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1747

SCSL-2003-08-PT  
(1747-1749)



**SPECIAL COURT FOR SIERRA LEONE**

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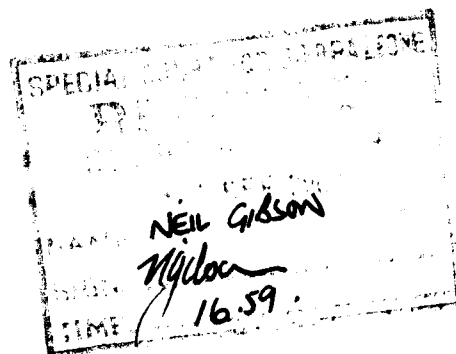
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**THE TRIAL CHAMBER**

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

**Registrar:** Robin Vincent

**Date:** 17<sup>th</sup> of September 2003



**The Prosecutor against**

**Samuel Hinga Norman**  
(Case No.SCSL-2003-08-PT)

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**ORDER PURSUANT TO RULE 72 (E)**

**DEFENCE PRELIMINARY MOTION ON LACK OF JURISDICTION: JUDICIAL INDEPENDENCE**

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**Office of the Prosecutor:**  
Mr. Luc Côté, Chief of Prosecutions

**Defence Counsel:**  
Mr. James Blyden Jenkins-Johnston  
Mr. Sulaiman Banja Tejan-Sie

**THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”)**

**SITTING** as the Trial Chamber (“the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

**SEIZED** of the Defence Preliminary Motion on Lack of Jurisdiction: Judicial Independence of the 26<sup>th</sup> day of June 2003 (“the Preliminary Motion”), in relation to the charges against **Samuel Hinga Norman** (“the Accused”);

**CONSIDERING** the Prosecution’s Response to “the Preliminary Motion” dated the 7<sup>th</sup> day of July 2003 (“the Response”);

**CONSIDERING** the Order on the Defence Request for Extension of Time within which to File Defence Reply to Prosecutor’s Response to Defence Preliminary Motions of the 17<sup>th</sup> day of September 2003;

**CONSIDERING** the Defence Reply to “the Preliminary Motion” dated the 14<sup>th</sup> day of July 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 provide 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 Defence “Preliminary Motion” objects to the jurisdiction of “the Special Court” to try “the Accused” on all the charges contained into the Indictment;

**CONSIDERING** that the Indictment charges “the Accused” with several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“The Statute”), Violation 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 “the Accused” submits “the Special Court” lacks of sufficient guarantees of judicial independence as its funding arrangements create a legitimate fear of political interference by economical manipulation;

**CONSIDERING**, in particular, that “the Accused” submits that Article 6 and 7 of the Agreement between the United Nations and the Government of the Republic of Sierra Leone on the Establishment of the Special Court create an opportunity for pressure on all Organs of “the Special Court” by the donor States who voluntarily contribute to its

financial and administrative budget, particularly those States who have representatives on the Management Committee of “the Special Court”;

**CONSIDERING** that “the Accused” also submits that a reasonable observer apprised of the financial and administrative structure of “the Special Court”, which do not insulate the judiciary from political pressure through financial manipulation, would have legitimate grounds to fear for its independence;

**GIVEN** that “the Accused”, in light of the above, argues that the lack of institutional financial independence created by “the Special Court” system of voluntary contribution adversely and directly affects its jurisdiction to try him for any of the counts contained in the Indictment;

**THE CHAMBER**

**FINDS** that the foregoing submissions raise a serious issue relating to the jurisdiction of “the Special Court” to try “the Accused” on all the counts of the Indictment that has been preferred against him;

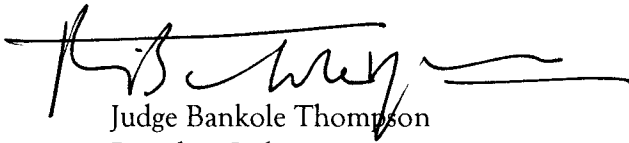
**AND THEREFORE, PURSUANT TO RULE 72 (E) OF THE RULES,**

**REFERS** this Defence “Preliminary Motion”, together with the Prosecution’s “Response” and the Defence “Reply” thereto, to the Appeals Chamber of “the Special Court” for determination;

**ORDERS** 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 17<sup>th</sup> of September 2003

The Trial Chamber

  
Judge Bankole Thompson  
Presiding Judge

