

I. INTRODUCTION

1. Pursuant to Rules 73(A), 89(B) and 94(A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (the “Rules”), the Prosecution applies for judicial notice to be taken of the following significant days of the Islamic calendar for the years 1997 to 2000 inclusive: Commencement of Ramadhaan, Eid-ul-Fitr, Day of Hajj, Eid-ul-Adha, Muharram, Day of Aa’shura, Birth of Prophet Muhammad, Lailatul Me’raj (Eve) and Lailatul Baraat (Eve).
2. Attached as Appendix A to this motion is a document produced by Jamiatul Ulama (Council of Muslim Theologians) of KwaZulu-Natal, Republic of South Africa, entitled “Significant Days of the Islamic Calendar for 1997” and a second document produced by the same organization entitled “Significant Days and Nights of the Islamic Calendar for South Africa 1998 to 2007”. These are public documents which can be viewed at the website www.jamiat.org.za. Attached as Appendix B to this motion are the judicial facts, extracted from the Islamic calendars in Appendix A, for which judicial notice is sought.¹

II. ARGUMENTS

3. Rule 73 of the Rules enables either party to move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused.²
4. Rule 89 (B) of the Rules grants the Chamber discretion to apply any rule of evidence that best favours a fair determination of the matter before it, in so far as that rule is consistent with the Statute of the Special Court and the general principles of law. As such, it

¹ *Prosecutor v Sam Hinga Norman et al*, SCSL-04-14-T-398, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, (*“Fofana Appeal Decision on Judicial Notice”*) 16 May 2005, paras. 48 and 49. The Appeals Chamber decision suggests that it is preferable to extract the facts from a document for which judicial notice is sought, rather than seeking judicial notice of the document.

² Rule 73: Motions (Amended 14 May 2005): (A) Subject to Rule 72 either party may move before the Designated Judge or a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Designated Judge or the Trial Chamber, or a Judge Designated by the Trial Chamber from among its members, shall rule on such motions based solely on the written submissions of the parties, unless it is decided to hear the parties in open court.

provides a broad legal basis for the Chamber to take judicial notice of certain facts when the interest of justice so requires.³

5. Rule 94 (A) states that: “A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.”
6. The Appeals Chamber held that judicial notice serves to expedite the trial by dispensing with the need to submit formal proof on issues that are patently indisputable. It serves as conclusive proof of those facts and ends the evidentiary inquiry.⁴ It also fosters consistency and uniformity of decisions on factual issues where diversity in factual findings would be unfair.⁵ Through either purpose, it favours the Accused’s rights to a fair trial.
7. The Trial Chamber of the ICTR defined “facts of common knowledge” as:

Those facts which are not subject to reasonable dispute including, common or universally known facts, such as general facts of history, generally known geographic facts and the law of nature.⁶

8. Common knowledge also encompasses:

Matters so notorious or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources that evidence of their existence is unnecessary.⁷

9. Facts need not be universally accepted in order to qualify as common knowledge.⁸ Facts that are generally known within a tribunal’s territorial jurisdiction qualify as common knowledge.⁹

³ Rule 89 (B) (Amended 7 March 2003): In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

⁴ *Fofana Appeal Decision on Judicial Notice*, paras 30 and 31; *Prosecutor v Semanza*, ICTR-27-97-20-I, “Decision on the Prosecutor’s Motion for Judicial Notice and Presumption of facts Pursuant to 94 and 54” (“*Semanza Decision on Judicial Notice*”) 3 November 2000, para 41, *Prosecutor v. Momcilo Krajisnik*, Case No. IT-00-39-PT, “Decision on the Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92bis”, 10 March 2003, para 16.

⁵ *Fofana Appeal Decision on Judicial Notice*, para 22.

⁶ *Semanza Decision on Judicial Notice*, para 23; *Fofana Appeal Decision on Judicial Notice*, paras 21.

⁷ *Semanza Decision on Judicial Notice*, paras 24 and 25, *Fofana Appeal Decision on Judicial Notice*, para 36; *Prosecutor v. Blagoje Simic et al.*, Case No. IT-95-9-PT, “Decision on Pre-trial Motion by the Prosecution Requesting the Trial Chamber to take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina”, (“*Simic Decision on Judicial Notice*”) 25 March 1999, para. 5

⁸ *Semanza Decision on Judicial Notice*, para 31.

⁹ *Semanza Decision on Judicial Notice*, para 23, *Fofana Appeal Decision on Judicial Notice*, para 21.

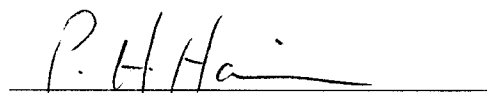
10. The facts for which judicial notice is sought must be relevant to the case of the accused although they must not attest to the criminal responsibility of the accused. The facts must not be subject to reasonable dispute, and must not include legal findings.¹⁰
11. Several witnesses who have testified in the trial are Muslim. They are obviously more familiar with significant dates from the Islamic calendar and have referred to significant dates from the Islamic calendar, such as Ramadhaan, during their testimony. The dates of the Islamic calendar are facts of common knowledge and they are relevant to the present proceedings as witnesses used such dates in their testimony to indicate the time frame of alleged offences.
12. In the *Fofana* decisions, judicial notice of documents and of the facts that documents assert was distinguished.¹¹ Accordingly, the Prosecution has extracted the particular facts for which notice is sought, so that the Court need not take judicial notice of all the contents of the Islamic calendar.

III. CONCLUSION

13. The facts stated in Appendix B are facts of common knowledge and they are not subject to reasonable dispute. The Prosecution applies to have the Trial Chamber take judicial notice of the facts stated in Appendix B.

Filed in Freetown, on 15 June 2006

For the Prosecution,



Peter Harrison

¹⁰ *Fofana Appeal Decision on Judicial Notice*, paras 6 and 28.

¹¹ *Fofana Appeal Decision on Judicial Notice*, paras 48 and 49.

Index of Authorities

A. Orders Decisions and Judgments

1. *Prosecutor v Semanza*, ICTR-27-97-20-I, “Decision on the Prosecutor’s Motion for Judicial Notice and Presumption of facts Pursuant to 94 and 54”, (*Semanza Decision on Judicial Notice*) 3 November 2000.
<http://65.18.216.88/ENGLISH/cases/Semanza/decision>
2. *Prosecutor v Sam Hinga Norman et al*, SCSL-04-14-T-398, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005.
3. *Prosecutor v. Momcilo Krajisnik*, IT-00-39-PT, “Decision on the Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92bis”, 10 March 2003.
<http://www.un.org/icty/Supplement/supp40-e/index.htm>
4. *Prosecutor v. Blagoje Simic et al.*, IT-95-9-PT, "Decision on Pre-trial Motion by the Prosecution Requesting the Trial Chamber to take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina", 25 March 1999.
<http://www.un.org/icty/simic/trialc3/decision-e/90325PT56373.htm>

Rules of Procedure and Evidence

1. Rules of Procedure and Evidence of the Special Court, Rule 73(A), 89(B) and 94(A) Amended 13 May 2006.

Appendix A

Who, What is the Jamiat?

The Jamiatul Ulama (Council of Muslim Theologians) is involved in various activities in the service of Islam and Muslims in South Africa, particularly in KwaZulu-Natal region. The Jamiat's Head Office is conveniently located in the city of Durban at 579 West Street.

Our Mission

The Mission Statement of the Jamiatul Ulama (KwaZulu-Natal) is encapsulated in the following words of the Noble Qur'an:

"For He Commands them what is just and forbids them from what is evil, he allows them as lawful what is good (and pure) and prohibits them from what is bad (and impure). He releases them from their burdens and from the yokes that are upon them." (A'raaf 7:157)

The organisation's philosophy, motivation and functioning reside in and derive from the teachings of the Holy Quran and the recorded lifestyle (Hadith) of the beloved Prophet of Islam, Muhammad (Sallallaahu Alayhi Wasallam) as exemplified by our pious predecessors.

The Information carried on our website is according to the Hanafi Mazhab.

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Jamiatul Ulama (KwaZulu-Natal) - Midlands Branch

Jamiatul Ulama (KwaZulu-Natal) - Northern Natal Branch

All correspondence should be addressed to the Head Office

- Jamiat's history and membership
- Activities of the Jamiat (in brief)
- Co-operative working committees of the Jamiat
- Your Jamiat Needs You
- Officials and Staff of the Jamiat
- Structures of the Jamiat

جمعیۃ العلماء (کوازولو نٹال)

Jamiatul Ulama (KwaZulu-Natal)

Significant Days of the Islamic Calendar for 1997

English Date	Significant Days & Nights	Islamic Date
Sat 11 January 1997	Commencement of Ramadhaan (Fasting)	1 Ramadhaan 1417
Sun 9 February 1997	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal 1417
Thur 17 April 1997	Day of Hajj (Pilgrimage)	9 Zil-Hijjah 1417
Fri 18 April 1997	Eid-ul-Adha (Day of Sacrifice)	10 Zil-Hijjah 1417
Thur 8 May 1997	Muharram (Islamic New Year)	1 Muharram 1418
Sat 17 May 1997	Day of Aa'shura (10th Day)	10 Muharram 1418
Thur 17 July 1997	Birth of Prophet Muhammad (Peace Be Upon Him)	12 Rabi-ul-Awwal 1418
Thur 27 November 1997	Lailatul Me'raj (Eve) (Ascension to Heaven)	27 Rajab 1418
Mon 15 December 1997	Lailatul Baraat (Eve) (Night of Emancipation)	15 Sha'abaaan 1418
Wed 31 December 1997	Commencement of Ramadhaan (Fasting)	1 Ramadhaan 1418

Note: All dates are computed on the basis of 'expected visibility' of the moon and are subject to change depending on actual sighting.

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جمعیۃ العلماء (کوازولو نٹال)

Jamiatul Ulama (KwaZulu-Natal)

Significant Days and Nights of the Islamic Calendar for South Africa 1998 to 2007

1998

English Date	Significant Days and Nights	Islamic Date
31 December, 1997	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1418
30 January, 1998	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1418
7 April, 1998	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1418
8 April, 1998	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1418
28 April, 1998	Muharram (Islamic New Year)	1 Muharram, 1419
7 May, 1998	Day of Áashurah (10th Day)	10 Muharram, 1419
7 July, 1998	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1419
16 November, 1998	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1419
4 December, 1998	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1419
21 December, 1998	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1419

1999

English Date	Significant Days and Nights	Islamic Date
19 January 1999	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1419
27 March 1999	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1419
28 March 1999	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1419
18 April 1999	Muharram (Islamic New Year)	1 Muharram, 1420

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27 April, 1999	Day of Áashurah (10th Day)	10 Muharram, 1420
26 June, 1999	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1420
5 November, 1999	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1420
23 November, 1999	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1420
10 December, 1999	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1420

2000

English Date	Significant Days and Nights	Islamic Date
9 January, 2000	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1420
16 March, 2000	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1420
17 March, 2000	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1420
6 April, 2000	Muharram (Islamic New Year)	1 Muharram, 1421
15 April, 2000	Day of Áashurah (10th Day)	10 Muharram, 1421
15 June, 2000	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1421
24 October, 2000	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1421
11 November, 2000	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1421
28 November, 2000	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1421
27 December, 2000	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1421

2001

English Date	Significant Days and Nights	Islamic Date
5 March, 2001	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1421
6 March, 2001	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1421
27 March, 2001	Muharram (Islamic New Year)	1 Muharram, 1422
5 April, 2001	Day of Áashurah (10th Day)	10 Muharram, 1422
5 June, 2001	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1422
14 October, 2001	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1422
31 October, 2001	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1422
17 November, 2001	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1422

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16 December, 2001	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1422
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2002

English Date	Significant Days and Nights	Islamic Date
22 February, 2002	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1422
23 February, 2002	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1422
16 March, 2002	Muharram (Islamic New Year)	1 Muharram, 1423
25 March, 2002	Day of Áashurah (10th Day)	10 Muharram, 1423
25 May, 2002	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1423
4 October, 2002	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1423
21 October, 2002	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1423
6 November, 2002	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1423
6 December, 2002	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1423

2003

English Date	Significant Days and Nights	Islamic Date
11 February, 2003	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1423
12 February, 2003	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1423
5 March, 2003	Muharram (Islamic New Year)	1 Muharram, 1424
14 March, 2003	Day of Áashurah (10th Day)	10 Muharram, 1424
14 May, 2003	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1424
23 September, 2003	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1424
11 October, 2003	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1424
27 October, 2003	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1424
25 November, 2003	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1424

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2004

English Date	Significant Days and Nights	Islamic Date
31 January, 2004	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1424
1 February, 2004	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1424
22 February, 2004	Muharram (Islamic New Year)	1 Muharram, 1425
2 March, 2004	Day of Áashurah (10th Day)	10 Muharram, 1425
2 May, 2004	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1425
12 September, 2004	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1425
29 September, 2004	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1425
16 October, 2004	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1425
14 November, 2004	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1425

2005

English Date	Significant Days and Nights	Islamic Date
20 January, 2005	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1425
21 January, 2005	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1425
10 February, 2005	Muharram (Islamic New Year)	1 Muharram, 1426
19 February, 2005	Day of Áashurah (10th Day)	10 Muharram, 1426
22 April, 2005	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1426
1 September, 2005	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1426
18 September, 2005	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1426
5 October, 2005	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1426
4 November, 2005	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1426

2006

English Date	Significant Days and Nights	Islamic Date
10 January, 2006	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1426
11 January, 2006	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1426

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31 January, 2006	Muharram (Islamic New Year)	1 Muharram, 1427
9 February, 2006	Day of Áashurah (10th Day)	10 Muharram, 1427
11 April, 2006	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1427
21 August, 2006	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1427
7 September, 2006	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1427
24 September, 2006	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1427
24 October, 2006	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1427
30 December, 2006	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1427
31 December, 2006	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1427

2007

English Date	Significant Days and Nights	Islamic Date
21 January, 2007	Muharram (Islamic New Year)	1 Muharram, 1428
30 January, 2007	Day of Áashurah (10th Day)	10 Muharram, 1428
01 April, 2007	Birth of Prophet (Peace Be Upon Him)	12 Rabi-ul-Awwal, 1428
10 August, 2007	Laylatul Méraaj - Eve (Ascension to Heaven)	27 Raajab, 1428
28 August, 2007	Laylatul Barāat (Night of Emancipation)	15 Shábaan, 1428
13 September, 2007	Commencement of Ramadhaan (Fasting)	1 Ramadhaan, 1428
13 October, 2007	Eid-ul-Fitr (Termination of Fasting)	1 Shawwaal, 1428
19 December, 2007	Day of Hajj (Pilgrimage)	9 Zul Hijjah, 1428
20 December, 2007	Eid-ul-Adha (Day of Sacrifice)	10 Zul Hijjah, 1428

Note: All Dates are computed on the basis of 'expected visibility' of the moon and are subject to change depending on actual sighting.

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Appendix B**Statement of Facts for which Judicial Notice is Requested**

1. Commencement of Ramadhaan took place on the following dates:
 - 11 January 1997
 - 31 December 1997
 - 21 December 1998
 - 10 December 1999
 - 28 November 2000.
2. Eid-ul-Fitr took place on the following dates:
 - 9 February 1997
 - 30 January 1998
 - 19 January 1999
 - 9 January 2000
 - 27 December 2000.
3. Day of Hajj took place on the following dates:
 - 17 April 1997
 - 7 April 1998
 - 27 March 1999
 - 16 March 2000.
4. Eid-ul-Adha took place on the following dates:
 - 18 April 1997
 - 8 April 1998
 - 28 March 1999
 - 17 March 2000.
5. Muharram took place on the following dates:
 - 8 May 1997
 - 28 April 1998
 - 18 April 1999
 - 6 April 2000.
6. Day of Aa'shura took place on the following dates:

- 17 May 1997
- 7 May 1998
- 27 April 1999
- 15 April 2000.

7. Birth of Prophet Muhammad took place on the following dates:

- 17 July 1997
- 7 July 1998
- 26 June 1999
- 15 June 2000.

8. Lailatul Me'raj (Eve) took place on the following dates:

- 27 November 1997
- 16 November 1998
- 5 November 1999
- 24 October 2000.

9. Lailatul Baraat (Eve) took place on the following dates:

- 15 December 1999
- 4 December 1998
- 23 November 1999
- 11 November 2000.