIVED</b></p> <p>COURT RECORDS</p> <p>21 SEP 2004</p> <p>NAME: MAUREEN EDWARDS</p> <p>SIGN: <i>Maureen Edwards</i></p> <p>TIME: 9:30</p> </div>

202)

SCSL-2004-14-T  
(9572-9577)

9572

**IN THE SPECIAL COURT OF SIERRA LEONE**

Case No. SCSL-04-14-T

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

**Registrar: Robin Vincent**

**Date: 20<sup>th</sup> September 2004**

**PROSECUTOR**

**V**

**CHIEF SAM HINGA NORMAN & OTHERS**

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**MOTION FOR SERVICE AND ARRAIGNMENT  
ON SECOND INDICTMENT**

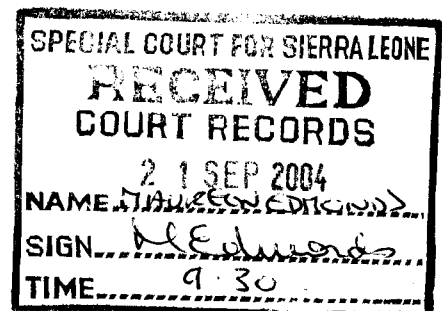
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**Office of the Prosecutor**

**Luc Cote  
James Johnson**

**Stand By Counsel for Chief Norman**

**Quincy Whitaker  
John Wesley Hall  
Dr Bu-Buakei Jabbi**



## INTRODUCTION

1. The first accused, Chief Hinga Norman, submits that he has not been lawfully arraigned on the indictment upon which he is currently being tried before the Special Court. By this Motion he seeks arraignment on the charges which he is purportedly being tried by the court and a formal quashing of previous indictment on which he was arraigned.

## THE FACTS

2. Chief Hinga Norman was arraigned on an indictment dated the 7<sup>th</sup> of March 2003 and filed under case number SCSL-2003-08-I-001 [hereinafter referred to as the “old indictment”]. In this indictment he was charged alone on eight counts. The particulars of the said indictment, which is annexed hereto, were:  
**Counts 1-2:** unlawful killings with particulars (a)-(e) spanning a time period of 1<sup>st</sup> November 1997 – 15<sup>th</sup> February 1998 and referring to geographical locations at Tongo Field, Kenema, Bo and Koribondo and concerning Operation Black December in the southern and eastern provinces of Sierra Leone;  
**Counts 3-4:** physical violence and mental suffering with particulars (a) – (b) spanning a time period of 1<sup>st</sup> November 1997 – 1<sup>st</sup> April 1998 and concerning geographical locations at Tongo Field, Kenema, Bo and Koribondo;  
**Count 5:** Looting and Burning spanning a time period of 1<sup>st</sup> of November 1997 – 1<sup>st</sup> April 1998 and concerning geographical locations at Bo and Koribondo;  
**Counts 6-7:** terrorizing civilian populations and collective punishments alleged to have occurred “at all time relevant to this indictment”, namely 1<sup>st</sup> of November – 1<sup>st</sup> April 1998;  
**Count 8:** Use of Child soldiers alleged to have occurred “at all time relevant to this indictment”, namely 1<sup>st</sup> of November 1997 – 1<sup>st</sup> April 1998.

3. By an application dated the 9<sup>th</sup> of October 2003 the prosecution applied for joinder of the old indictment with those faced by Chief Norman's present co-accused, Moinina Fofana and Allieu Kondewa. The Prosecution asserted as the basis for the application that "the indictments against the aforementioned accused are nearly identical. The material facts alleged in the indictment are nearly the same except for personal particulars. The general allegations are the same. The charges are the same and cover nearly the same time frame except that the allegations against the Accused Fofana and Kondewa contain additional specific examples of crimes committed, which are of equal relevance to the indictment against Norman and are covered by its general language." (see Ruling of Trial Chamber on Application for Joinder dated 27<sup>th</sup> January 2004 at para. 2)
4. The Prosecution failed to exhibit the proposed consolidated indictment with their motion. However they submitted that the consolidated indictment did not involve any amendment of the old indictment but was "confined to a mere putting together" of the three indictments in once document and further that if "there were any concerns about possible amendment or inconsistency between the existing indictments and the consolidated one" they noted that they would abide by an order that the consolidated indictment be approved by a designated Judge or by the Chamber pursuant to the Rules. However they submitted there was no need for such further approval of the consolidated indictment "given it will not involve any change in the substance of the original indictments." (Ibid. at para. 10).
5. Pursuant to these submissions, the Trial Chamber allowed the Prosecution application for joinder pursuant to Rule 48(B) of the Rules of Evidence and Procedure of the Special Court ["the Rules"] and held that a comparison of the indictments against the three accused "*reveals that the specific crimes charged in those several counts are exactly the same, except for the allegations in respect of additional time and locations as regards Accused Moinina Fofana and Allieu Kondewa, which is an issue of no materiality for the instant purpose.*" (Ibid. at para. 24)

6. The order also said that the new indictment should be served (Ibid. at p. 16, item 3), which is required by rules 50(A) & 52 (amended indictment proceeds under Rule 47).
7. Judge Benjamin Mutanga Itoe appended a separate concurring judgment in which he was of the view that the consolidated indictment “was to all intents and purposes new” which lent support to the proposition that “the indictment has to be subjected to the new procedures of Rules 47 and 61 in the form which it will take and will be presented” following the Chamber’s decision (Ruling of Trial Chamber on Application for Joinder dated 27<sup>th</sup> January 2004, Separate Opinion at para. 10).
8. The consolidated indictment, dated the 5<sup>th</sup> of February 2004, was affixed with a new case number SCSL-03-14-I. Under the consolidated indictment Chief Norman faced a considerably extended indictment period of an additional 20 months, until December 1999, and additional geographic locations, specifically: **Counts 1-2** contained an additional particular (f) and an additional particular at (e) (the previous particular at (e) becoming the particular at (g)) adding the additional geographic locations of Moyamba District at new particular (e) and of Bonthe District at new particular (f); **Counts 3-4** expanded the time frame of particular (a) to 30 April 1998 and added the additional locations of Blama and Kamboma and expanded the time frame of particular (b) to December 1999 and added the Districts of Moyamba and Bonthe; **Count 5** changed the charge from looting of “private property” to “civilian property”; **Counts 6-8** framed as occurring “at all times relevant to this indictment” were consequently expanded by some 20 months to December 1999 by reason of the alterations referred to above.

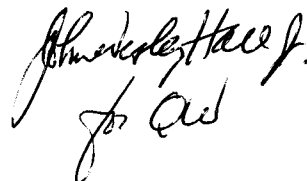
## SUBMISSIONS

9. The first accused submits that he has not been served with the second indictment and properly arraigned on the new, expanded charges that he faces as required by Rule 50(B)(i) and that pursuant to Rule 61 the Designated Judge must cause the new consolidated indictment to be read to him and call upon the accused to enter a plea of guilty or not guilty as required by Rule 61(iii).\
10. The first accused submits he faces substantially different allegations than those on which he was arraigned, including new geographical locations of crimes previously not alleged against him and a considerably increased time period of some 20 additional months. The first accused seeks arraignment on the allegations that he faces under the consolidated indictment pursuant to the Rules.
11. The first accused submits that two indictments are currently lying against him contrary to the rule of law against double jeopardy under Art. 9(1) of the Statute of the Special Court of Sierra Leone (one cannot be retried “for acts which he or she has already been tried by the Special Court”). The former indictment is included within the superseding indictment, so trial on the superseding indictment should prevent retrial on the former indictment. He is concerned, however, based on previous experiences before domestic Sierra Leonean tribunals, that a complete acquittal on the consolidated indictment would nonetheless leave him vulnerable to further prosecution on the old indictment because it has happened to him before.
12. Thus, the first accused requests that the Trial Chamber quash the old indictment or declare it superseded to protect him against double jeopardy. Further, or alternatively, the first accused seeks a ruling from the Trial Chamber that the prosecution be barred from pursuing the allegations in the old indictment upon his acquittal on any part of the consolidated indictment.

Dated this 20<sup>th</sup> day of September 2004

Chief Sam Hinga Norman

Quincy Whitaker  
Stand By Counsel for Chief Norman



Handwritten signature of Quincy Whitaker, appearing to read "Quincy Whitaker" and "for Qid".