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237

SCSL-2003-02-PT-022  
(237-253)

**THE SPECIAL COURT FOR SIERRA LEONE**

**Before:** Judge Bankole Thompson  
Designated Judge

**Registrar:** Robin Vincent

**Date filed:** 23 April 2003

**THE PROSECUTOR**

v.

**FODAY SAYBANA SANKOH also known as POPAY  
also known as PAPA also known as PA**

**Case No. SCSL-2003-02-PT**

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**REQUEST FOR AN ORDER STAYING PROCEEDINGS  
IN THE CASE OF FODAY SAYBANA SANKOH**

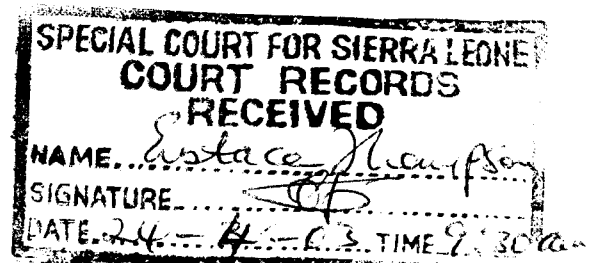
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**Office of the Prosecutor**

Luc Côté, Chief of Prosecutions  
Brenda J. Hollis, Senior Trial Counsel

**Defence Office**

John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor  
Claire Carlton-Hanciles, Defence Associate  
Ibrahim Yillah, Defence Associate  
Haddijatu Kah-Jallow, Defence Associate  
Sam Scratch, Defence Intern



Pursuant to Rules 45 and 54 of the Rules of Procedure and Evidence (the “**Rules**”) of the Special Court for Sierra Leone (the “**Court**”), the Defence Office files this Request for an Order of the designated Judge or the Trial Chamber ordering the stay of proceedings in respect of Foday Saybana Sankoh on humanitarian grounds pending the results of the physiological and psychiatric examination ordered by the designated Judge.

## **I. INTRODUCTION**

1. Mr Foday Saybana Sankoh was indicted by the Prosecutor of the Court on 3 March 2003. The indictment was reviewed and approved by Judge Bankole Thompson on 7 March 2003 and a Warrant of Arrest and Order for Transfer and Detention of the Accused were issued on 7 March 2003. Mr. Sankoh was arrested on 10 March 2003 and transferred to the detention facility in Bonthe the same day. Due to his condition, Mr. Sankoh was transferred on 29 March 2003 from the Bonthe detention facility to a hospital, the location of which, for the purposes of preserving confidentiality, will remain undisclosed.
2. The initial appearance of Mr. Sankoh which commenced on 15 April 2003 has not yet concluded. Pursuant to the *Order for Physiological and Psychiatric Examination and Detention on Remand* dated 15 March 2003 (**Annex A**) and the *Order for Further Physiological and Psychiatric Examination* dated 21 March 2003 (**Annex B**), Mr. Sankoh’s Initial Appearance has been adjourned pending the carrying out of “*a further medical examination [of] the physiological and psychiatric condition of the Accused*”. A plea has not so far been entered on behalf of Mr. Sankoh.
3. The position of the Defence Office is that Mr. Sankoh is incompetent and incapable of understanding the proceedings against him, and therefore is unfit to plead and that the proceedings against Mr. Sankoh should accordingly be stayed until the physiological and psychiatric examination ordered by the designated Judge has been obtained.

## II. MR. SANKOH'S PRESENT CONDITION

4. Members of the Defence Office in accordance with the Rules of the Court and in the performance of its functions visited Mr Sankoh on several occasions at the detention facility in Bonthe and subsequently in hospital. Mr Sankoh has been unresponsive to all attempts at communication made to him by the Defence Office.
5. The Medical Officer appointed for the purposes of establishing the physical and mental condition of the Detainee confirmed that Mr Sankoh rarely acknowledged the presence of persons and recommended further medical evaluation.
6. The records of proceeding of the initial appearance of Mr. Sankoh on 15 and 21 March 2003 clearly indicate that Mr Sankoh remained unresponsive throughout the proceedings.
7. The medical report filed by the court-appointed psychiatrist, Dr. Verkaik, on 20 March 2003 corroborated the opinion expressed by the detention facility medical doctor. The report attached to the motion as **Annex C** states *inter alia* “that Mr Sankoh could not feed himself, he could not walk or put himself in an upright position and he was incontinent for urine and faeces, which is which is the reason why he wears diapers”. The psychiatric evaluation concluded that Mr. Sankoh is in a “catatonic- stuporous state”, i.e. he does not speak, hardly moves and appears to be unaware of his surroundings.
8. Up to the time of filing of this motion, Mr. Sankoh lacks the physical and mental ability to move or eat without assistance.

## III. THE LAW

9. A universal principle of international human rights law is the right not to be subjected to “inhuman or degrading treatment”. Article 5 of the *African Charter on Human and Peoples Rights* provides that:

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade,*

*torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.*

Article 3 of the *European Convention on Human Rights* states that:

*“No one shall be subjected to torture or to inhuman and degrading treatment or punishment.”*

Article 5 of the *American Convention on Human Rights* states that:

*“(1) Every person has the right to have his physical, mental and moral integrity respected.*

*(2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. [...]*”

Article 7 of the *International Covenant on Civil and Political Rights* (“**ICCPR**”) provides that:

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*

Article 10 of the ICCPR further provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

10. These international legal instruments have crystallized into a recognised and universally accepted practice and have set the standard for the treatment of persons. These international human rights norms inform and permeate the entire legal framework within which the Court operates – its Statute and Rules and constitutive instruments. It is submitted that to continue proceedings against Mr. Sankoh in his present condition would be tantamount to inhuman and degrading treatment.
11. It offends the principle of human dignity for person in a catatonic state – unmoving, unseeing and uncomprehending – to continue to be served with Prosecution Motions to which he or his legal representatives are meant to respond (for example, the *Extremely Urgent Prosecution Motion* dated 7 April 2003 and the *Prosecution Motion For Immediate Protective Measures For Witnesses And*

*Victims And For Non-Public Disclosure* dated 7 April 2003, to both of which the Defence Office has had to respond on behalf of Mr. Sankoh).

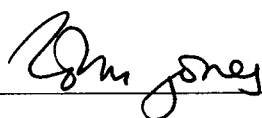
12. In these circumstances, to permit the Prosecution to continue to file motions in Mr. Sankoh's case and for him to appear to the world public to be subject to an on-going criminal process which he does not have the capacity to understand or meaningfully to participate in would both offend his human rights and vitiate the integrity of the Court's proceedings.

**IV. ORDERS SOUGHT.**

13. In order appropriately to respect the human dignity of Mr. Sankoh and his right not to be subjected to inhuman or degrading treatment by being subject to on-going criminal proceedings and the service of process when he has not the slightest ability to respond to them, or to instruct his legal representatives to respond to them on his behalf, the Defence Office requests an order to stay all proceedings until a final determination is made as to the physiological and psychiatric condition of Mr. Sankoh.

Dated this 23<sup>rd</sup> day of April, 2003

DEFENCE OFFICE



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John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor

Claire Carlton-Hanciles, Defence Associate

Ibrahim Yillah, Defence Associate

Haddijatu Kah-Jallow, Defence Associate

Sam Scratch, Defence Intern

**ANNEX A**



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

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Before: Judge Benjamin Mutanga Itoe  
Registry: Mr. Robin Vincent  
Decision of: 15 March 2003

**THE PROSECUTOR**

**Against**

**FODAY SAYBANA SANKOH also known as POPAY  
also known as PAPA also known as PA**

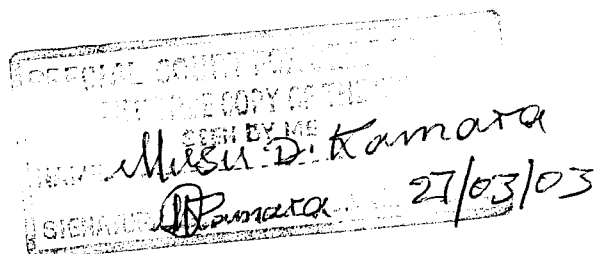
CASE NO. SCSL - 2003 - 02 - I

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**ORDER FOR PHYSIOLOGICAL AND PSYCHIATRIC EXAMINATION AND  
DETENTION ON REMAND**

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The Office of the Prosecutor:  
Mr. David Crane  
Mr. Jim Johnson



**THE SPECIAL COURT FOR SIERRA LEONE (the Court),**

**PRESIDED OVER** by Judge Benjamin Mutanga Itoe, designated in accordance with the provisions of Rule 28 of the Rules of Procedure and Evidence ("the Rules");

**CONSIDERING** the Initial Appearance of the Foday Saybana Sankoh ('the Accused') on 15 March 2003, pursuant to Rule 61 of the Rules;

**CONSIDERING** the request of the Duty Counsel for the adjournment of the Initial Appearance of the Accused in order to undertake full his physiological and psychiatric examination;

**CONSIDERING** the favorable opinion expressed by the Prosecutor for such examination of the Accused and, consequently, for the adjournment of his Initial Appearance;

**CONSIDERING** the Order for the Adjournment of the Initial Appearance of the Accused to 20 March 2003;

**PURSUANT** to Rule 54 and Rule 74 *bis* of the Rules,


**HEREBY ORDERS**, the physiological and psychiatric examination of the Accused;

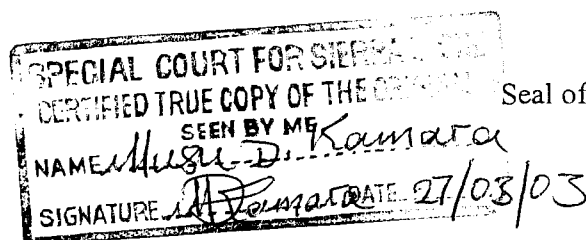
**DISPENSES** the Accused of any further attendance in court until further order;

**DIRECTS** the Registrar to undertake, after consultation with the Defence Office and the Office of the Prosecutor, all necessary measures for the execution of this order;

**ORDER** the detention on remand of the Accused until further order of the Special Court.

Done in Freetown, Sierra Leone this 15<sup>th</sup> day of March 2003

  
 Judge Benjamin Mutanga Itoe  
 Designated Judge



Seal of the Special Court for Sierra Leone



**ANNEX B**

SCSL- 2003-02- I  
( . )



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995  
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Before: Judge Benjamin Mutanga Itoe

Registry: Mr. Robin Vincent

Order of: 21<sup>st</sup> of March, 2003

**THE PROSECUTOR**

Against

**FODAY SAYBANA SANKOH** also known as POPAY

also known as PAPA also known as PA

CASE NO. SCSL - 2003 - 02 - I

**ORDER FOR FURTHER PHYSIOLOGICAL AND PSYCHIATRIC EXAMINATION**

The Office of the Prosecutor:  
Mr. David Crane  
Mr. Jim Johnson  
Mr. Nicholas Browne-Marke

SPECIAL COURT FOR SIERRA LEONE  
CERTIFIED TRUE COPY OF THE ORIGINAL  
SEEN BY ME  
NAME *M. S. D. Kamata*  
SIGNATURE *M. S. D. Kamata* DATE *27/03/03*

SPECIAL COURT FOR SIERRA LEONE  
COURT RECORDS  
RECEIVED  
NAME *I. O. INYANG*  
SIGNATURE *I. O. Inyang*  
DATE *26.3.2003* TIME *2:10*

**THE SPECIAL COURT FOR SIERRA LEONE (the Special Court),**

WITH Judge Benjamin Mutanga Itoe, presiding pursuant to the provisions of Rule 28 of the Rules of Procedure and Evidence ("the Rules");

**CONSIDERING** the Initial Appearance of Foday Saybana Sankoh ('the Accused') on the 15<sup>th</sup> and on the 21<sup>st</sup> of March, 2003;

**CONSIDERING** the Order of the 15<sup>th</sup> of March, 2003 for a Physiological and a Psychiatric Examination and the Detention on Remand of the Accused;

**CONSIDERING** the Report of the 20<sup>th</sup> of March, 2003 on the Physiological and Psychiatric Examination of the Accused ("the Report") prepared and submitted by an expert, Dr. Peter Verkaik, designated by the Registrar for this purpose;

**HAVING HEARD** the preliminary oral comments on the Report made by Counsels for the Prosecution and for the Defence;

**CONSIDERING** the Prosecuting Counsel's oral request and submission made to me to enter a plea of "Not Guilty" on behalf of the Accused;

**CONSIDERING** the observations of both Counsels for the Prosecution and the Defence that a further medical examination on the physiological and psychiatric condition of the Accused is necessary;

**CONSIDERING** the necessity to carry out a further and conclusive medical examination on the physiological and psychiatric condition of the Accused and the establishment of a final medical report in this regard;

**NOW THEREFORE:** I, Judge Benjamin Mutanga Itoe, considering that the Report recommends, *inter alia*, further examination of the Accused in order to better assess his present physiological and psychiatric condition and, in particular, to evaluate the future development of such condition,

**DO HEREBY ORDER:**

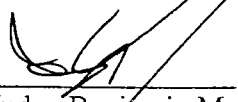
1. That the Report be served on Counsels for the Prosecutions and for the Defence;
2. That the Accused be subjected to a further physiological and psychiatric examination, whose report should be conclusive and shall be subject to non disclosure excepting to Counsels for the Prosecution and the Defence until further Order, with a view to determining if the Accused is fit to plead and eventually to stand trial before the Special Court;
3. That the Prosecutor's submission for a plea of "Not Guilty" to be entered is overruled as it is premature and cannot be considered before a final medical report



on the physiological and psychiatric condition of the Accused is made available for analysis by Counsels for the Prosecutions and the Defence;

- 4. That the Registrar undertakes, after consultation with the Office of the Prosecutor and the Defence Office, all necessary measures to ensure a full execution of this Order, and thereafter, to fix a date when this matter will come up before a Judge designated under Rule 28 of the Rules or before the Trial Chamber for a final determination of all the issues that have so far been raised;
- 5. That the Order for the Detention on Remand of the Accused until further order of the Special Court is reconfirmed;

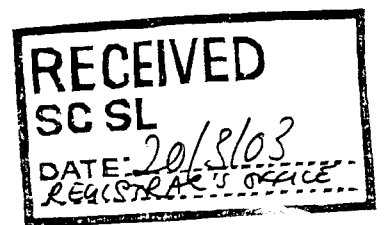
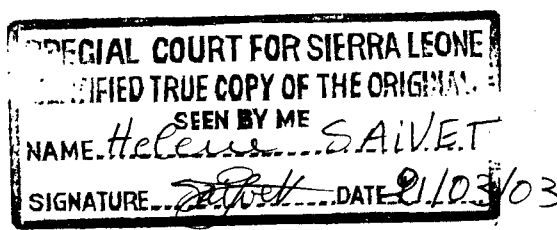
Done in Freetown, Sierra Leone this 21<sup>st</sup> day of March, 2003

  
 \_\_\_\_\_  
 Judge Benjamin Mutanga Itoe  
 Designated Judge



**SPECIAL COURT FOR SIERRA LEONE**  
**CERTIFIED TRUE COPY OF THE ORIGINAL.**  
 SEEN BY ME  
 NAME *Musa D. Kamara*  
 SIGNATURE *Musa D. Kamara* 27/03/03

**ANNEX C**



Dr. P.G. Verkaik, Psychiatrist  
Lorentzhuis

250

Institute for Marital Therapy, Counselling and Consultation  
Van Eedenstraat 16  
2012 EM Haarlem  
The Netherlands  
Phone: 00 31 (0)23 531 03 46 or 00 31 (0)627 007 813  
Fax: 00 31 (0)23 531 79 68

Mr. Robin Vincent  
The Registrar  
Special Court for Sierra Leone

PSYCHIATRIC EXAMINATION  
FODAY SAYBANA SANKOH  
Date of Birth: 17 October 1937

I examined Foday Saybana Sankoh at Bonthe Detention Centre, 19<sup>th</sup> March 2003, on behalf of the Registry and at the order of the Special Court For Sierra Leone, Judge Benjamin M. Itoe.

Available information:

Treating General Practitioner:

The subject has been at his present location for 8 days. Before this he stayed in custody in the Pademba Road Prisons for several months, and before that he stayed at an undisclosed location for ten months. The GP has no knowledge on his functioning then apart from the reports mentioned below. His condition on arrival was very poor. The subject did not speak, he could not feed himself, he could not walk or put himself in an upright position and he was incontinent for urine and faeces, which is the reason why he wears a diaper. He suffers from high blood pressure which is reasonably under control with the help of medication. His psychic condition has, since he came into the custody of the Court, improved a little bit in the sense that he

seems to react a little bit to the nurse who is taking care of him most of the time.

Psychiatric examination by Dr. Edward A. Nahim, dd 15-03-2003:

Patient suffers from psychosis with paranoid and grandiose delusions. No neurological deficits.

Psychiatric examination by Dr. Edward A. Nahim, dd 23-09-2003:

Patient suffers from depressive illness. No signs of psychosis. Signs of a stroke (right-sided paralysis of arm and leg, incontinence for urine).

**Anamnesis:**

Not possible. The subject does not speak.

**Psychiatric examination:**

When I entered the cell of the subject I was accompanied by his treating GP and two guards. I saw an old man with a normal stature lying on a mattress on the ground. He has short grey hair and a light beard. He has a scar on his left calf. I see no signs of muscle abnormalities. He is dressed in a t-shirt and a diaper. To me he seems to be in an uncomfortable bend position against the wall. He stares straight ahead and shows no reaction upon our entering. The cell is clean and neat.

He does not respond when I'm introduced to him, he keeps staring straight forward. Also he does not react when I talk directly to him. With the help of the guards he is put in a wheelchair in which he sits bent forward. When his GP helps him to raise his head he seems at first to actively avoid eye contact with me. One or two times he does make eye contact however. His gaze is then staring and hollow as if he doesn't really see me. He hardly moves and if he does so his movements are very slow and although this seems to cost great effort I see him move both his arms and legs. He does not react when I ask him to raise his hand or to move a finger. He does not seem to be particularly anxious. On feeding at first he refuses to open his mouth. Once his lips are touched with food for a few moments he eventually starts eating and then continues eating without problems.

He does not seem to be in pain.

During the complete examination he gives no clue whether he is aware of what is happening.

### **Conclusion:**

The subject is in a catatonic-stuporous state.

His contact with reality is grossly disturbed. There is a severe disturbance in his consciousness in the sense that he hardly if at all is aware of his surroundings. The subject hardly reacts when he is addressed. The subject is mutistic (he doesn't speak), sporadically he groans. Higher cortical functions cannot be tested due to a lack of response. His motoractivity is poor. Spontaneous movements are rare and when he moves he moves very slowly. Power has diminished on both sides in both his arms and his legs (right>left).

### **Discussion:**

The cause of this catatonic-stuporous state is yet unclear. Organic brain disease as a result of infarction is one possibility. The subject suffers from high blood pressure and had a mild stroke in August last year. This stroke probably doesn't account for the gross disturbances seen now. But possible infarctions of a later date could well account for the present state. Multiple small infarctions could also lead to a demential syndrome which also could contribute to the present state. Another possible cause or contributing factor could be melancholia (a severely depressed state with psychotic symptoms). The subject has been described as having a depression before in 2002. He could well have a recurrence. A third possible cause is hysteria (somatic and psychic symptoms due to severe anxiety). In conclusion might he suffer from a post traumatic stress disorder.

### **Recommendation:**

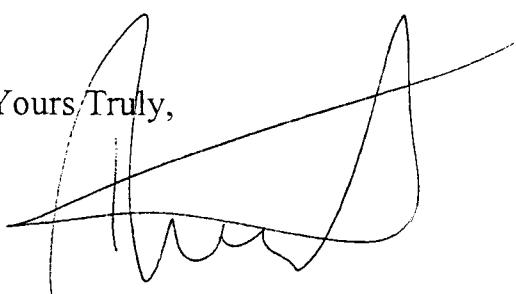


More extensive both psychiatric and neurological investigation is necessary to be able to draw more specific conclusions. This will include observation over a longer period of time.

At the same time the subject needs treatment in the form of physiotherapy to prevent contractures of the muscles and regular stimulation in order to try to reactivate him. Medication (antipsychotics and/or antidepressants) should be administered under careful observation to look if a possible underlying psychosis or mood-disorder could be improved.

Whether these measures will lead to improvement of his present state and in what period of time is hard to predict because this depends among other things on the underlying cause(s). At this moment there is no way to exclude that his mental condition might improve considerably if he gets the right treatment and enough time.

Yours Truly,



Dr. P.G. Verkaik  
Psychiatrist.