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RSCSL-04-14-ES  
(1408-1414)

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RESIDUAL SPECIAL COURT FOR SIERRA LEONE  
CHURCHILLPLEIN 1, 2517 JW • THE HAGUE • THE NETHERLANDS  
P. O. BOX 19536, 2500CM • THE HAGUE • THE NETHERLANDS  
(BRANCH OFFICE:) JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

Before: Justice Solomon Vivian M. Solomon, JSC, Presiding

Registrar: Ms. Binta Mansaray

Date: 01 April 2016

Case No. RSCSL 04-14-ES

PROSECUTOR

Against

MOININA FOFANA

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PUBLIC

DEFENCE SUBMISSION FILED IN COMPLIANCE WITH THE ORDER OF THE  
HON. JUSTICE VIVIAN M. SOLOMON JSC

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Office of the Prosecutor:

Ms. Brenda Hollis

Defence Counsel for Moinina Fofana:

Mr. Ibrahim Sorie Yillah

Mr. Melron Nicol-Wilson

Mr. Hassan Sherry

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
COURT MANAGEMENT	
THE HAGUE	
01 APR 2016	
NAME	<i>Frances Ngaboh-Smart</i>
SIGN	<i>[Signature]</i>
TIME	<i>17:00</i>

## 1. INTRODUCTION

1.1. On 9th day of March 2016, the President of the Court issued his Order for the detention and arrest of Moinina Fofana (Court Order) ordering the Monitoring Authority, that is, the Sierra Leone Police to arrest and surrender Moinina Fofana to the Residual Special Court for Sierra Leone<sup>1</sup>

1.2. Upon being informed by the Principal Defender of the President's order, Moinina Fofana voluntarily contacted and surrendered to the Monitoring Authority, the Sierra Leone Police before service of the order on him.

1.3. In that same decision<sup>2</sup>, the President found that there was probable cause that Moinina Fofana may have violated one of his conditions of the Decision on Conditional Early Release and accordingly directed that a hearing be held within 7 days of the date of the Order.

1.4. In accordance with the President's Order<sup>3</sup>, an administrative hearing presided over by the Hon. Justice Vivian M. Solomon was held in Freetown on the 16th day of March 2016.

1.5. At the initial hearing held on the 16th day of March 2016, Moinina Fofana denied the allegations put to him by the Court partly because of the convoluted nature of the allegations read out by the Court Clerk. The hearing was adjourned to the 18th March 2016 and Moinina Fofana was refused bail.

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<sup>1</sup> Order for Detention and Transfer and For Hearing Pursuant to Article 12 (F) the Practice Direction on Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone.

<sup>2</sup> Order for Detention and Transfer and For Hearing Pursuant to Article 12 (F) the Practice Direction on Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone.

<sup>3</sup> Order for Detention and Transfer and For Hearing Pursuant to Article 12 (F) the Practice Direction on Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone.

1.6. At the hearing held on 18th March 2016, Defence Counsel requested that the allegations be put again to Moinina Fofana<sup>4</sup> in order to enable him take a plea on clear and concise allegations .

1.7. After several unsuccessful attempts at formulating concise allegations, Moinina Fofana changed his plea and admitted the allegations at the earliest opportunity after clarity on the allegations was attained and pleaded with the Court, the Prosecutor and the Registrar to forgive any errors he may have made noting that any such error may have been unintentional.

1.8. At that same hearing, the Hon Justice Vivian M. Solomon, JSC ordered the release of Moinina Fofana on bail pending the determination of the hearing imposing additional conditions on Moinina Fofana<sup>5</sup>.

1.9. At the conclusion of that hearing, the Hon Justice Vivian M. Solomon ordered the Prosecution and Defence to file written submissions in support of their respective cases on or before Friday, 2<sup>nd</sup> April 2016<sup>6</sup>.

## **2. DEFENCE MAIN SUBMISSIONS**

In compliance with the order of the Hon. Justice Vivian M. Solomon, JSC and in accordance with Article 12(F) (iii) of the Practice Direction on Conditional Early Release, the Defence hereby files its submissions. For the reasons set out below, the Defence respectfully pleads with the Court and appeals to the Learned Judge to temper justice with mercy and order the release of Moinina Fofana on the terms and conditions of the original conditional early release agreement.

### **2.1 Applicable Law**

Article 12 (J) of the Practice Direction on Conditional Early Release is the applicable law to these hearings. It provides that in the event that the convicted person admits the allegations as in the instant case, the Judge shall

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<sup>4</sup> See Court transcript in the Case No. RSCSL 04-14-ES The Prosecutor V. Moinina Fofana Line 10:34:00 dated 18.03.2016

<sup>5</sup> See Court transcript in the Case No. RSCSL 04-14-ES The Prosecutor V. Moinina Fofana Line 1:13:23 dated 18.03.2016

<sup>6</sup> See Court transcript in the Case No. RSCSL 04-14-ES The Prosecutor V. Moinina Fofana Line 1:13:23 dated 18.03.2016

- (i) Revoke the order for conditional early release order re-imprisonment of the convicted person for the time remaining on the sentence at the date that conditional early release went into effect, with credit for time served in detention pending disposition of the violation and any credit the Judge may order for the time served under conditional early release;
- (ii) Revoke the order for conditional early release and order the release of the convicted person subject to modified conditions of the conditional early release agreement; or
- (iii) Order the release of the convicted person on the terms and conditions of the original conditional early release agreement.

The penalties provided by Article 12 of the Practice Direction on Conditional Early Release are in the alternative, that is, the Judge in the exercise of her discretion may impose only one of the conditions listed above as a penalty for breach of a condition(s) of conditional early release.

As stated earlier, for the reasons immediately detailed below, the Defence respectfully pleads with the Hon Judge to temper justice with mercy and order the release of Moinina Fofana on the terms and conditions of the original conditional agreement.

**2.2 Mitigating Factors Militating in Favour of the Exercise of the Judge's discretion in imposing a penalty under Article 12 (J) (iii)**

### **2.3 Background to this Submission**

Moinina Fofana has instructed his defence team to convey his deepest regrets for the events leading to these hearings. He has specifically requested the team to convey his regrets and remorse to the Judge, the President, the Prosecutor, the Registrar and the victims. He fully understands the gravity of the offence(s) for which he was convicted and sentenced by the predecessor to this Court, the Special Court for Sierra Leone and intends to uphold and maintain the integrity of the court's sentence as well as the conditional early release agreement at all times.

Additionally, he has instructed the Defence to inform the Court that he respects all the rulings, decisions and judgment issued by this Court and its predecessor against him and intends to uphold each of them.

Most importantly, at the conclusion of the last hearing, Moinina Fofana requested that the Defence Office read over and explain to him all the conditions of his detention of the original conditional early release agreement as well as the additional conditions imposed by the Judge for bail pending the conclusion of this matter. Additionally, he has firmly undertaken that in the event of ambiguity he will seek the advice of the defence at all times to ensure that he no longer breaches any of his conditions of his release and bail.

### **2.3 Moinina Fofana's Health Condition**

Both counsel and Moinina Fofana drew the Court's attention to his medical condition at the hearings. At the risk of sounding repetitious, Moinina Fofana underwent a major surgery during his imprisonment in Rwanda in which his entire disc below his spine was replaced. He is grateful that this Court paid his medical bills. The effect of the surgery is that Moinina Fofana cannot survive unaided. Moinina Fofana is currently residing with his family members in Bo who are assisting him with his daily activities. Against this background, the Defence respectfully pleads with this Court to consider Moinina Fofana's Medical condition and release him on the terms contained in the original conditional early release agreement.

### **2.4 Moinina Fofana demonstrated good behaviour in Prison**

In addition to his Medical condition, the Defence respectfully submits that Moinina Fofana served his custodial sentence in Rwanda with good conduct, a factor taken into account by the President of the Court in reaching his Decision on Conditional Early Release. Also, apart from the allegations leading to these hearings, Moinina Fofana has been of good behaviour cooperating at all times with the Monitoring Authority, the Sierra Leone Police. Viewed from this position, the Defence submits that a stern warning would suffice and would put him on his toes to comply with the terms of the conditional early release agreement at all times.

### **2.5 Violations were unintentional**

Despite the availability of possible defences, Moinina Fofana informed his defence that having understood the allegations; he would admit them and apologize to the Court. During the he explained that his violations were unintentional and in some cases having misunderstood the terms of his Conditional Early Release Agreement. This latter position is understandable given Moinina Fofana's level of understanding and education. As a result of these events, Moinina Fofana maintains constant contact with the Defence Office and has informed the defence that he will raise questions whenever an issue arises that require further clarification/explanation regarding any of the conditions governing his early release.

2.6 Moinina Fofana has saved the Court time, resources and expense by admitting the allegations at the earliest opportunity. By admitting the allegations at the earliest opportunity with full knowledge of the difficulty in relation to elaborating on procedural hurdles be devilled by Article 12 proceedings, Moinina Fofana has taken the moral high ground and in the process saved the Court time and resources. Given the length of these hearings especially a novel one such as those prescribed in Article 12, the Defence respectfully pleads with the Court to grant him credit and accordingly release him on the original Conditional Early Release Agreement.

**2.7 Moinina Fofana has been cooperative with the Court**

Moinina Fofana has been fully cooperative with the Court. Upon being notified of the President's order for his arrest by the Principal defender, he voluntarily contacted and surrendered to the Sierra Leone Police before the order was served on the Police and him. Further, whilst in detention, he has been fully cooperative with court personnel and the Defence Office. In addition, he displayed good conduct and respect for the law and authority whilst in court. Viewed collectively, Moinina Fofana's level of cooperation has served the process well and has saved the court time and expenses.

2.8 Moinina Fofana fully understands his obligations to maintain the integrity of the Court's original sentence.

Moinina Fofana fully understands that he has been convicted of very serious offences. Also, he understands that he is serving the remainder of his sentence. Against this background, he undertakes to maintain and continues to maintain the integrity of the court's original sentence. He respectfully appeals to the Court to view his attitude and approach to his conditional early release within this context. He understands that conditional early release is a privilege and not a right. He undertakes to respect all conditions of his original Conditional Early Release Agreement and any further conditions imposed should this Court agree to release him pursuant to Article 12(J)(iii).

**2.9 Moinina Fofana poses no threat to protected witnesses and victims**

No evidence has been brought before the Court demonstrating that Moinina Fofana poses any risk to protected witnesses and victims nor did he breach that condition in his Conditional Early Release Agreement. This is so because Moinina Fofana understands the various rulings of the court and his obligation to protect witnesses and victims. Within this context, the Defence respectfully pleads that Moinina Fofana be given credit and be allowed to

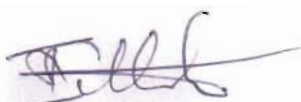
continue his Conditional Early Release in Sierra Leone in accordance with the original Conditional Release Agreement or with additional conditions.

**3. CONCLUSION:**

In view of the forgoing reasons, the Defence respectfully pleads with this Court to issue a stern warning to Moinina Fofana and for him to be released on his original Conditional Early Release Agreement.

**DATED THE 1ST DAY OF APRIL, 2016**

Respectfully Submitted by



IBRAHIM S. YILLAH



MELRON NICOL-WILSON



HASSAN SHERRY