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SCSL-04-14-T  
(19300-19314)

19300

**SPECIAL COURT FOR SIERRA LEONE**

**In Trial Chamber I**

Before: Justice Bankole Thompson, Presiding  
Justice Benjamin Mutanga Itoe  
Justice Pierre Boutet

Registrar: Mr Lovemore Munlo, SC

Date: 27 September 2006

**THE PROSECUTOR**

**-against-**

**SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA**

SCSL-2004-14-T

PUBLIC

**FOFANA REQUEST TO ADMIT EVIDENCE PURSUANT TO RULE 92bis**

**For the Office of the Prosecutor:**

Mr Christopher Staker  
Mr James C. Johnson  
Mr Joseph Kamara

**For Moinina Fofana:**

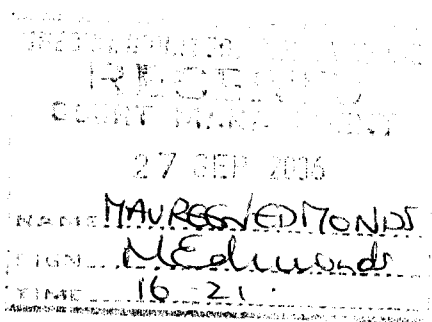
Mr Victor Koppe  
Mr Arrow Bockarie  
Mr Michiel Pestman  
Mr Steven Powles

**For Samuel Hinga Norman:**

Dr Bu-Buakei Jabbi  
Mr Alusine Sani Sesay  
Mr John Wesley Hall

**For Allieu Kondewa:**

Mr Charles Margai  
Mr Ansu Lansana  
Mr Yada Williams  
Ms Susan Wright



## INTRODUCTION

1. Counsel for the Second Accused, Mr Moinina Fofana, (the “Defence”) hereby submits its request to admit evidence in lieu of oral testimony pursuant to Rule 92*bis* of the Rules of Procedure and Evidence (the “Rules”).
2. The Defence tenders the following documents: (i) the original, signed statement of Ambassador Foday Seisay, resident of Bonn, Germany, (the “Seisay Statement”)<sup>1</sup> and (ii) a copy of an email communication with Mr Alfred SamForay, resident of Indiana, USA, (the “SamForay Email”)<sup>2</sup>. Neither gentleman is able to attend the trial proceedings in person. The documents were disclosed to the parties on 14 September 2006 and 20 September 2006, respectively, pursuant to Rule 92*bis*(C) with a view to reaching agreements as to their acceptance. The Office of the Prosecutor (the “Prosecution”), however, indicated that it would oppose both proffers. Counsel for Messrs Norman and Kondewa have made no response to date.
3. The Defence submits that the information contained in both documents is relevant to material issues before the Chamber and capable of corroboration in due course. Further, it is submitted that the acceptance of the documents will not unfairly prejudice the other parties to the proceedings. Accordingly, the Defence respectfully moves the Chamber to accept both documents as evidence in support of Mr Fofana’s case.

## SUBMISSIONS

### **The Applicable Law**

4. Rule 92*bis* states, in pertinent part: “(A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony. (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation”.

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<sup>1</sup> Attached hereto as Appendix A.

<sup>2</sup> Attached hereto as Appendix B.

5. Paying particular attention to the marked differences between this Court's streamlined Rule 92bis and its rather more technical analogues at the *ad hoc* tribunals<sup>3</sup>, the Appeals Chamber has construed the former quite liberally:

SCSL Rule 92bis is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR Rule 92bis in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities. The effect of the SCSL Rule is to permit the reception of "information"—assertions of fact (but not opinion) made in documents or electronic communications—if such facts are relevant and their reliability is "susceptible of confirmation". This phraseology was chosen to make clear that proof of reliability is not a condition of admission: *all that is required is that the information should be capable of corroboration in due course*.<sup>4</sup>

6. Drawing upon the Appeals Chamber's guidance, this Chamber has adopted and consistently applied a simple, three-pronged test for the admission of information in lieu of oral testimony, namely: (i) Is the tendered information relevant? (ii) Does it possess sufficient indicia of reliability (that is, is it susceptible of corroboration in due course)? and (iii) Would no party be unfairly prejudiced by its admission? Assuming each prong is answered in the affirmative, the information should be admitted into evidence over any objections regarding its probative value or weight<sup>5</sup>. Such assessments are properly deferred until the Chamber is in a position to view the information "in light of the totality of the evidence before it"<sup>6</sup>.
7. By its terms, Rule 92bis does not require the party seeking the admission of a witness statement, "in lieu of oral testimony"<sup>7</sup>, to produce the individual who made the statement in court for cross-examination by the other parties. Indeed, such a requirement would

<sup>3</sup> See ICTY and ICTR Rules 92bis, which include a variety of procedural requirements not contained in SCSL Rule 92bis as well as specific enumerations of factors in favour of and against admitting the proposed evidence.

<sup>4</sup> *Prosecutor v. Norman et al.*, SCSL-2004-14AR73-398, Appeals Chamber, 'Fofana – Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence', 16 May 2005, ¶ 26 (emphasis added).

<sup>5</sup> See *Prosecutor v. Norman et al.*, SCSL-2004-14-T-694, Trial Chamber I, 'Decision on Norman Request to Admit Documents in Lieu of the Testimony of Abdul-One Mohammed Pursuant to Rules 89(C) and Rule 92bis', 15 September 2006 and *Prosecutor v. Norman et al.*, SCSL-2004-14-T-447, Trial Chamber I, 'Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)', 14 July 2005.

<sup>6</sup> *Prosecutor v. Norman et al.*, SCSL-2004-14-T-447, Trial Chamber I, 'Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)', 14 July 2005, at page 4.

<sup>7</sup> Rule 92bis(A).

defeat the purpose of Rule 92bis, which is intended to simplify the proceedings by allowing for the alternative proof of facts, as the both the rule's title and the Appeals Chamber's gloss suggest. Already this Chamber has admitted the statement of Major-General Abdul-One Mohammed, with the knowledge that his appearance at the proceedings was highly unlikely<sup>8</sup>.

### **The Seisay Statement**

8. According to his statement, Ambassador Seisay was based in Bo as the Minister of State for the Southern Region of Sierra Leone (the so-called "Resident Minister"), from mid-1998 onwards. During such time, he had certain dealings with CDF officials in Bo including Mr Fofana. The Prosecution has made an issue of Mr Fofana's alleged activities in Bo following the reinstatement of the Kabbah government in 1998<sup>9</sup>. Therefore, it is submitted that the factual observations contained in the Seisay Statement are relevant to material questions now before this Chamber.
  
9. Further, the information contained in the Seisay Statement is susceptible of corroboration in due course. For example, a prosecution witness has already testified that he was a member of the so-called Peace Office in Bo; that its "main function was to check on the excesses of the Kamajors within Bo Town and its environs"; and that "this office was created by the then resident minister, who was in charge of Bo, for his own administrative convenience"<sup>10</sup>. A second prosecution witness has indicated that this office "was being headed by the second accused Moinina Fofana"<sup>11</sup>; that it was formed "around 1999 to 2000" after "the war finished"<sup>12</sup>; and that the "resident minister, Foday Sesay, and some other authorities asked us to form that office, because the undisciplined had become too much in the society"<sup>13</sup>. At the close of the CDF proceedings, the Chamber will be in a position to evaluate the Seisay Statement in light of the totality of the evidence before it.

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<sup>8</sup> See *Prosecutor v. Norman et al.*, SCSL-2004-14-T-694, Trial Chamber I, 'Decision on Norman Request to Admit Documents in Lieu of the Testimony of Abdul-One Mohammed Pursuant to Rules 89(C) and Rule 92bis, 15 September 2006.

<sup>9</sup> See, e.g., *Prosecutor v. Norman et al.*, SCSL-2004-14-PT-063, 'Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004', 22 April 2004, ¶¶ 30-37.

<sup>10</sup> Testimony of TF2-008, Trial Transcript of 16 November 2004 at 18:1-5 and 19:23-20:3.

<sup>11</sup> Testimony of TF2-014, Trial Transcript of 14 March 2005 at 57:24-26.

<sup>12</sup> *Ibid.*, Trial Transcript of 15 March 2005 at 40:17-41:25.

<sup>13</sup> *Ibid.*, Trial Transcript of 15 March 2005 at 42:16-22.

10. Finally, no party will be unfairly prejudiced by the *mere admission* of the document. The Prosecution and counsel for Messrs Norman and Kondewa will have ample opportunity to thoroughly canvass arguments regarding the probative value and weight of the statement in their respective final trial briefs.

### **The SamForay Email**

11. According to his email, Mr SamForay was involved in the creation of the CDF Calendar, which was tendered by the Prosecution under Rule 92*bis* and admitted into evidence by this Chamber as Exhibit 112. The Prosecution has made an issue of Mr Fofana's alleged leadership role within the CDF and is presumably of the view that Exhibit 112 in some way supports its position in that regard. Therefore, the Defence submits that the factual assertions contained in the SamForay Email<sup>14</sup> with respect to the creation, purpose, and accuracy of the calendar are relevant to a material issue before this Chamber.

12. Further, the information contained in the SamForay Email is susceptible of corroboration in due course. Indeed, the matter of the calendar's provenance has already been addressed by at least two defence witnesses. In his testimony, Mr Norman indicated that Exhibit 112 was produced, at his request, by the "Tegloma organisation in the United States for future historical purposes"<sup>15</sup>. Additionally, Mr Francis Lumeh testified that the calendar was "prepared by the Sierra Leone Action Movement in America"<sup>16</sup>, and Mr SamForay purports to be a member of that organisation.

13. Finally, as noted above, all parties will have ample opportunity to make submissions as to the probative value and weight to be attached to the SamForay Email. Accordingly, accepting the document at this stage will not result in any unfair prejudice.

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<sup>14</sup> The Defence concedes that the final paragraph of the SamForay Email amounts to a legal opinion, rather than an "assertion of fact" and has therefore been redacted from the document.

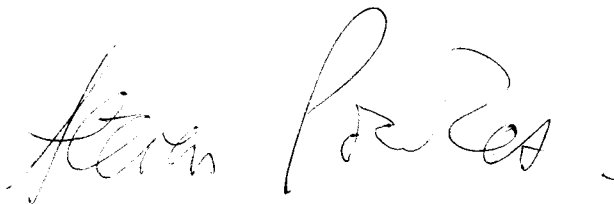
<sup>15</sup> Trial Transcript of 6 February 2006 at 54:1-4.

<sup>16</sup> Trial Transcript of 5 May 2006 at 94:1-2.

**CONCLUSION**

14. Simply stated, the information contained in the Seisay Statement and the SamForay Email is relevant, susceptible of corroboration in due course, and will not unfairly prejudice any party. The Defence therefore respectfully urges the Chamber to admit both documents into evidence pursuant to Rule 92*bis*.

COUNSEL FOR MOININA FOFANA

A handwritten signature in black ink, appearing to read "Steven Powles", written in a cursive style.

Steven Powles

**APPENDIX A**  
**The Seisay Statement**



SPECIAL COURT FOR SIERRA LEONE  
 LONG BEACH ROAD • FREETOWN • SIERRA LEONE

DEFENCE WITNESS STATEMENT  
 on behalf of  
 THE SECOND ACCUSED MOININA FOFANA

Name	Foday Mohammed Duramani Seisay
Address	20 Reinalle, Bonn, Germany
Occupation	Ambassador of the Republic of Sierra Leone
Date of Birth	26 October 1945
Place of Birth	Targbe, Bendu-Sha Chiefdom, Bonthe District
Father's Name	Duramani Seisay
Mother's Name	Fatmata née Parson
Tribal Affiliation	Mandingo
Languages Spoken	Mandingo, Mende, Krio, English

I am the current ambassador of the Republic of Sierra Leone to Austria, Germany, Italy, and Switzerland. I received my appointment from H.E. President Ahmad Tejan Kabbah and assumed my official duties on 3 May 2005. I am a resident of Bonn, Germany.

At the time of the AFRC coup of 25 May 1997, I was the Deputy Minister of Health and Sanitation in the SLPP government in Freetown. Sometime in July 1997, I fled to Conakry, Guinea where I remained in exile until shortly after the restoration of President Kabbah. During my stay in Conakry, I had nothing to do with the activities of the Civil Defence Forces (the "CDF"). My exile was a personal one, and I did not continue my official duties.

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Around May or June 1998, President Kabbah appointed me as Minister of State for the Southern Region, with a mandate to coordinate the activities of all government ministries and departments in the Southern Region. I moved to Bo with my family, where I was given an official office with a staff of more than fifteen civil servants.

Although the fighting had largely ended when I arrived in Bo, there was no effective police force in place. ECOMOG had, by then, established a battalion in the city and both ECOMOG and Kamajors were seen patrolling the streets, armed and dressed in their respective uniforms. Up to that point, although I had heard of the CDF and the Kamajors, I did not have any personal exposure to their activities or knowledge of their structures and operations. Essentially, what I met in Bo was a tenuous security situation, with ECOMOG operating as the *de facto* police force and various groups of Kamajors operating without apparent leadership.

In order to create some sense of governance and semblance of security in the region, I decided to assemble a core of local figures to assist me. My first official interaction with the CDF came shortly after my arrival in Bo in June 1998. I invited CDF District Administrator Sosseh Hindowa to my hotel, introduced myself, and expressed my interest in working together with the CDF for peace and security in the area. As the top CDF official in Bo at the time, I was eager to gain his support and cooperation. Some of Mr Hindowa's colleagues were present at the meeting. Moinna Fofana was not.

Sometime shortly thereafter, I arranged a similar meeting with Mr Hindowa, some of his staff, and ECOMOG Brigade Commander Colonel Jack Eketibossi at the brigade headquarters situated on Joseph Mattar's compound in central Bo. It was decided that, although there was little fighting in the south, regular security patrols were necessary. As ECOMOG was overextended in terms of manpower and had been given a limited mandate, Mr Hindowa agreed to devote some Kamajors to the effort. Again, Mr Fofana was not present at this meeting, nor was his name mentioned. I had approached the CDF District Administrator, and not the CDF Director of War, because it was well-known that Mr Hindowa was in charge of CDF affairs in Bo, even though Mr Fofana was resident in the town at that time. Mr Hindowa occupied a large, staffed office at 88 Mahei Boima Road, while the official location and activities of Mr Fofana were unknown to me, if they existed at all. In fact, Colonel Eketibossi and I would later come to wonder why a man with such a title

appeared to be so uninvolved in CDF affairs. We both had heard of the position, but neither one of us had any official dealings with him in 1998 or any sense of his official duties. According to my own assessment, a lot of the positions within the CDF were just big names.

It was only some time in 1999 that I met Mr Fofana personally, when he came to plead with me on behalf of some Kamajors who had been arrested by ECOMOG regarding an incident in Pujehun District. I learnt that Mr Fofana had some clout among Kamajors from Bonthe District, his home district, from my friend and former SLPP colleague Charles Moiwo, to whom I often turned when I encountered problems with Kamajors in Bo. I also learned that Mr Fofana was an illiterate man with no formal education.

Sometime later in 1999, possibly March, Mr Fofana came to me and announced that he, Augustine Ngaugia, and some others from the area had managed—through their personal connections—to secure office space along Mahe'i Boima Road in the Shenge section of Bo. Mr Fofana told me that they intended to use the office to apply for peace-building grants from certain NGOs like Conciliation Resources and government bodies like the European Commission. By this time, Mr Fofana had taken me as a kind of elder brother, as we hailed from the same district, and I provided a desk and chair for the office—which I later heard referred to as the Peace Office—as well as encouragement for their activities. At one point, a gentleman called Simon Arthy, who worked for the European Commission, later inquired as to Mr Fofana's personality in connection with a grant, and I described him as the very docile and very cooperative individual I believe him to be.

Based on my own personal and professional observations, Mr Fofana was not capable of effectively directing a war. To me, he was a sort of personal assistant to Mr Norman, who took care of chores unrelated to war or fighting. Although I reported directly to the SLPP government in Freetown and had no formal relationship with Mr Fofana or the CDF administration in Bo, I know from personal experience with initiators like Kamoh Lahai Bangura and Mama Munda Fortune that the bonds of chiefdom and tribe were greater than my authority that may have been associated with official titles. I know, for example, that Mr Fofana considered me to be his superior, not because I was a government minister, but because I was his senior from Bonthe District.

AFFIRMATION

I hereby affirm that the contents of this statement have been read to me in a language that I understand and that the information contained herein is true and correct to the best of my present knowledge and was given freely by me to the legal representatives of Moinina Fofana without the expectation of any material or personal gain. I understand that this statement and some or all of the information contained herein may be used in criminal proceedings before the Special Court for Sierra Leone and may become part of the public record of that tribunal.

Done and witnessed at Bonn, Germany on 29 August 2006.

*[Faded signature]*  
Name

*[Handwritten signature]*  
Signature

MARV JOSEPHINE BALLADA  
Witness

*[Handwritten signature]*  
Signature

**APPENDIX B**  
**The SamForay Email**



asamforay@aol.com  
05/02/2006 06:56 PM

To: defence-fofana@un.org  
cc: lansjay0078@yahoo.com  
bcc:  
Subject: Re: CDF Calendar

Andrew,

Sorry about the long delay in getting this to you. Please feel free to contact me for any further issues or clarifications.

Alfred,  
(812) 841 - 1000.

-----Original Message-----

From: SCSL Defence-Fofana <defence-fofana@un.org>  
To: asamforay@aol.com  
Sent: Thu, 20 Apr 2006 18:25:03 +0000  
Subject: CDF Calendar

Dear Mr Samforay:

Thank you for receiving my call today. It was a pleasure to speak to you.

As per our discussion, we would be most grateful if you could answer the following questions (by return email) at your earliest convenience:

- (1) Who initiated the creation of the CDF calendar?
- (2) Who provided the information contained therein, especially the copy beneath the photograph of Moinina Fofana?
- (3) How and by whom, if at all, was such information verified?
- (4) Who paid for the calendar's publication?
- (5) What was the purpose of publishing the calendar?
- ! (6) Which individuals were involved in the project?

We look forward to hearing from you soon. Please do not hesitate to reach me by telephone on +232 (0)22 297 297 or +232 (0)76 959 969.

Thank you for your cooperation.

Yours,

Andrew Ianuzzi



for the Fofana Defence Team Question and Answers - CDF Calendar.doc

Q Who initiated the creation of the CDF Calendar

A: I believe the idea was that of Chief Hinga Norman, the National Coordinator of the CDF

Q: Who provided the information therein especially the copy beneath the photograph of Moinina Fofana?

A. As the General Secretary of the CDF support group, SLAM, (the Sierra Leone Action Movement) and editor of the calendar, I was primarily responsible for the collection, analysis and selection of information about the individuals in the calendar including the caption beneath the photograph of Mr. Fofana.

Q: How and by whom, if at all, was such information verified?

A: There was no formal verification of the information in the calendar. The information in the calendar were for commercial and promotional purposes only, not for legal purposes. For example, the caption under the photograph of Mr. R. E. S. Lagawo (late) as the "Oldest member of the oldest political party in West Africa" while not intentionally false or malicious, may not necessarily reflect historical facts. In any case, calendars are, by definition, annual publications, not historical documents, per se.

Q: Who paid for the calendar's publication?

A: As publisher of the calendar and fund raiser for the CDF, I paid for the calendars and was reimbursed, in part, by the CDF High Command.

Q: What was the purpose of publishing the calendar?

A: The calendar was primarily a fund raising venture for the CDF. It was also distributed in Sierra Leone and abroad for the public relations purposes.

Q: Which individuals were involved in the project?

A: The calendar was published by the CDF support group, SLAM. Members of SLAM, primarily in the United States provided information, expertise, critique and financial support to make the project possible.

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~~I hope that the above information assists the defence in clarifying questions about the CDF Calendar. Aside from paranoia or desperation, I cannot see how the calendar establishes command responsibility although it certainly does establish a clear chain of command with the President, the Vice President and the National Chairman, Richard Lagawo as the substantive heads of the organization.~~

19314.

If I can be of further assistance in this matter please do not hesitate to contact me.

Rev Alfred M. SamForay,  
Spokesman & Coordinator.  
Hinga Norman-CDF Defence Fund.  
(812) 841 - 1000