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SCSL-04-15-T
(24005 - 24017)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Hon. Justice Bankole Thompson, Presiding
Hon. Justice Pierre Boutet
Hon. Justice Benjamin Itoe

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 3 July 2006

THE PROSECUTOR

Against

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

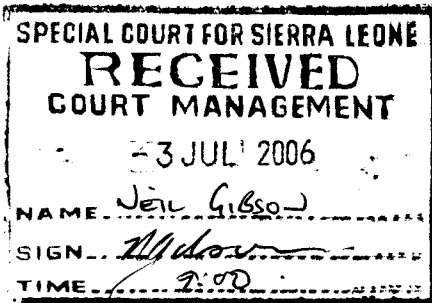
PUBLIC
PROSECUTION REPLY TO THE SESAY RESPONSE TO THE PROSECUTION
MOTION FOR JUDICIAL NOTICE

Office of the Prosecutor:
Mr. James C. Johnson
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Defense Counsel for Issa Hassan Sesay
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Mr. John Cammegh



I. INTRODUCTION

1. On 15 June 2006 the Prosecution filed its “Prosecution Motion for Judicial Notice” (the “Motion”), asking the Trial Chamber to take judicial notice of certain dates of the Islamic calendar.¹ The “Sesay Defence Response to ‘Prosecution Motion for Judicial Notice’ of Significant Days of the Islamic Calendar” (“Sesay Response”)² refers to the evidence of TF1-172 who in the course of their evidence used the term Ramadhaan to indicate when an event took place.³ In addition to that witness the Prosecution is aware, although an exhaustive review of all testimony was not carried out, of three other witnesses who refer to events in relation to significant days in the Muslim religion.
2. TF1-156, whose transcript from the AFRC trial was admitted into evidence in the RUF trial as Exhibit 103, testified in Madingo. The witness was asked about an event and said that it took place during Youghbenteh, a Madingo word, and added “that is the last pray day or praying day.”⁴ The witness is a Muslim.
3. TF1-031 also testified in Madingo and described an incident which took place on a Thursday during a month transcribed by the court reporters as Jombente. When asked by the Trial Chamber what month was being referred to the witness said “It’s the Islamic praying day.”⁵
4. Witness TF1-028 testified in Krio but is a person who also speaks Madingo. The witness was asked what a word, spelled as Youghbenten, means in Madingo and responded that “Youghbenten is a time of praying”⁶ The witness is a Muslim.
5. In a country where the majority of the citizens are Muslims the Islamic religious holidays are facts of common knowledge, just as Christian religious holidays are facts of common knowledge in countries where the majority of the citizens are Christians. One would not hesitate to ask a court, in a country where a large proportion of the citizens are Christians, to take judicial notice that Christmas falls on 25 December.
6. Witnesses have testified of events in relation to Islamic religious holidays and it is likely

¹ *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-580, “Prosecution Motion For Judicial Notice”, 15 June 2006.

² *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-587, “Sesay Defence Response to “Prosecution Motion for Judicial Notice” of Significant Days of the Islamic Calendar”, 26 June 2006.

³ *Ibid.*, para. 6 and 7, and the transcript attached to the Sesay Response.

⁴ Prosecution Exhibit 103 in the RUF trial: the AFRC Transcript, 26 September 2005, p. 42, lines 14-16.

⁵ RUF Transcript, 17 March 2006, p. 79, lines 5-11.

⁶ RUF Transcript, 20 March 2006, p. 4, lines 8-13.

that future witnesses will testify with similar references. There is simply no unfairness to the accused where judicial notice is taken of common or universally known facts. Taking judicial notice of universally known facts reduces the possibility of inconsistent findings of fact or arbitrariness. The efficiency of the trial proceedings would be enhanced if one judicial notice application and decision were rendered encompassing the relevant dates of the Islamic calendar. To have judicial notice taken of different Islamic religious holidays, as the individual holidays are referred to in court, would seem counter to efficient judicial administration.

II. THE ISLAMIC CALENDAR

7. The Sesay Response correctly and helpfully points out that significant dates of the Islamic calendar are determined by reference to the phases of the moon, and that lunar crescents are sighted at different times depending on location. However, variation in dates between different locations is one or two days.
8. It would be appropriate for the Trial Chamber to take judicial notice of the dates stated in Appendix B of the Motion with the qualification that the event took place “on or about” the date cited.
9. By way of example, we attach as Appendix A to the Reply significant dates of the Islamic calendar from the website www.islam-usa.com. The website makes clear that the dates are tentative, allowing for one or two days range of difference, depending on sighting of the moon. A comparison between Appendix B of the Motion and the dates as determined by www.islam-usa.com is set out in the table below:

Islamic Calendar Dates as Listed in Appendix B of the Motion	Date Recorded in the Calendar found at www.islam-usa.com	Date Recorded in Appendix B of the Motion
Commencement of Ramadhaan	20 December 1998	21 December 1998
	9 December 1999	10 December 1999
	28 November 2000	28 November 2000
Eid al-Fitr or Eid-ul-Fitr	Not stated	30 January 1998
	19 January 1999	19 January 1999

Islamic Calendar Dates as Listed in Appendix B of the Motion	Date Recorded in the Calendar found at www.islam-usa.com	Date Recorded in Appendix B of the Motion
	8 January 2000	9 January 2000
Day of Hajj	Not stated	17 April 1997 7 April 1998 27 March 1999 16 March 2000
Eid-ul-Adha	Not stated 28 March 1999 16 March 2000	8 April 1998 28 March 1999 17 March 2000
Muharram or New Year	27 April 1998 17 April 1999 7 April 2000	28 April 1998 18 April 1999 6 April 2000
Ashura or Aa'shura	6 May 1998 26 April 1999 16 April 2000	7 May 1998 27 April 1999 15 April 2000
Mawlid Al-Nabi or birth of prophet Muhammad	6 July 1998 26 June 1999 16 June 2000	7 July 1998 26 June 1999 15 June 2000
Isra wa Al-Miraj or Lailatul Me'raj	16 November 1998 5 November 1999 25 October 2000	16 November 1998 5 November 1999 24 October 2000
Lailatul Baraat	Not stated	15 December 1997 4 December 1998 23 November 1999 11 November 2000
Laylat Al-Qadr	16 January 1999 5 January 2000	Not stated

10. Pleadings frequently use the term “on or about” to express a possible variation of when an event took place. With respect to the dates for which judicial notice is being sought, that variation is one or two days. There can be no doubt and no reasonable dispute that the dates of the Islamic calendar for which judicial notice is sought took place on or about

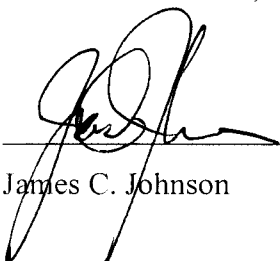
the dates stated in Appendix B of the Motion.

II. CONCLUSION


13. The facts stated in Appendix B of the Motion are facts relevant to the testimony of some of the witnesses who have testified and may be relevant to the testimony of subsequent witnesses, and they are facts of common knowledge. The Prosecution says that the Motion should be granted.

Filed in Freetown, on 3 July 2006

For the Prosecution,



James C. Johnson



Peter Harrison

Index of Authorities

A. Filings

1. *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-580, “Prosecution Motion For Judicial Notice”, 15 June 2006.
2. *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-587, “Sesay Defence Response to “Prosecution Motion for Judicial Notice” of Significant Days of the Islamic Calendar”, 26 June 2006.

B. Exhibits

1. Prosecution Exhibit 103 in the *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-580: the Transcript of the *Prosecutor v. Brima, Kamara and Kanu*, 26 September 2005, p. 42, lines 14-16.

C. Trial Transcripts

1. Transcript of the *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-580, 17 March 2006, p. 79, lines 5-11.
2. Transcript of the *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-580, 20 March 2006, p. 4, lines 8-13.

Appendix A of the Reply

Calender of Muslim Holidays

Contents:

- 1. Notes to calender**
- 2. Details of holidays**
- 3. Tentaive holiday dates**

Notes to calender :

- *These dates are tentative, give or take a day or two, depending on the sighting of the moon's phase.*

Because the Muslim calender is lunar the year is 354 Days long. Days begin at sunset .

As a particular holiday approaches, you can find out its precise date from the :

*American Muslim Council
1212 New York Ave., Suite 525
Washington, DC 20005.
Phone: (202) 789 - 2262*

- *According to the Muslim calender, we are now in the early 15th century because the years are*

counted from the date of Muhammad's hijra.

So spring 1996 A.D. is 1417 A.H. on the Muslim calender

Details of holidays

New Year

Ashura

Mawlid Al-Nabi

Isra wa Al - Miraj

Ramadan

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Laylat Al - Qadr

Eid al - Fitr

Eid al - Adha

Rabi Al-Awwal

Yom Arafat

Laylat Al-Baraa

New Year

The First of Muharram marks the new year. The date fluctuates (in the Gregorian calendar) from year to year as it is based on the Islamic lunar calendar.

Ashura

Ashura is celebrated on the ninth and tenth month of Muharram. The word *ashura* means "ten" and is a time of fasting, reflection and meditation. Jews of the city of Medina fasted on the tenth day in remembrance of their salvation from the Pharaoh, and the Prophet Muhammad pledged he would fast for two days instead of one in this same remembrance, but he died the following year and so never fasted as he had hoped.

For many Muslims there is joy in commemorating all of the wonderful events traditions say occurred on this day, including: Noah's ark came to rest, the Prophet Abraham was born, the Kaaba was built. Among Shiite Muslims, it is a day of special sorrow commemorating the martyrdom of the Prophet's grandson Hussain and his followers at the battle of Kerbala in Islam's first century. It is commemorated in Shiite communities with reenactment of these events and is a time of mourning.

Mawlid Al-Nabi

Mawlid Al-Nabi is the Prophet Muhammad's birthday. It occurs on the twelfth of Rabi Al-Awal of the Islamic calendar.

Speeches are given about the life of the Prophet in gatherings, and dinners are held. This occasion was not celebrated in the early times of Islam and is therefore unevenly celebrated today, with great and festive celebrations in many Muslim countries (i.e. Egypt and Turkey) and none in others

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(i.e. Saudi Arabia).

Isra wa Al - Miraj

Laylat Al-Isra wa Al-Miraj ("the night journey and ascension") commemorates the journey of the Prophet Muhammad from Makkah to Jerusalem, his ascension into the seven heavens, and his return in the same night. These events acknowledge that all the Abrahamic faiths (Judaism, Christianity and Islam) have one and the same God as their source.

In this night, Muslims believe, the Prophet was instructed to establish the five daily prayers in their current form. On this night, Muslims believe, Muhammad prayed together with Abraham, Moses and Jesus in the area of the Al-Aqsa mosque.

The rock from which he is believed to have ascended to heaven to speak with God is the one seen inside the Dome of the Rock. *Isra wa Al-Miraj* as it is sometimes called is celebrated on the twenty-seventh of Rajab of the Islamic calendar.

Ramadan

Laylat Al - Qadr

Laylat Al-Qadr ("the night of power.") falls on one of the last ten days of Ramadan on an odd numbered day (such as the twenty-third, twenty-fifth or twenty-seventh), In the Qur'an this night is said to be equal to one thousand months and on this night the prayers of the sincere Muslim are certain to be answered.

Eid al - Fitr

Eid Al-Fitr: The Feast of the Breaking of the Fast Just as festivity becomes the atmosphere when the fast is broken each day at sunset, happiness becomes doublefold when the month of fasting is finally completed and the Eid Al-Fitr is celebrated.

The most elaborate dishes are served at large banquets to which relatives and friends are invited. These colorful celebrations are the climax of the sense of fulfillment characterizing a month of fasting and hardships, increasing the bonds of connectedness among humankind and between humankind and God.

Eid al - Adha

Eid Al-Adha ("The Feast of the Sacrifice") commemorates Abraham's willingness and obedience to sacrifice his son Ishmael to God (and God's mercy in substituting a lamb for Ishmael). This feast is

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part of the Hajj, and takes place on the tenth of Dhu Al-Hijja of the Islamic calendar. For those on the Hajj and for many others the day begins with the sacrifice of an animal in commemoration of the Angel Gabriel's substitution of a lamb as Abraliam's sacrificial obligation. One-third of the meat is given to the poor, with the remainder shared with neighbors and family members. This holiday is then celebrated in much the same way as Eid Al-Fitr - with good food, gifts for children and general merrymaking.

Rabi Al-Awwal

Rabi Al-Awwal commemorates the Hijrah ("migration") of the Prophet Muhammad from Makkah to Medina, and marks the beginning of the Islamic calendar in history (622 A.D.).

Yom Arafat

Yom Arafat falls on the ninth of Dhu Al-Hijja, when people on the Hajj are assembled for the "standing" at the plain of Arafat (in Mina near Makkah) during the Hajj. Muslims around the world gather at the local mosque (masjid) for prayer in spiritual solidarity with those at Arafat.

Laylat Al-Baraa

Laylat Al-Baraa has been translated as "the night of repentance." (Laylat means night). It is the night when forgiveness is granted to those who repent. Muslims believe it is a night when God is setting the coming year's course for each person. It is therefore a time when one asks for God's blessings as well as for any specific request.

Tentative holiday dates

1998 - 1989

New Year

April 27, 1998

Ashura

May 6, 1998

Mawlid Al-Nabi

July 6, 1998

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Isra wa Al - Miraj
November 16, 1998

Ramadan
December 20, 1998

Laylat Al - Qadr
January 16, 1999

Eid al - Fitr
January 19, 1999

Eid al - Adha
March 28, 1999

1999 - 2000

New Year
April 17, 1999

Ashura
April 26, 1999

Mawlid Al-Nabi
June 26, 1999

Isra wa Al - Miraj
November 5, 1999

Ramadan
December 9, 1999

Laylat Al - Qadr
January 5, 2000

Eid al - Fitr
January 8, 2000

Eid al - Adha
March 16, 2000

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2000 - 2001

**New Year
April 7, 2000**

**Ashura
April 16, 2000**

**Mawlid Al-Nabi
June 16, 2000**

**Isra wa Al - Miraj
October 25, 2000**

**Ramadan
November 28, 2000**

**Laylat Al - Qadr
December 25, 2000**

**Eid al - Fitr
December 28, 2000**

Eid al - Adha

March 4, 2001

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