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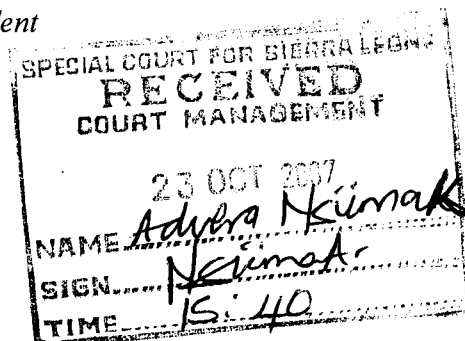
## SPECIAL COURT FOR SIERRA LEONE

### IN THE APPEALS CHAMBER

Before: Hon Justice George Gelaga King, *President*  
Hon Justice Emmanuel Ayoola  
Hon Justice A Raja N Fernando  
Hon Justice Renate Winter

Registrar: Mr. Herman von Hebel

Date of filing: 23<sup>rd</sup> October 2007



### THE PROSECUTOR

v

**MOININA FOFANA  
ALLIEU KONDEWA**

*Case No SCSL-04-14-A*

PUBLIC

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### KONDEWA NOTICE OF APPEAL AGAINST JUDGEMENT PURSUANT TO RULE 108

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Office of the Prosecutor  
Christopher Staker  
Chile Eboe-Osuji  
Joseph Kamara  
Karim Agha

Counsel for Allieu Kondewa  
Yada Williams

Counsel for Moinina Fofana  
Bola Carrol

## I. INTRODUCTION

1. Pursuant to Rule 20 of the Statute of the Special Court for Sierra Leone and Rule 108 of the Rules of Procedure and Evidence (the “Rules”), the Defence for Mr. Allieu Kondewa hereby serves its written notice of appeal and sets forth its grounds of appeal against the Majority Decision of the Judgement of the Trial Chamber dated 2<sup>nd</sup> August 2007 in Case No. SCSL-2004-14-T, *Prosecutor v. Moinina Fofana and Allieu Kondewa*<sup>1</sup> (hereinafter referred to as “Trial Chamber Judgment”).

## II. GROUNDS OF APPEAL

2. The Defence submits the following grounds for Appeal:

### GROUND ONE

3. The majority of the Trial Chamber erred both in law and in fact in finding that the Prosecution had proven beyond a reasonable doubt that Mr. Kondewa was individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Bonthe Town and the surrounding areas under Counts 2, 4, 5, and 7.<sup>2</sup>

### GROUND TWO

4. The majority of the Trial Chamber erred both in law and in fact in finding that the Prosecution had proven beyond a reasonable doubt that Mr. Kondewa was individually criminally responsible pursuant to Article 6(1) for committing murder as a war crime as charged under Count 2 of the Indictment in Talia / Base Zero.<sup>3</sup>

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<sup>1</sup> Judgement, *Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL-14-785, 2<sup>nd</sup> August 2007.

<sup>2</sup> *Ibid.*, paragraph 903.

<sup>3</sup> *Ibid.*, paragraph 937.

### **GROUND THREE**

5. The Majority of the Trial Chamber erred both in law and in fact in finding that the Prosecution had proven beyond a reasonable doubt that Mr. Kondewa was individually criminally responsible as a superior pursuant to Article 6(3) for pillage under Count 5 in the Moyamba District.<sup>4</sup>

### **GROUND FOUR**

6. The Majority of the Trial Chamber erred in law in failing to establish the correct *mens rea* requirement for aiding and abetting and the determination of individual criminal responsibility pursuant to Article 6(1) for Counts 2, 4 and 7 in Tongo Fields.<sup>5</sup>

### **GROUND FIVE**

7. The Majority of the Trial Chamber erred both in law and in fact in finding that the Prosecution had established beyond a reasonable doubt that Mr. Kondewa was individually criminally responsible pursuant to Article 6(1) for committing the crime of enlisting children under the age of 15 years into an armed force or group and/or using them to participate actively in hostilities.<sup>6</sup>

### **GROUND SIX**

8. The Majority of the Trial Chamber erred in law in entering convictions under Count 7 as well as under Counts 2-5 stating it was permissible to do so even where the underlying facts for the convictions are the same.<sup>7</sup>

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<sup>4</sup> Ibid. paragraph 955.

<sup>5</sup> Ibid. Paragraph 764.

<sup>6</sup> Ibid. paragraphs 971 and 972.

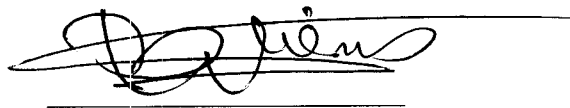
<sup>7</sup> Ibid. paragraph 978.

**III. RELIEF SOUGHT**

9. The Defence requests the Appeal Chambers to reverse the decisions of the Trial Chamber in respect of the crimes for which Mr. Kondewa was found guilty.
  
10. The Defence requests the Appeal Chambers to make resulting amendments to the Disposition of the Trial Chamber's Judgement.
  
11. The Defence does not appeal against the Sentencing Judgment of the Trial Chamber dated 9<sup>th</sup> October 2007.<sup>8</sup> However, the Defence requests the Appeal Chambers to reduce the sentence imposed by the Trial Chamber accordingly to reflect the reduced criminal liability.

Respectfully Submitted,

On 23<sup>rd</sup> October 2007



Yada Williams  
Senior Counsel

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<sup>8</sup> Judgement, *Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL-14-796, 9<sup>th</sup> October 2007.