

I Honourable Justice Vivian M. Solomon, sitting as Designated Judge pursuant to the President's 'Order for Detention and Transfer and for Hearing Pursuant to Article 12(F) of the Practice Direction on Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone' dated 9 March 2016;¹

NOTING that at the Preliminary Hearing of 16 March 2016, Moinina Fofana denied the allegation of the violation of the terms of his Conditional Early Release;

NOTING that during the course of the Preliminary Hearing, the Prosecutor notified the Designated Judge of two additional allegations of violations of the terms of Moinina Fofana's Conditional Early Release Agreement, which Moinina Fofana also denied;²

NOTING that the Preliminary Hearing was adjourned to 18 March 2016, in order to, *inter alia*, provide a reasoned decision on the issues raised by the Parties;³

NOTING the Defence submissions at the hearing recommenced on 18 March 2016, that Moinina Fofana had not fully understood the allegations against him; and that having since benefitted from the Defence' explanation of the said allegations, the Defence requested that the allegations be read out to him again to answer;

NOTING that Moinina Fofana, having had the allegations re-read to him, decided to change his initial answer to the allegations and now admits to all alleged violations of the terms of his Conditional Early Release;

COGNISANT that Moinina Fofana is at liberty to change his answer at any stage during the course of the hearing;

CONSIDERING the oral submissions of the Parties on the Defence' oral application for the release of Moinina Fofana from the custody of the Residual Special Court for Sierra Leone ("Residual Special Court") pending the disposition of the matter pursuant to

¹*Prosecutor v Moinina Fofana and Allieu Kondewa*, RSCSL 04-14-ES 'Public Order for Detention and Transfer and for Hearing Pursuant to Article 12 (F) of the Practice Direction on Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone' 9 March 2015. The date of the Order was subsequently amended to reflect the correct date of 9 March 2016 – see Corrigendum dated 10 March 2016

² 'Prosecutor's Notice of Alleged Violations of Conditional Early Release Agreement Pursuant to Article 12(B), RSCSL Practice Direction on Conditional Early Release' dated 16 March 2016 made the following two additional allegations of violations by Moinina Fofana of the terms of his Conditional Early Release Agreement (CER Agreement): 1. That Moinina Fofana violated paragraph 6.4 of the CER Agreement Special Conditions and para. 5.d of the CER Agreement Standard Terms and Conditions by (a) failing to obtain advance permission from the Monitoring Authority or its Agent to deviate from his approved departure from his designated location Bo Town, to Freetown, such deviation being to travel to Makeni and for purposes not approved by the Monitoring Authority or its Agent; and (b) failing to return to Bo Town on the date authorized by the Monitoring Authority or its Agent without obtaining advance permission for late return to Bo Town. 2. That Moinina Fofana violated paragraph 6.4 of the CER Agreement Special Conditions and paragraph 5.h of the CER Agreement Standard Terms and Conditions by (a) failing to report to the Monitoring Authority on one occasion in October 2015 instead falsely certifying his physical presence on that date by signing the required form in advance of the sign in date.

³ The Parties' submissions for the purposes of the Preliminary Hearing of 16 March 2016 are three fold: (i) what are the procedural guidelines for an administrative hearing of this nature; (ii) who bears the burden of proof; and (iii) what type of evidence may be tendered during the course of the hearing.

Article 12(I) of the Practice Direction on Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone (“Practice Direction”);

CONSIDERING that the Prosecution does not object to Moinina Fofana’s release pending the disposition of the matter provided that certain additional conditions are imposed on him;

CONSIDERING that the principles of fairness and due process are applicable in the context of this hearing⁴ and that in assessing which principles of due process apply, due process is flexible and calls for the procedural protections that the particular circumstances of a case demand;⁵

CONSIDERING that this matter concerns a question of imprisonment and thus the potential deprivation of Moinina Fofana’s liberty which constitutes a fundamental aspect of due process recognized in international human rights treaties, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

NOTING that the Residual Special Court has inherent power to ensure that the exercise of the jurisdiction accorded to it is not frustrated and that the proceedings do not lead to injustice;

HEREBY grants the Defence oral application for the release of Moinina Fofana from the custody of the Residual Special Court pending the disposition of this matter;

ORDERS that Moinina Fofana:

- i. complies fully with and reaffirms his understanding of the terms of the Conditional Early Release Agreement signed by him on 10 February 2015 pursuant to Article 10(B) of the Practice Direction;
- ii. complies fully with and reaffirms his understanding of the standards and special conditions issued by the President on 20 February 2015;

FURTHER ORDERS that Moinina Fofana:

- i. obtains written permission from the Registrar of the Residual Special Court at all times before travelling out of Bo Town;
- ii. reports to the Monitoring Authority every Monday;
- iii. refrains from discussing issues pertaining to this matter with members of the Press or the Media and any third party that is not associated with his Defence Team or the Residual Special Court while the matter is ongoing;
- iv. desists from directly or indirectly attempting to influence anyone whose information has been provided in this hearing or attempting to bribe, intimidate, threaten, harm or otherwise interfere with such individuals;
- v. desists from the practice of signing the required forms in advance of his sign in date;

⁴ *Morrissey v Brewer*, 408 U.S. 471 (1972), pp.487 -- 490; *West v Parole Board* 2002 EWCA Civ 1641, paras. 44 - 45; *Regina v Parole Board ex parte Smith and Regina v Parole Board ex parte West* (Conjoined Appeals) UKHL, paras. 27 – 28, 30, 37, 45 & 47.

⁵ *Morrissey v Brewer*, 408 U.S. 471 (1972), p.482;
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DIRECTS the Registrar to set a date for the delivery of the disposition;

FURTHER DIRECTS the Parties to file any further written submissions with the Registrar within 14 days of this hearing;

INSTRUCTS the Parties to refrain from discussing this matter to members of the press or the media; or to any third party that is not associated with the Residual Special Court.

Done at Freetown, Sierra Leone

This 18th day of March 2016



Justice Vivian M. Solomon
Judge

[Seal of the Residual Special Court for Sierra Leone]

