

**THE PRESIDENT OF THE RESIDUAL SPECIAL COURT FOR SIERRA LEONE
("Residual Special Court")**

RECALLING that Moinina Fofana ("Fofana") submitted an Application for Determination of Eligibility for Consideration for Conditional Early Release on 21 January 2013, which said Application was rejected by reason of its being premature at the time;

SEIZED OF Fofana's "Subsequent Petition by Convicted Person to Establish Eligibility for Conditional Early Release" dated 7 March 2014 as set out in "Form A2" annexed to the Practice Direction on the Conditional Early Release of Persons convicted by the Special Court for Sierra Leone ("Application" and "Practice Direction" respectively);

CONSIDERING the "Notification by State of Enforcement to Establish Eligibility for Conditional Early Release" dated 7 March 2014 contained in "Form B" annexed to the Practice Direction and also annexed to this Application, by which the Republic of Rwanda notified the Residual Special Court that Fofana had served 2/3 of his total sentence;

RECALLING that, on 2 August 2007 and 9 October 2007, Trial Chamber I of the Special Court for Sierra Leone ("Trial Chamber" and "Special Court" respectively) rendered its Judgment and Sentencing Judgment in *Prosecutor v. Fofana and Kondewa*, and sentenced Fofana to a term of 6 years imprisonment with credit for time already served;

RECALLING that on 28 May 2008, the Appeals Chamber of the Special Court ("Appeals Chamber") rendered Judgment in *Prosecutor v. Fofana and Kondewa*, wherein by a majority it increased Fofana's sentence to a total term of 15 years imprisonment;

RECALLING that on 12 August 2009, the Republic of Rwanda was designated as the State in which Fofana was to serve his sentence;

RECALLING that under Article 24 of the Statute of the Residual Special Court ("Statute"), a convicted person is eligible for pardon or commutation of sentence if the President, in consultation with the judges who imposed the sentence where possible so decides in the interests of justice and the general principles of law, following notification by the State in which the convicted person is imprisoned that he or she is eligible for pardon or commutation of sentence pursuant to the applicable law of that State;

HAVING carried out the consultations prescribed by Article 4(A) of the Practice Direction;

CONSIDERING that in accordance with Article 246 of the Law of Rwanda code of criminal procedure (Law No. 30/2013 of 24/5/2013) which recognizes service of 2/3 of total sentence for conditional early release, the Republic of Rwanda notified the Residual Special Court of Fofana's completion of 2/3 of his sentence in Form B herein;

CONSIDERING however that pursuant to Article 2 of the Practice Direction a convicted person upon having served 2/3 of his or her total sentence must first establish his eligibility for consideration for conditional early release; and that under 4(A) of the said Practice Direction, in order to establish this eligibility, the convicted person must demonstrate that he meets the requirements set out in Articles 2 (B) to (D) of the aforementioned Practice Direction set out hereunder: to wit that

Under Article 2(B) of the Practice Direction the convicted person shall demonstrate: successful completion of any remedial, educational, moral, spiritual or other programme to which he was referred within the Prison, that he is not a danger to the community or to any member of the public and compliance with the terms and conditions of his imprisonment;

Pursuant to Article 2(C) of the Practice Direction the convicted person shall, in addition, provide proof that: he has shown respect for the fairness of the process by which he was convicted, he has refrained from incitement against the peace and security of the people of Sierra Leone while incarcerated and he has made a positive contribution to peace and reconciliation in Sierra Leone and the region; and that pursuant to Article 2(D) he shall further provide a statement of understanding that his release will be subject to entering into and complying with a Conditional Early Release Agreement;

Pursuant to Article 4(A) of the Practice Direction a determination of eligibility for consideration for conditional early release shall be made by the President in consultation with the Judges who imposed the sentence, if available or, if unavailable at least two other Judges; and **HAVING** carried out the aforementioned consultations;

TAKING INTO ACCOUNT that the instant Application refers to and documents Fofana's compliance with the requirements set out above in *inter alia* Fofana's submissions in Form A including his statement of understanding that his release will be subject to entering into and complying with a Conditional Early Release Agreement; statements by the Prison Authorities in the Republic of Rwanda that he has successfully completed all remedial, educational, moral, spiritual or other programs to which he was referred within the Prison, that he has complied with all conditions of imprisonment as stated in his disciplinary record and that he poses no risk of danger to the community or to any member of the public including witnesses who testified against him (psychological risk assessment) as set out in Form B;

FINDING that these factors, at the present stage warrant Fofana's consideration for conditional early release and that Fofana has therefore met the requirements set out in Article 2 of the Practice Direction;

FOR THE ABOVE REASONS,

GRANTS the Application, and determines that Fofana is eligible for consideration for conditional early release, and

HEREBY ORDERS AS FOLLOWS:

1. The Registrar shall request Fofana to provide the information required under Article 5(B) of the Practice Direction not later than 14 days from the date of service of this Decision;
2. The Registrar shall provide the information required under Articles 5 (C) to (H) of the Practice Direction not later than 30 days from the date of filing of this Decision;
3. If there are special reasons for non-compliance with the time lines, the Registrar may apply to the President for extension of time stating the reasons therefor.

Done at The Hague, The Netherlands

This 24 day of April 2014



Justice Philip N. Waki,
President

[Seal of the Residual Special Court for Sierra Leone]

