

I, Justice PHILIP NYAMU WAKI, President of the Residual Special Court for Sierra Leone (“Residual Special Court”);

COGNISANT of Rule 124 of the Residual Special Court Rules of Procedure and Evidence (“Rules”) which declares that “[t]here shall only be pardon, commutation of sentence or early release if the President of the Residual Special Court, in accordance with Article 24 of the RSCSL Statute and in consultation with the judges who imposed the sentence where possible, and after considering the position of the Prosecutor, which shall incorporate the interests of Prosecution witnesses and victims, as well as the convicted person individually or through counsel, so decides on the basis of the interests of justice and the general principles of law. An early release shall only occur after the prisoner has served a minimum of two thirds of his or her original sentence”;

FURTHER COGNISANT of Rule 19(d) of the Rules which declares that “[t]he President shall, in addition to the discharge of his or her judicial functions, be responsible for the proper administration of justice”;

FURTHER COGNISANT of the Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone (“Practice Direction”);

NOTING that Mr. MOININA FOFANA (“FOFANA”), was convicted on 4 counts of war crimes and acquitted on 4 counts of crimes against humanity by Judgment of a Majority of the Special Court for Sierra Leone (“Special Court”) Trial Chamber I on 2 August 2007 and sentenced to serve a term of imprisonment of 6 years on 9 October 2007 with credit for time already served, and that on appeal FOFANA’S acquittal on crimes against humanity was overturned with a majority of the Appeals Chamber finding him guilty on 5 counts and increasing his sentence to a total term of 15 years on 28 May 2008;

FURTHER NOTING that FOFANA served two-thirds of his term of imprisonment and applied for early release pursuant to the Practice Direction;

RECALLING the Decision of the President on Application for Conditional Early Release of 11 August 2014 (“Decision”), in which FOFANA was granted conditional early release on the following terms:

subject to service by the applicant of a further period of six (6) months from the date of this Decision, in prison custody. Within those six months, the Registrar of this court in conjunction with the Prison Authorities in Rwanda, shall conduct training for Fofana and certify that he has, as far as his level of intelligence can take him, understood the nature of the crimes for which he was convicted in that they were serious violations of International Humanitarian Law, Geneva Conventions and Crimes Against Humanity; understood that what may be a legitimate cause does not justify the use of illegal means; and that he acknowledges his own responsibility and the leadership role he played in the armed conflict in Sierra Leone.

NOTING the Registrar’s Interoffice Memorandum of 4 February 2015, certifying FOFANA’S successful completion of the additional training in accordance with the Decision and confirming his voluntary expression of a public apology for his wrongful

conduct, acknowledgement of his guilt and showing of remorse to the people of Sierra Leone and the victims of his crimes;

RECALLING that upon certification of the Training by the Registrar, FOFANA was released on execution of a Conditional Early Release Agreement in accordance with Article 9(C) of the Practice Direction and signed by him on 10 February 2015 in accordance with Article 10 (B) of the Practice Direction, in which he indicated that he had been advised by the Principal Defender of his obligations and the consequences of the Agreement, and that he understood and agreed to comply with the terms and conditions thereof including the special condition that:

The applicant shall conduct himself honorably and peacefully in the community and shall not engage in secret meetings intended to plan civil unrest or join local politics

CONSIDERING that in signing the Conditional Early Release Agreement FOFANA also confirmed that:

- A. In the event that he violates any Conditions of his Early Release he understands that the order for Conditional Early Release may be revoked and an order for re-imprisonment for the time remaining on his sentence may be issued;
- B. He is subject to immediate detention and transfer to the Residual Special Court upon the reasonable belief by the Monitoring Authority that he is in violation of any condition of the Conditional Early Release Agreement or poses a risk of harm to any person;
- C. He may be returned to prison to complete his sentence should the Residual Special Court find that he breached any of the terms or conditions of his Conditional Early Release Agreement.

RECALLING Article 11 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone which provides that “[t]he Government shall comply without undue delay with any request for assistance by the Residual Special Court or an order issued by the Chambers, including, but not limited to:

- (a) Identification and location of persons;
- (b) Service of documents;
- (c) Arrest or detention of persons;
- (d) Transfer of an indictee to the Residual Special Court.”

CONSIDERING the Supervision and Transfer Order issued on 25th February 2015 under the terms of which FOFANA was released to reside at Bo Town, Bo District, subject to the supervision of the Monitoring Authority, the Sierra Leone Police at Bo Town, and by which they were ordered to immediately detain Fofana if *inter alia*, there is reason to believe that he has violated a condition of the Conditional Early Release Agreement signed by him and to transfer him to the custody of the Residual Special Court without delay;

SEIZED pursuant to Article 12 (C) of the Practice Direction of a report from the Registrar with supporting evidence alleging a violation by FOFANA of the terms of his Conditional Early Release Agreement, and in particular of the aforementioned special condition;

PURSUANT to Article 12 (F) of the Practice Direction, **DETERMINES** that there is probable cause to believe that a violation has occurred, and

- (i) **DESIGNATES** Justice Vivian M. Solomon to hear the matter pursuant to Article 13 (3) of the Statute of the Residual Special Court for Sierra Leone;
- (ii) **DIRECTS** the Prosecutor to prosecute the matter;
- (iii) **DIRECTS** the Principal Defender to represent FOFANA; and
- (iv) **DIRECTS** the Registrar to set a preliminary hearing of the matter within 7 days.

FURTHER ORDERS the Monitoring Authority and the relevant authorities of the Government of Sierra Leone to immediately detain FOFANA and to transfer him to the custody of the Residual Special Court pending the hearing and determination of the matter.

Done at The Hague, The Netherlands

This 9th day of March 2016



Justice Philip N. Waki,
President

[Seal of the Residual Special Court for Sierra Leone]

