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RSCSL-04-14-ES  
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RESIDUAL SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PRESIDENT  
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 Vivian Margarette Solomon

**Registrar:** Binta Mansaray

**Date:** 26 May 2016

**Case Number:** RSCSL-04-14-ES

**PROSECUTOR**

**Against**

**MOININA FOFANA**

**PUBLIC**  
**SUBMISSION OF THE REGISTRAR PURSUANT TO RULE 33(B) AS ORDERED IN**  
**TERMS OF PARAGRAPH 81(v) OF THE DISPOSITION ON THE MATTER OF**  
**MOININA FOFANA'S VIOLATIONS OF THE TERMS OF HIS CONDITIONAL EARLY**  
**RELEASE**

**Office of the Prosecutor:**  
Ms. Brenda Hollis

**Counsel for Moinina Fofana:**  
Mr. Ibrahim Sorie Yillah  
Mr. Melron Nicol-Wilson  
Mr. Hassan Sherry

RESIDUAL SPECIAL COURT FOR SIERRA LEONE  
**RECEIVED**  
COURT MANAGEMENT  
THE HAGUE  
26 MAY 2016  
NAME Francesca Ngaboh-Smart  
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RSCSL-04-14-ES

## I. INTRODUCTION

1. On 11 August 2014, pursuant to the Decision of the President on Application for Conditional Early Release,<sup>1</sup> Mr. Moinina Fofana (Mr. Fofana) was granted Conditional Early Release subject to six months of subsequent training, a condition imposed by the President, and upon execution of a Conditional Early Release Agreement signed by Mr. Fofana on 10 February 2015.
2. On 29 October 2015, following allegations that Mr. Fofana had violated his Conditional Early Release Agreement, the Registrar was directed by the President to commence an investigation concerning the alleged violation.<sup>2</sup>
3. Pursuant to the Registrar's ensuing report<sup>3</sup> and the determination made by the President that there was probable cause that a violation had occurred, the President directed a preliminary hearing to be held and designated Justice Vivian M. Solomon to hear the matter.<sup>4</sup> A preliminary hearing subsequently took place on 16 March 2016, which was adjourned to 18 March 2016, during which Mr. Fofana admitted having violated the terms of his Conditional Early Release Agreement.
4. On 25 April 2016, following Mr. Fofana's admission of the alleged violations, Justice Solomon, issued a Disposition, *inter alia*, ordering that Mr. Fofana be released subject to further stringent and modified special conditions.<sup>5</sup>
5. In the Disposition, Justice Solomon further expressed her grave concern pertaining to the Monitoring Authority, which is the Sierra Leone Police (hereafter referred to as "Monitoring

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<sup>1</sup> *Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL-04-14-ES, "Public Decision of the President on Application for Conditional Early Release, 11 August 2014, p.22.

<sup>2</sup> Annex 3 of the Confidential Inter Office Memorandum from the Registrar to the President "Investigation of Alleged Violation of a Special Condition under the Conditional Early Release Agreement of Moinina Fofana", 3 March 2016 ("Registrar's Confidential Investigation Memorandum").

<sup>3</sup> Registrar's Confidential Investigation Memorandum.

<sup>4</sup> *Prosecutor v. Moinina Fofana*, 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 2016, ("Presidents Order for Detention and Transfer"), p.4.

<sup>5</sup> *Prosecutor v. Moinina Fofana*, RSCSL-04-14-ES, "Public Disposition on the Matter of Moinina Fofana's Violations of the Terms of his Conditional Early Release," 25 April 2016, ("Disposition"), para.81 (ii).

Authority”) and its failures to abide by the Monitoring Agreement<sup>6</sup> and enforce the conditions of Mr. Fofana’s early release,<sup>7</sup> in that:

- 5.1. It permitted Mr. Fofana to sign the register in advance of his sign in date of 23 October 2015;
  - 5.2. It failed to instruct Mr. Fofana to report to the Monitoring Authority in Freetown pursuant to his authorised travel to Freetown on 11 October 2015;
  - 5.3. It failed to inform the Registrar of Mr. Fofana’s failure to return to Bo city on his due date of 25 October 2015;
  - 5.4. It failed to take steps against Mr. Fofana despite his attendance at the APC Youth League Conference (Conference) in violation of his former special condition 6.3, whilst providing security coverage at the Conference;
  - 5.5. It failed to act in accordance with its duty in terms of Article 12(A) of the Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Leone (Practice Direction), by not taking any steps to arrest and transfer Mr. Fofana to the custody of the Residual Special Court despite having reason to believe that Mr. Fofana had violated the conditions of his early release.
6. In light of these failures, the Registrar was ordered to contact the Monitoring Authority within 7 days from the date of the Disposition and enter discussions to address its failures; fully brief it on the Modified Special Conditions; assess the manner in which the Monitoring Authority proposes to ensure strict future enforcement and adherence to its duties and report back to this Court within 30 days from the date of the Disposition and provide it with a full update concerning these discussions.<sup>8</sup>

## II. SUBMISSIONS

7. On 28 April 2016, the Registrar held a preliminary meeting with the Inspector General of the Sierra Leone Police, Mr. Francis A. Munu (“Inspector General”), to bring to his urgent attention the outcome of the Disposition and to advise him as to the numerous aspects of the Order concerning the Monitoring Authority and the Registrar’s obligations in this regard.

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<sup>6</sup> “Confidential Agreement to Perform the Duties of the Monitoring Authority”, 2 March 2015.

<sup>7</sup> Disposition, paras. 72 – 79.

<sup>8</sup> Disposition, para. 81(v).



8. On 3 May 2016, following the preliminary meeting with the Inspector General, the Registrar addressed and delivered a letter to his office at the Sierra Leone Police Headquarters in Freetown. Enclosed with the letter was a list of the Modified Special and Standard Terms and Conditions (Modified Conditions) and a copy of the Disposition. In the said letter, the Registrar *inter alia*, advised the Monitoring Authority on the outcome of the Disposition; the Designated Judge's findings pertaining to the Monitoring Authority and its failures to uphold the Monitoring Agreement; drew the Monitoring Authority's attention to its obligations as set out in the Disposition, the Monitoring Agreement and the Practice Direction; and further to the directives imposed on the Registrar in the Disposition pertaining to the Monitoring Authority.
9. On the same date, the Registrar held a follow-up meeting with the Inspector General and the Assistant Inspector General of Police. During the meeting the Registrar, *inter alia*, advised them on Mr. Fofana's impending two weeks of intensive training from 5 to 18 May 2016, to ensure Mr. Fofana's understanding of the Modified Conditions. Moreover, the Registrar briefed them on the content of the Modified Special Conditions which she explained would be imposed in conjunction with the Standard Terms and Conditions spelled out in the Practice Direction, once Mr. Fofana had successfully completed the two week training course and affirmed his understanding of and signed a modified Conditional Early Release Agreement.
10. Further discussions were held concerning measures that could be implemented to enhance the Monitoring Authority's enforcement of the Modified Conditions. In this regard, the Inspector General pledged the Sierra Leone Police's commitment to adhering to its obligations as the Monitoring Authority *vis-à-vis* overseeing and ensuring that Mr. Fofana strictly respects the terms of his Conditional Early Release. The Inspector General further promised to enhance measures to ensure that the Monitoring Authority adheres to its duties with respect to Mr. Fofana.
11. To this end, the Inspector General designated a focal point within the Monitoring Authority in Freetown in order to streamline communication and liaise with the Monitoring Authority in Bo City concerning matters relevant to Mr. Fofana's Conditional Early Release. Further, the Inspector General agreed that the Monitoring Authority participate in the two weeks training to ensure its understanding of the Modified Conditions and its obligations pertaining to the enforcement thereof. The designated focal point was as well to coordinate the Monitoring Authorities' participation in the training.

12. The Registrar and the Inspector General agreed to the proposals made by the latter and noted that such training would generally be beneficial to the Monitoring Authority in the form of capacity building.
13. Further, the Monitoring Authority engaged itself to undertake the following measures in order to enhance future enforcement and adherence to its duties:
  - 13.1. Monitoring Authority Personnel that have benefitted from the training to join personnel from the Residual Special Court as facilitators to train more personnel countrywide on Conditional Early Release, beginning with the Southern Province;
  - 13.2. Local Units Commanders (LUCs) all over Sierra Leone to be trained on Conditional Early Release. This will assist LUCs to be knowledgeable on those conditions and to properly supervise Monitoring Agents under their command, who in turn are monitoring convicted persons serving Conditional Early Release;
  - 13.3. To disseminate information to all areas to be visited by Mr. Fofana after the initial six months period of his stay in Bo City;
  - 13.4. An additional personnel member to join Inspector Michael Bassie as Monitoring Agent in Bo City;
  - 13.5. Police Headquarters to be in contact with the Assistant Inspector General (AIG) of Police Southern Province on a monthly basis to assess Mr. Fofana's compliance with respect to his Conditional Early Release Agreement;
  - 13.6. Besides the joint 'on the spot' checks of the Registrar and the Monitoring Authority as ordered by the Designated Judge, the National Witness Protection and Assistance Unit of the Sierra Leone Police (NWP&AU) shall be independently conducting monthly spot checks in Bo City to ensure that the Monitoring Agents carry out their roles and that Mr. Fofana also complies with the conditions;
  - 13.7. The Monitoring Agent in Bo City shall report to Police Headquarters every two weeks through the NWP&AU;
  - 13.8. The designated Focal Point, Superintendent Joseph Saffa, shall be reporting on the level of Mr. Fofana's compliance with his Conditional Early Release Agreement to the AIG Crime Services on a monthly basis for the attention of the Inspector General of Police.
14. It should be emphasized that the Inspector General has been extremely cooperative during the respective meetings with the Registrar and in making the above proposals to ensure the Monitoring Authority's enforcement of Mr. Fofana's Conditional Early Release Agreement.



15. On 5 May 2016, pursuant to the agreement as set out in paragraph 11 above, ten Sierra Leone Police personnel from both Bo West and Bo East Divisional Police Headquarters, including the Monitoring Agent, Inspector Michael Bassie, and three Sierra Leone Police personnel from the NWP&AU underwent two weeks of intensive training with Mr. Fofana. The training was conducted by the Registrar with the assistance of the Principal Defender, Mr. Ibrahim Yillah, the Associate Defence Legal Officer, Mr. Hassan Sherry, the Residual Special Court Monitoring Officer, Ms. Elaine Thomas Archibald, the designated Focal Point of the Monitoring Authority, Superintendent Joseph Saffa, and the Outreach Contractor, Mr. Patrick Fatoma.
16. The training was conducted in Krio, the lingua franca of Sierra Leone, to ensure the ease of understanding of participants. In addition, a Mende interpreter was present to ensure Mr. Fofana's understanding, Mende being Mr. Fofana's dialect. The training included detailed discussion and instruction on a range of aspects including, an introduction to human rights and international humanitarian law, the meaning and application of Conditional Early Release, the meaning and import of the Modified Conditions, the consequences in the event of a breach of the Modified Conditions, the role of the Sierra Leone Police in society, the role of the Monitoring Authority concerning the enforcement of the Modified Conditions and their obligations in the case of a breach thereof.
17. The two week training course was duly completed by Mr. Fofana, the Monitoring Authority and other participants on 18 May 2016.

Respectfully,

A handwritten signature in dark ink, appearing to be 'Binta Mansaray', written over a horizontal line.

Binta Mansaray  
Registrar