



**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

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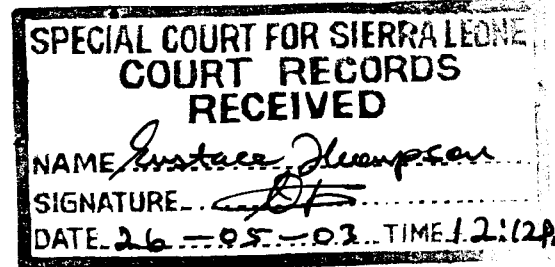
(SCSL - 2003 - 11 - PD)  
(1-10)

**THE SPECIAL COURT FOR SIERRA LEONE**

**THE PROSECUTOR**

Against

**MOININA FOFANA**



**REQUEST FOR TRANSFER AND PROVISIONAL DETENTION UNDER RULE 40  
BIS OF THE RULES OF PROCEDURE AND EVIDENCE OF THE SPECIAL  
COURT FOR SIERRA LEONE.**

**TO THE HONOURABLE JUDGE SITTING PURSUANT TO RULE 28 OF THE  
RULES OF PROCEDURE AND EVIDENCE OF THE SPECIAL COURT FOR  
SIERRA LEONE**

I, DAVID M. CRANE, Prosecutor of the Special Court for Sierra Leone, pursuant to the authority given to me by Rule 40 *bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (hereafter "the Rules") request the issuance of an Order for the transfer and provisional detention of MOININA FOFANA in the premises of the detention unit of the Special Court on the following grounds:

1. On Saturday, 24 May 2003, pursuant to the authority given to me by Rule 40, I requested the Government of Sierra Leone, through its designated representative the Sierra Leone

Police, to arrest MOININA FOFANA and place him in custody in accordance with the laws of Sierra Leone. I expect the Sierra Leone Police to comply with my request without undue delay.

2. The office of the Prosecutor is currently investigating MOININA FOFANA for crimes committed within the territory of Sierra Leone within the temporal jurisdiction of the Special Court, namely:

a. Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court for Sierra Leone (hereafter “the Statute”),

b. Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of the Statute,

c. Other Serious Violations of International Humanitarian Law, punishable under Article 4 of the Statute.

3. It appears from these investigations, particularly from the information contained in the declaration of TAMBA GBEEKIE annexed hereto, that there is evidence that MOININA FOFANA may have committed crimes over which the Special Court has jurisdiction, and which may give rise to the following provisional charges:

Between November 1997 and March 1998, Kamajors, including MOININA FOFANA, engaged in widespread attacks against Revolutionary United Front and Armed Forces Revolutionary Council Forces within the Republic of Sierra Leone, including but not limited to the locations of Tongo Field, Kenema, Bo and Koribondo. These attacks included the unlawful killing of and infliction of serious bodily harm on an unknown number of civilians and captured enemy combatants. Additionally these attacks included the looting and destruction of an unknown number of civilian owned and occupied houses, buildings and businesses.

By his acts or omissions in relation, but not limited to these events, MOININA FOFANA, pursuant to Article 6.1. and , or alternatively, Article 6.3. of the Statue of the Special Court for Sierra Leone, is individually criminally responsible for the crimes alleged below:

a. Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute of the Special Court;

In addition, or in the alternative,

Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute of the Special Court.

b. Inhumane Acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute of the Special Court;

In addition, or in the alternative,

Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of Statute of the Special Court.

c. Pillage, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.f. of the Statute of the Special Court.

d. Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute of the Special Court.

e. Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.b. of the Statute of the Special Court.

f. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute of the Special Court.

4. I submit that provisional detention of MOININA FOFANA is a necessary measure to prevent his escape, physical or mental injury to or intimidation of a victim or witness or the destruction of evidence, or is otherwise necessary for the continued conduct of the investigations.

**ACCORDINGLY, I REQUEST THAT YOU GRANT ALL ASPECTS OF THE PRESENT REQUEST AND THEREBY:**

**DECLARE** that there is reason to believe that MOININA FOFANA may have committed the crimes specified in the provisional charges above, over which charges the Special Court has Jurisdiction;

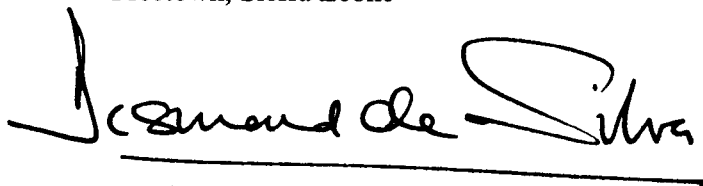
**CONSIDER** provisional detention to be a necessary measure to prevent the escape of MOININA FOFANA, the physical or mental injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation;

**ORDER** that, upon the arrest of MOININA FOFANA by the Sierra Leone Police, he be immediately transferred from the custody of the Sierra Leone Police to the detention premises of the Special Court; and

**ORDER** that MOININA FOFANA be provisionally detained for an initial period not exceeding 30 days from the day of the transfer to the detention unit of the Special Court.

Dated this 26<sup>th</sup> day of May 2003

Freetown, Sierra Leone



For the Prosecutor,

Desmond de Silva, QC

The Deputy Prosecutor



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(SCSL - 2003 - 11 - PD)

Before: Judge Bankole Thompson

Registry: Mr. Robin Vincent

Decision of: \_\_\_ May 2003

**THE PROSECUTOR**

**Against**

**MOININA FOFANA**

CASE NO. SCSL-2003- 11 -PD

**ORDER FOR TRANSFER AND PROVISIONAL DETENTION PURSUANT TO  
RULE 40bis**

The Office of the Prosecutor:  
Mr. James C. Johnson

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

**WITH** Judge Bankole Thompson, presiding pursuant to the provisions of Rule 28 and Rule 40 of the Rules of Procedure and Evidence (“the Rules”);

**HAVING RECEIVED** on the 26 May 2003 from the Prosecutor pursuant to Rule 40 *bis*, a request for the transfer and provisional detention of the suspect, MOININA FOFANA;

**CONSIDERING** the declaration dated 26 May 2003, attached to the said request from the Prosecutor and signed by Tamba P. Gbokie, Investigator at the Office of the Prosecutor;

**CONSIDERING** the formal request dated 24 May 2003, addressed by the Prosecutor to the authorities of the Republic of Sierra Leone pursuant to Rule 40 of the Rules to arrest and hold in custody the said suspect, MOININA FOFANA;

**WHEREAS** the authorities of the Republic of Sierra Leone are expected to grant the said request of the Prosecutor and arrest MOININA FOFANA without undue delay;

**WHEREAS** the Prosecutor reports that he is investigating crimes allegedly committed by MOININA FOFANA in the territory of Sierra Leone since 30 November 1996, crimes which fall within the jurisdiction of the Special Court;

**WHEREAS**, according to the Prosecutor, MOININA FOFANA participated in widespread attacks which included the unlawful killing of and infliction of serious bodily harm on civilians and captured enemy combatants and the looting and destruction of civilian property;

**WHEREAS** the Special Court considers, on the basis of the request submitted by the Prosecutor, and on the evidence brought to its attention in the affidavit attached to the request, that there is reason to believe that MOININA FOFANA may, in the light of the above have committed **SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable respectively under Article 4.b., Article 2.a., Article 3.a. and Article 3.c. of the Statute of the Special Court (“the Statute”);

**WHEREAS**, furthermore, the Prosecutor contends that the provisional detention of MOININA FOFANA is a necessary measure to prevent his escape and also to prevent the suspect from seeking to intimidate or to cause bodily harm to victims or witnesses or to destroy evidence, or to be otherwise necessary for the conduct of the investigation in the matter concerning him;

**WHEREAS**, the Judge, in light of the above, is convinced that the provisional detention of MOININA FOFANA is necessary;

**NOW THEREFORE:** I, Judge Bankole Thompson, for all the aforementioned reasons advanced by the Prosecutor, rule that the request submitted by the Prosecutor for the transfer and provisional detention of MOININA FOFANA satisfies the conditions laid down by Rule 40 *bis* (B) of the Rules;

**ON THESE GROUNDS,**

**GRANT** the request submitted by the Prosecutor and consequently, order that MOININA FOFANA be transferred as soon as possible to the Detention Facility of the Special Court, and be kept in provisional detention for a maximum of thirty days, with effect from the day after his transfer, and that he, in accordance with Rule 40 *bis* (J) of the Rules, be brought before me or another Judge designated under Rule 28 of the Rules, to ensure that his rights are respected;

**INSTRUCT** the Registrar to serve the present Order on the Authorities of the Government of Sierra Leone, for its immediate execution, upon the arrest of MOININA FOFANA by the Sierra Leone Police, pursuant to the provisions of Section 20 of the Special Court Agreement 2002 (Ratification) Act.

Done in Freetown, this \_\_\_\_ day of May 2003.

\_\_\_\_\_  
Judge Bankole Thompson  
Designated Judge

Seal of the Special Court for Sierra Leone

## DECLARATION

26 May 2003

**I TAMBA PUJEH GBEKIE**, Investigator in the Office of the Prosecutor, Special Court for Sierra Leone make the following declaration this 26<sup>th</sup> day of May 2003:

1. I work as an Investigator in the Office of the Prosecutor of the Special Court for Sierra Leone.
2. I am also a professionally trained Policeman of the rank of Assistant Commissioner in the Sierra Leone Police Force where I have been working as a Policeman since 1980.
3. Since October 2002, I have been working in the Office of the Prosecutor, Special Court for Sierra Leone where my duties include investigating crimes against International Humanitarian Law and Sierra Leone Law committed within the territory of Sierra Leone from the 30 November 1996, during the period of armed conflict in Sierra Leone.
4. I have in particular been investigating the role played by MOININA FOFANA as a member of the Civil Defences Forces (CDF). My investigations reveal that MOININA FOFANA was an active member of the CDF and held the position of Director of War. In this position, MOININA FOFANA answered directly to Samuel Hinga Norman, the National Coordinator and leader of the CDF. The evidence clearly indicates that MOININA FOFANA was the 2<sup>nd</sup> in command of the CDF and in particular, the Kamajors. MOININA FOFANA also served as a chief advisor and confidant of Samuel Hinga Norman. Additionally, he also held other leadership positions within the CDF and Kamajors, to include the command of the 19<sup>th</sup> Battalion which operated in and around Bo.
5. From about November 1997 and March 1998, Kamajors, including MOININA FOFANA, engaged in widespread attacks against Revolutionary United Front and Armed Forces Revolutionary Council Forces within the Republic of Sierra Leone, including but not limited to the locations of Tongo Field, Kenema, Bo and Koribondo. These attacks included the unlawful killing of and infliction of serious bodily harm on an unknown number of civilians



and captured enemy combatants. Additionally these attacks included the looting and destruction of an unknown number of civilian owned and occupied houses, buildings and businesses.

6. Witnesses to these attacks describe systematic and brutal killing by Kamajors of any captured enemy combatants and anyone suspected of collaborating with the RUF or AFRC. These suspected collaborators would be segregated, often on the basis of tribal affiliation, and then shot, hacked to death, or burned to death. In addition, witnesses describe the systematic burning and looting of civilian homes, businesses and other properties by Kamajors. Witnesses report that MOININA FOFANA participated in or directed these attacks, killings and all activities of the Kamajors.
7. Both witnesses and former child combatants describe how children under the age of 15 fought and took an active role in these attacks and activities of the CDF and specifically the Kamajors. In his position as Director of War, MOININA FOFANA directed the activities of these children in hostilities.
8. I firmly believe that the detention of the Suspect, MOININA FOFANA, is necessary to prevent escape or the intimidation and harassment of victims and potential witnesses, or both.
9. I TAMBA PUJEH GBKIE affirm that the information in this declaration is true and correct to the best of my knowledge and belief. I understand that wilfully and knowingly making false statements in this statement could result in proceedings before the Special Court for giving false testimony. I have not wilfully or knowingly made any false statements in this declaration.



TAMBA PUJEH GBKIE

26/05/03

OFFICE OF THE PROSECUTOR



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### REQUEST FOR ARREST, DETENTION, AND RELATED ASSISTANCE

SUBMITTED TO

THE GOVERNMENT OF SIERRA LEONE

1. I have concluded that a case of urgency exists in relation to the arrest, detention, and transfer of **MOININA FOFANA**.
2. I consider **MOININA FOFANA** a suspect and possess reliable information that tends to show that he may have committed crimes within the jurisdiction of the Special Court for Sierra Leone.
3. Therefore, pursuant to my authority as Prosecutor, Special Court for Sierra Leone, acting under Rule 40 of the Rules of Procedure and Evidence, I hereby request that the Government of Sierra Leone, through a designated representative, arrest, and detain **MOININA FOFANA** pending transfer into the custody of the Special Court for Sierra Leone.
4. I request that a representative from the Office of the Prosecutor be present from the time of arrest. I further request that the Government of Sierra Leone, through its designated representative, assist the representative from the Office of the Prosecutor, at any location designated by the Prosecutor, in the search for and seizure of all evidence related to crimes within the jurisdiction of the Special Court.
5. I further request that the Government of Sierra Leone, through its designated representative, identify and locate assets owned by the suspect within the territory of Sierra Leone and adopt provisional measures to freeze such assets without prejudice to the rights of third parties. The disposition of such assets at a date certain shall be arranged between the Registrar and the Government of Sierra Leone.
6. In accordance with the Statute of the Special Court for Sierra Leone and the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, please comply with this request without undue delay. If for any reason this request for arrest, detention, and related assistance cannot be acted upon immediately, please contact the Office of the Prosecutor without delay.

Hereby requested,

For the Prosecutor,  
Desmond de Silva, QC  
Deputy Prosecutor

On the 24<sup>th</sup> day of May of the year 2003