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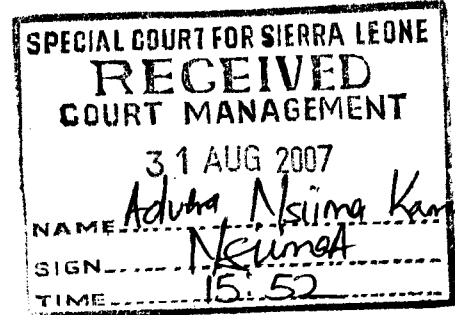
THE SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

Before: Justice Benjamin Mutanga Itoe, Presiding
Justice Bankole Thompson
Justice Pierre Boutet

Registrar: Herman Von Hebel

Date: 31 August 2007



THE PROSECUTOR

-v-

MOININA FOFANA and ALLIEU KONDEWA

SCSL-04-14-T

PUBLIC

FOFANA SENTENCING BRIEF

Office of the Prosecutor:

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I. INTRODUCTION

1. Counsel for Moinina Fofana (the “Defence”) hereby submits its Sentencing Brief pursuant to Rule 100(A) of the Rules of Procedure and Evidence (the “Rules”) and in accordance with the Trial Chamber’s Scheduling Order for Sentencing Hearing and Judgement.¹ In support of its arguments, the Defence makes reference to the existing trial record as well as the various documents annexed hereto. Where appropriate, the Defence responds to points raised by the Office of the Prosecutor (the “Prosecution”).²

II. THE JUDGEMENT AGAINST FOFANA

2. On 2 August 2007 the Trial Chamber delivered its Judgement with respect to the charges contained in the Prosecution’s eight-count consolidated indictment (the “Indictment”), in which Fofana was said to bear individual criminal responsibility for crimes against humanity, war crimes, and other serious violations of international humanitarian law committed within the territory of Sierra Leone after 30 November 1996.³ Specifically, the Indictment alleged that Fofana was responsible pursuant to Article 6(1) of the Statute for planning, instigating, ordering, committing (including by way of his participation in a JCE), and otherwise aiding and abetting the crimes contained in each of the eight counts. Additionally, Fofana was charged with the failure to discharge his duty as a superior pursuant to Article 6(3) of the Statute with regard to the crimes of his alleged subordinates under the same eight counts. The allegations covered seven discrete crime bases, namely: Tongo Field, Koribondo, Bo District, Bonthe District, Kenema District, Talia/Base Zero, and Moyamba District.
3. The charges in the CDF case were various and broad. However, the findings of guilt by the Trial Chamber with respect to Fofana were decidedly few and narrow. Fofana was fully acquitted on four of the eight counts, namely Counts 1 and 3 (murder and inhumane acts as crimes against humanity), Count 6 (acts of terrorism as a war crime), and Count 8 (recruiting/using child soldiers as a serious violation of international humanitarian law). With regard to the remaining four counts (all war crimes), Fofana was acquitted on all modes of *direct* liability—planning, instigating, ordering, and

¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-784, 2 August 2007 (the “Scheduling Order”).

² *See Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-786, Prosecution Sentencing Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence, 24 August 2007 (the “Prosecution Sentencing Brief”).

³ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-785, Judgement, 2 August 2007 (the “Judgement”).

committing (including by way of participation in a JCE)—for each crime base. The Trial Chamber’s findings of guilt were limited to *indirect* modes of liability in only three of the seven crime bases:

Aiding and Abetting Crimes in and Around Tongo

- a. Fofana has been found guilty of Counts 2, 4, and 7 pursuant to Article 6(1) of the Statute for aiding and abetting various murders, acts of cruel treatment, and collective punishments committed by Kamajors in January and February 1998 in and around the town of Tongo.⁴ This liability is based upon the Trial Chamber’s finding that Fofana’s speech at a passing-out parade at Base Zero in December 1997 “not only encouraged the Kamajors to follow Norman’s unlawful orders to commit criminal acts but also [stressed] that if they failed to perform accordingly, they should not come back to Base Zero to report but to kill themselves rather than losing their own ground”.⁵ The Trial Chamber did not find that Fofana was present in or around Tongo during the commission of any of these crimes.

Failure to Prevent Crimes in Koribondo

- b. Additionally, Fofana has been found guilty of Counts 2, 4, and 7 pursuant to Article 6(3) of the Statute for failing to prevent the criminal acts of his subordinates,⁶ including Albert Nallo, Joe Tamidey, Borbor Tucker, Lahai George, Lamin Ngobeh, and the Kamajors under their immediate command.⁷ The Trial Chamber has determined that Fofana failed to prevent “only those particular criminal acts that were explicitly included in Norman’s order” given at a meeting at Base Zero.⁸ These include various murders, acts of cruel treatment, and collective punishments committed by Kamajors in February 1998 in the town of Koribondo.⁹ Fofana’s presence at the meeting—as well as his subsequent discussion with Joe Tamidey, Norman, and Kondewa after the attack—formed the basis for the Trial Chamber’s finding that “Fofana knew that the attack on Koribondo would involve the

⁴ Judgement, paras. 721–734, 747–763.

⁵ Judgement, para. 722.

⁶ Judgement, paras. 772–783.

⁷ Judgement, para. 775.

⁸ Judgement, para. 782.

⁹ Judgement, paras. 784–797.

commission of criminal acts” by his subordinates.¹⁰ The Trial Chamber did not find that Fofana was present in Koribondo during the commission of any of these crimes.

Failure to Prevent Crimes in Bo District

- c. Finally, Fofana has been found guilty of Counts 2, 4, 5, and 7 pursuant to Article 6(3) of the Statute for failing to prevent the criminal acts of his subordinates,¹¹ including Albert Nallo, James Kaillie, Joseph Lappia, Witness TF2-017, and the Kamajors under their immediate command.¹² The Trial Chamber has determined that Fofana failed to prevent “only those particular criminal acts that were explicitly included in Norman’s order” given at a meeting at Base Zero.¹³ These include various murders, acts of cruel treatment, pillage, and collective punishments committed by Kamajors in February 1998 in Bo District.¹⁴ Fofana’s presence at the meeting at Base Zero, his proximity to Norman when the latter received a situation report regarding the Kebi attack, and Norman’s comments at a subsequent meeting in Bo Town in April 1998 formed the bases for the Trial Chamber’s finding that “Fofana knew that the attack on Bo Town would involve the commission of criminal acts” by his subordinates.¹⁵ The Trial Chamber did not find that Fofana was present in Bo Town during the commission of any of these crimes.
4. For purpose of sentencing, the Defence acknowledges these legal and factual findings of the Trial Chamber and does not seek in any way to re-litigate issues of criminal liability.

III. APPLICABLE LAW

A. The Relevant Provisions and Jurisprudence

5. Article 19 of the Statute and Rule 101 set out the factors to be considered in determining an appropriate sentence. Article 19 provides, in pertinent part:

1. The Trial Chamber shall impose upon a convicted person [...] imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.

¹⁰ Judgement, para. 777.

¹¹ Judgement, paras. 816–827.

¹² Judgement, paras. 817–818.

¹³ Judgement, para. 826.

¹⁴ Judgement, paras. 828–845.

¹⁵ Judgement, para. 821.

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

6. Rule 101 echoes Article 19 and expands the sentencing considerations as follows:

- (A) A person convicted by the Special Court [...] may be sentenced to imprisonment for a specific number of years.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19(2) of the Statute, as well as such factors as:
 - (i) Any aggravating circumstances;
 - (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction; [...]
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- (D) Any period during which the convicted person was detained in custody pending [...] trial or appeal shall be taken into consideration on sentencing.

7. Based on these provisions, the Trial Chamber shall examine both the gravity of the offence with which an accused has been convicted as well as his individual circumstances.¹⁶ Additionally, the Trial Chamber shall consider any aggravating and/or mitigating factors as well as, where appropriate, the general sentencing practices of the International Criminal Tribunal for Rwanda (the “ICTR”) and the national courts of Sierra Leone. However, where an accused person has neither been indicted for, nor convicted of, offences under Article 5 of the Statute, it is inappropriate for the Trial Chamber to consider the sentencing practices of the national courts of Sierra Leone.¹⁷ Furthermore, although Article 19(1) of the Statute makes specific reference only to the practice regarding prison sentences at the ICTR,¹⁸ the Trial Chamber should also consider the sentencing practices at the International Criminal Tribunal for the Former

¹⁶ See *Oric* Trial Judgement, para. 726 (“The gravity of the crime has consistently been viewed by the [ICTY] as ‘the primary consideration in imposing sentence.’”) (internal citations omitted).

¹⁷ *Prosecutor v. Brima et al.*, SCSL-04-16-T, Sentencing Judgement, 19 July 2007 (the “AFRC Sentencing Judgement”), para. 32 (“The Trial Chamber finds that it is not appropriate to adopt the practice in the present case since none of the Accused was indicted for, nor convicted of, offences under Article 5 of the Statute.”)

¹⁸ The Prosecution’s suggestion at paragraph 78 of its Sentencing Brief that “the crimes of which Fofana was convicted would have likely led to the imposition of a sentence of life imprisonment at the ICTR” is inaccurate. An analysis of the ICTR jurisprudence reveals that sentences of life imprisonment are reserved for those who planned or ordered atrocities (mainly genocide) or those who participated in crimes with particular zeal or sadism. See, e.g., *Serugendo* Trial Judgement, para. 83. Fofana has not been found guilty of *planning* or *ordering* crimes, nor has the Trial Chamber determined that his criminal activity was in any way *zealous* or *sadistic*.

Yugoslavia (the “ICTY”), as “its statutory provisions are analogous to those at the Special Court and the ICTR”.¹⁹

8. The imposition of a single, aggregate sentence is appropriate so long as it reflects the “gravity of the offences and the overall culpability of the offender”.²⁰ Time served in detention shall be credited against the final sentence.²¹
9. Ultimately, the Trial Chamber has broad discretion in determining the most appropriate sentence within the framework of the relevant provisions and jurisprudence.²²

B. Objectives of Sentencing

10. The primary objectives of sentencing at international criminal tribunals are deterrence, retribution, and rehabilitation.²³ While deterrence seeks to ensure that the penalty imposed will dissuade others from committing similar offences, retribution aims at imposing a just and appropriate punishment for a particular offence.²⁴ Retribution is not understood as the fulfilment of a desire for revenge, but rather as society’s collective expression of disapproval of the crimes committed.²⁵ Although the possibility of rehabilitation is generally given less prominence than the goals of deterrence and retribution, it is often reflected as an important factor in mitigation of sentence.²⁶ In all cases, the penalty imposed must be proportionate with the criminal conduct of the accused: “the punishment must fit the crime”.²⁷

C. Sentencing Factors

1. The Gravity of the Offence

¹⁹ AFRC Sentencing Judgement, para. 33.

²⁰ AFRC Sentencing Judgement, para. 12 (citing *Delalic* Appeal Judgement, paras. 429–430).

²¹ *Hadzihasanovic* Trial Judgement, para. 2086; *see also* AFRC Sentencing Judgment, p. 36.

²² *Nikolic* Sentencing Judgement, para. 106; *see also* AFRC Sentencing Judgment, para. 18.

²³ AFRC Sentencing Judgement, para. 14 (citing *Aleksovski* Appeal Judgement, para. 185; *Delalic* Appeal Judgement, para. 806; *Todorovic* Sentencing Judgement, paras. 28–29; *Gacumbitsi* Trial Judgement, para. 335; *Semanza* Trial Judgement, para. 554; *Kambanda* Trial Judgement, para. 28).

²⁴ *Limaj* Trial Judgement, para. 723; *Todorovic* Sentencing Judgement, paras. 29–30; *Nikolic* Sentencing Judgement, para 140.

²⁵ AFRC Sentencing Judgement, para. 15.

²⁶ *See* the cases cited in the discussion at paras. 44–47, *infra*.

²⁷ AFRC Sentencing Judgement, para. 15.

11. The primary sentencing consideration is the gravity of the crime committed by the accused.²⁸ In determining the gravity of a particular crime, in addition to assessing the objective character of the crime itself,²⁹ it is equally important to examine the nature and degree of the accused's criminal activity.³⁰ The jurisprudence of the international tribunals and most, if not all, municipal jurisdictions support the proposition that the gravity of any crime is significantly reduced when it is carried out indirectly.³¹
12. It is settled law that crimes committed through indirect or secondary modes of liability—such as aiding and abetting³² and command responsibility³³—warrant considerably lower sentences than those normally reserved for principal or co-perpetrators.³⁴ This is the case because liability may attach under the former categories despite their diminished *mens rea* or *actus reus* requirements.³⁵ It is for this reason that

²⁸ See AFRC Sentencing Judgement, para. 15.

²⁹ The established principle in international criminal law is that “violations of the law or customs of war are not inherently less serious than crimes against humanity”. *Oric* Trial Judgement, para. 730 (citing *Furundzija* Appeal Judgement, para. 247; *Tadic* Appeal Judgement, para. 69).

³⁰ AFRC Sentencing Judgement, para. 19 (citing *Kordic* Appeal Judgement, para. 1061; *Blaskic* Appeal Judgement, para. 683; *Blagojevic* Trial Judgment, para. 833); see also Prosecution Sentencing Brief, para. 40 (“The determination of the gravity of a crime requires a consideration of the particular circumstances of the case, as well as the *form and degree* of the participation of the accused in the crime”.) (emphasis in original) (citing *Stakic* Appeal Judgement, para. 380; *Blaskic* Appeal Judgement, para. 683).

³¹ *Krstic* Appeal Judgement, para. 238; *Vasiljevic* Appeal Judgement, n. 291 (citing analogous provisions in Canadian, US, UK, Chinese, South Korean, German, and Austrian cases, guidelines, and codes). (*N.B.* The law of Sierra Leone is in accord with this approach.)

³² *Krstic* Appeal Judgement, paras. 237–275; *Vasiljevic* Appeal Judgement, paras. 181–182; *Semanza* Appeal Judgement, para. 388; *Blagojevic* Appeal Judgement, para. 334; *Simic* Appeal Judgement, para. 265; *Nzabirinda* Sentencing Judgement, paras. 109–110; *Serugendo* Trial Judgement, para. 87; *Ntagerura* Trial Judgement, para. 813; *Semanza* Trial Judgement, para. 563.

³³ *Hadzihasanovic* Trial Judgement, para. 2076 (“Accordingly, the Chamber finds that the *sui generis* nature of command responsibility under Article 7(3) of the Statute may justify the fact that the sentencing scale applied to those Accused convicted solely on the basis of Article 7(1) of the Statute, or cumulatively under Articles 7(1) and 7(3), is not applied to those convicted solely under Article 7(3), in cases where nothing would allow that responsibility to be assimilated or linked to individual responsibility under Article 7(1).”); *Oric* Trial Judgement, para. 292 (superior criminal responsibility pursuant to Article 7(3) of the ICTY statute is a form of accessory liability). To the contrary, the Prosecution cites to language from the *Blaskic* Trial Judgement at paragraph 49 of its Sentencing Brief. However, it is submitted that the significant reduction in sentence imposed by the *Blaskic* Appeal Judgement, as well as the practice at the ICTY going forward (as illustrated by the more recent cases cited above), indicates that the position adopted in the *Blaskic* Trial Judgement was incorrect.

³⁴ See, e.g., *Babic* Appeal Judgement, 18 July 2005, para. 40 (holding that a finding of secondary or indirect forms of participation in a joint criminal enterprise relative to others may result in the imposition of the lower sentence).

³⁵ *Krnjelac* Trial Judgement, para. 75 (“The seriousness of what is done by a participant in a joint criminal enterprise who was not the principal offender is significantly greater than what is done by one who merely aids and abets the principal offender. That is because a person who merely aids and abets the principal offender *need only be aware of the intent* with which the crime was committed by the principal offender, whereas the participant in a joint criminal enterprise with the principal offender *must share that intent*.”) (emphasis added); *Hadzihasanovic* Trial Judgement, para. 2076 (“The concept of command responsibility [...] is exceptional in law in that it allows for a superior to be found guilty of a crime even if he had no part

the mode of liability, as such, is considered as part of the gravity analysis rather than as a factor in mitigation.³⁶ Simply put, secondary modes of liability reflect a lower magnitude of criminal responsibility.³⁷

13. While the failure to prevent war crimes may be considered “intrinsically grievous”,³⁸ an accused found guilty pursuant to Article 6(3) of the Statute does not share the same responsibility as the subordinate who commits the underlying crime; rather, the superior bears responsibility for his own neglect in failing to act³⁹—“the only crime for which [he] is to be sentenced”.⁴⁰ Accordingly, a reduced sentencing scale is justified.⁴¹ The ultimate gravity of the accused’s offence under Article 6(3) will depend upon: (i) the gravity of the underlying crimes; (ii) the nature of the accused’s knowledge, whether imputed or actual, and (iii) the foreseeability of the underlying crimes given the circumstances of the case.⁴² Factors such as the scale and brutality of the underlying crimes and their impact upon the victims “are to be considered as factors subsumed in the notion of gravity itself”⁴³ and “cannot additionally be considered as separate aggravating circumstances.”⁴⁴

2. Aggravating and Mitigating Factors

whatsoever in its commission (absence of an *actus reus*), and even if he never intended to commit the crime (absence of a *mens rea*.)”)

³⁶ As discussed below, the *nature and degree* of one’s secondary liability may be considered mitigating. See paras. 38–43, *infra*.

³⁷ This approach accords with the so-called “principle of gradation” which reserves the harshest sanction for those leaders who plan a particular conflict such as the *genocidiers* of Rwanda or the architects of ethnic cleansing in the former Yugoslavia. *Musema* Appeal Judgement, para. 382–383; *Delalic* Appeal Judgement, paras. 731, 849; *Aleksovski* Appeal Judgement, para. 182; *Ndindabahizi* Trial Judgement, para. 500; *Niyitegeka* Trial Judgement, para. 486; *Ntakirutimana* Trial Judgement, para. 884; *Krstic* Trial Judgement, para. 698; *Todorovic* Trial Judgement, para. 31; *Kupreskic* Trial Judgement, para. 852.

³⁸ *Oric* Trial Judgement, para. 727.

³⁹ *Oric* Trial Judgement, para. 724 (internal citations omitted); *Hadzihasanovic* Trial Judgement, para. 2075 (“The Accused will not be convicted for crimes committed by his subordinates but for failing in his obligation to prevent the crimes or punish the perpetrators.”)

⁴⁰ *Oric* Trial Judgement, para. 727.

⁴¹ *Hadzihasanovic* Trial Judgement, para. 2076 (“[T]he *sui generis* nature of command responsibility under Article 7(3) of the Statute may justify the fact that the sentencing scale applied to those Accused convicted solely on the basis of Article 7(1) of the Statute, or cumulatively under Articles 7(1) and 7(3), is not applied to those convicted solely under Article 7(3), in cases where nothing would allow that responsibility to be assimilated or linked to individual responsibility under Article 7(1).”)

⁴² *Oric* Trial Judgement, para. 728.

⁴³ *Oric* Trial Judgement, para. 729 (citing *Stakic* Appeal Judgement, para. 380; *Krnjelac* Trial Judgement, para. 512).

⁴⁴ *Oric* Trial Judgement, para. 729 (citing *Nikolic* Appeal Judgement, para. 58).

14. The specific aggravating and mitigating circumstances to be considered at sentencing are not exhaustively listed in the Rules.⁴⁵ The Trial Chamber thus has great discretion in both identifying the relevant circumstances and weighing them appropriately.⁴⁶

a. Aggravating Factors

15. Any factor which is found to aggravate the sentence of an accused⁴⁷ must be proved beyond a reasonable doubt.⁴⁸ Additionally, only circumstances directly related to the commission of the particular offence charged may be seen as aggravating.⁴⁹ A factor which has been taken into account in determining the gravity of the offence cannot additionally be considered to aggravate the sentence.⁵⁰ Similarly, where a particular circumstance is included as an element of the offence under consideration, it cannot also be regarded as an aggravating factor.⁵¹
16. Where liability is based on Article 6(1) of the Statute, the abuse of a position of command may be considered an aggravating factor.⁵² However, because a position of command amounts to an element of Article 6(3) liability,⁵³ the accused must have “actively abused his command position or otherwise promoted, encouraged, or participated in the crimes of his subordinates” in order for the position to be considered aggravating.⁵⁴ For purposes of aggravation, what matters is not the position of authority standing alone, but the position coupled with the manner in which the

⁴⁵ Rule 101(B)(ii) lists only one example: “the substantial cooperation with the Prosecutor by the convicted person before or after conviction”.

⁴⁶ AFRC Sentencing Judgement, para. 21.

⁴⁷ Aggravating factors have been found to include: the position of the accused; the discriminatory intent or state of mind with respect to crimes for which such state of mind is not an element or ingredient of the crime; the duration of the criminal conduct; active and direct criminal participation including the active participation of a superior in the criminal acts of his subordinates; informed, willing, or enthusiastic participation in criminal activity; premeditation and motive; the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; the status of the victims, age, number, and effect of crimes on them; the character of the accused; and the general circumstances of the offence. *See generally* AFRC Sentencing Judgement, para. 21, n. 43 (citing various ICTY and ICTR cases).

⁴⁸ *Delalic* Appeal Judgement, para. 763.

⁴⁹ *Stakic* Trial Judgement, para. 911; *Hadzihasanovic* Trial Judgement, para. 2069; Prosecution Sentencing Brief, para. 55 (citing *Kunarac* Trial Judgement, para. 850; *Deronjic* Sentencing Judgement, para. 185).

⁵⁰ AFRC Sentencing Judgement, para. 23; *Naletilic* Appeal Judgement, para. 610 (the accused’s position of authority may not be counted both as an element of a mode of liability and as an aggravating factor).

⁵¹ *Oric* Trial Judgement, para. 731.

⁵² AFRC Sentencing Judgement, para. 24; *Deronjic* Appeal Judgement, para. 67; *Babic* Appeal Judgement, para. 80; *Kupreskic* Appeal Judgement, para. 451.

⁵³ AFRC Sentencing Judgement, para. 24; *Jokic* Appeal Judgement, para. 28; *Deronjic* Appeal Judgement, para. 67; *Babic* Sentencing Judgement, para. 60; *Kayishema* Trial Judgement, para. 15.

⁵⁴ AFRC Sentencing Judgement, para. 24; *see also* *Delalic* Appeal Judgement, para. 736; *Obrenovic* Trial Judgement, para. 99.

authority was exercised. In any event, only the *abuse* of a superior position (as distinct from the mere holding of the position) may be considered an aggravating factor.⁵⁵

b. Mitigating Factors

17. Mitigating factors relate to the assessment of sentence and in no way derogate from the gravity of the crime—they mitigate the punishment, not the crime.⁵⁶ Such circumstances need only be proved on a balance of probabilities⁵⁷ and need not directly relate to the offence.⁵⁸
18. As noted above, there exists no exhaustive list of factors that may be found to mitigate a sentence. The following circumstances—each of which previously has been held to constitute a mitigating factor—are germane to the instant proceedings:⁵⁹ prevailing circumstances and overall context;⁶⁰ indirect or limited participation in criminal activity;⁶¹ behaviour and conduct of the accused subsequent to the conflict;⁶² attitude

⁵⁵ *Blagojevic* Appeal Judgement, para. 324; *Simic* Appeal Judgement, para. 268.

⁵⁶ *Erdemovic* Sentencing Judgement, para. 46 (“It must be observed however that mitigation of punishment does not in any sense of the word reduce the degree of the crime. It is more a matter of grace than of defence.”)

⁵⁷ *Sikirica* Sentencing Judgement, para. 110; *Kunarac* Trial Judgement, para. 847; *Simic* Trial Judgement, para. 1065.

⁵⁸ *Stakic* Trial Judgement, para. 920; *Hadzihasanovic* Trial Judgement, para. 2069; *Babic* Appeal Judgement, para. 43.

⁵⁹ Other mitigating factors (not relevant to these proceedings) are duress, diminished mental responsibility, age, assistance to detainees and/or victims, poor health, volutary surrender, guilty plea, cooperation with prosecution, and acceptance of guilt. See generally AFRC Sentencing Judgement, para. 25.

⁶⁰ *Oric* Trial Judgment, para. 767–772 (finding the circumstances prevailing in Srebrenica and those particular to the accused and to the crimes committed the “dominant factor” in mitigation); *Hadzihasanovic* Trial Judgment, para. 2081 (“The case law of this Tribunal has, on several occasions, considered that the overall context in which the incriminating acts took place may be taken into account in determining which sentence to impose.”) (While this factor does not “justify the causes or consequences” of the criminal activity, the “particular context [may cast] the [a]ccused[’s] failures in a light which leads the Chamber to show leniency.”); *Kambanda* Trial Judgment, para. 34 (“As far as the ‘individual circumstances of Jean Kambanda’ are concerned, the individualisation of the sentence, as the expression itself seems to suggest, is not possible unless facts about his ‘personality’ are known, including his background, his behaviour before, during and after the offence, his *motives* for the offence and demonstration of remorse thereafter.”) (emphasis added); see also *Delalic* Trial Judgement, para. 1248.

⁶¹ *Krstic* Appeal Judgement, para. 272 (In a case of aiding and abetting, both the nature of the assistance provided as well as the accused’s absence from the crime scene may be accounted for in mitigation of sentence.); *Strugar* Trial Judgement”, para. 464 (“While the Accused’s responsibility for his failure to act as the superior commander of the forces involved is clearly established by the evidence, it remains the case that he was more remotely responsible than [his subordinate] Admiral Jokic.”); *Bisengimana* Trial Judgment, para. 178 (that the accused did not personally commit any violent acts during the massacres was found to be mitigating).

⁶² *Blagojevic* Appeal Judgement, para. 330 (Conduct of an accused that promotes reconciliation may be considered mitigating whether or not it is directly connected to the harm the accused caused.); see also Prosecution Sentencing Brief, para. 68 (“subsequent conduct demonstrating intentions to ‘make amends’ or to atone for the crimes committed” can be mitigating).

with respect to the proceedings and good behaviour in detention;⁶³ good character and capacity for rehabilitation;⁶⁴ family circumstances;⁶⁵ lack of prior convictions;⁶⁶ superior orders;⁶⁷ and lack of animosity for the enemy.⁶⁸

IV. ARGUMENT

A. Admission of Witness Statements

19. The Trial Chamber has ordered the Defence to “file any relevant information that may assist [...] in determining an appropriate sentence”.⁶⁹ Rule 100 governs the admission of evidence at sentencing proceedings, and pursuant to its terms, any information that is *relevant* to the Trial Chamber’s task is therefore admissible.⁷⁰
20. The Defence submits that the documents annexed hereto are highly relevant to the instant proceedings and therefore will assist the Trial Chamber in determining an appropriate sentence for Fofana. They include five statements regarding Fofana’s

⁶³ *Nzabirinda* Sentencing Judgement, para. 92.

⁶⁴ *Hadzihasanovic* Trial Judgement, para. 2079 (“The Chamber also finds that the Accused Hadzihasanović has a character which can be rehabilitated and that he thus merits a reduced sentence. To arrive at that conclusion, the Chamber has taken into account not only his lack of a prior criminal record but also his prior good reputation.”); *see also* *Blaškić* Judgement, para. 780; *Obrenović* Sentencing Judgement, para. 134; *Krstić* Appeal Judgement, para. 273.

⁶⁵ *Hadzihasanovic* Trial Judgement, para. 2079 (“The Chamber finds the family situation of the Accused Hadzihasanović, in particular the fact that he is married and is the father of two children, to be a mitigating circumstance.”); *see also* *Blaskic* Trial Judgement, para. 779; *Vasiljevic* Trial Judgement, para. 300; *Nzabirinda* Sentencing Judgement, para. 81; *Bisengimana* Trial Judgment, para. 144.

⁶⁶ *Hadzihasanovic* Trial Judgement, para. 2079; *Blaskić* Trial Judgement, para. 780; *Nzabirinda* Sentencing Judgement, para. 92.

⁶⁷ Article 6(4) of the Statute provides: “The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.”

⁶⁸ *Hadzihasanovic* Trial Judgement, para. 2089 (“The Chamber has also noted that the Accused Kubura does not seem to have harboured any animosity against his opponents, other than the animosity a commander has for an enemy army.”).

⁶⁹ Scheduling Order, p. 3.

⁷⁰ *N.B.* Rules 92*bis*, 92*ter*, and 92*quater* regulate the admission of written statements at the trial phase of the proceedings, during which time these Rules may restrict the admission of information which “go[es] to proof of the acts and conduct of the accused”. Rule 92*bis*(A). However, this phrase must be understood to refer only to such acts and conduct “as charged in the indictment” (with regard to the determination of guilt or innocence) and not to any acts or conduct of the accused which may be relevant to sentencing. Rule 92*quater*(B). Had the Trial Chamber envisaged strict compliance with Rules 92*bis*, 92*ter*, and 92*quater* for purposes of the sentencing phase of the CDF proceedings, it would have allotted the parties more than one hour in which to make submissions at the Sentencing Hearing. *See* Scheduling Order, p. 3. *N.B.* Rule 92*bis* was amended on 14 May 2007; Rule 92*ter* was adopted on 24 November 2006; and Rule 92*quater* was adopted on 14 May 2007. Each of these modifications to the Rules occurred subsequent to the close of evidence in the CDF trial. The Defence therefore submits that it would be manifestly unfair for the Trial Chamber to rely on any one of these Rules to exclude evidence from the instant proceedings without first hearing comprehensive legal submissions by the parties.

activities subsequent to the conflict,⁷¹ a memorandum regarding his behaviour in the SCSL Detention Centre, and a letter regarding a presidential commendation.

B. The Gravity of the Offences

21. For the purposes of these proceedings, the Defence accepts that the principal crimes committed by the Kamajors, for which Fofana has been found guilty of aiding and abetting and failing to punish, are serious ones.⁷² However, because these crimes are attributable to Fofana only through indirect or secondary modes of liability,⁷³ their gravity is considerably diminished.⁷⁴ Accordingly, a sentence significantly lower than those normally reserved for principal perpetrators is automatically warranted in this case.⁷⁵
22. The Trial Chamber has found that it was “irrelevant whether [Fofana] shared the intent of the [principal] perpetrator[s]”.⁷⁶ This reduced *mens rea* requirement with respect to aiding and abetting supports a finding of reduced gravity with regard to Fofana’s liability pursuant to Article 6(1), whereas the attenuated nature of his actual knowledge⁷⁷ and participation must be considered as a mitigating factor and is more appropriately dealt with below.⁷⁸
23. With respect to Fofana’s liability pursuant to Article 6(3) for failure to prevent crimes in Koribondo and Bo, the Trial Chamber did not find that Fofana had actual knowledge of their commission but rather that such knowledge could have been reasonably inferred from Norman’s illegal order.⁷⁹ Accordingly, Fofana’s crime in this regard must be

⁷¹ One of these statements, Annex B, is already part of the trial record, as is a redacted version of Annex D. With regard to the latter, the Defence submits that the redacted portions are relevant to sentencing. Accordingly, an un-redacted version is submitted (along with the original trial exhibit) for the Trial Chamber’s consideration.

⁷² See Judgement, para. 106 (“All of the crimes charged in the Indictment qualify as *serious* violations of international humanitarian law.”) (emphasis in original). With regard to the gravity of crimes, the Prosecution has submitted that: “Certain crimes of which Fofana and Kondewa have been convicted, such as collective punishment, are of their nature crimes against an entire population”. Prosecution Sentencing Brief, para. 44. Not only is this statement inaccurate—the *actus reus* element of the crime of collective punishments refers to “persons” not to populations—it appears to be an attempt by the Prosecution to equate Count 7 with genocide and/or persecutions, crimes for which Fofana has not been charged or convicted.

⁷³ See paras. 3(a)–(c), *supra*.

⁷⁴ See para. 11, *supra*.

⁷⁵ See para. 12, *supra*.

⁷⁶ Judgement, para. 724 (emphasis added).

⁷⁷ The Trial Chamber found that “Fofana was aware that one of a number of crimes *would probably be committed* by the Kamajors and that one of those crimes was in fact committed”. Judgement, para. 724.

⁷⁸ See paras. 38–43, *infra*.

⁷⁹ Judgement, paras. 777–778, 821–822.

considered relatively less grave than had he actually known about the commission of the specific underlying criminal activity.⁸⁰

C. Aggravating Factors

24. The Prosecution's Sentencing Brief suggests the presence of the following aggravating factors: (i) the vulnerability of the victims, especially women and children;⁸¹ (ii) the heinous nature of the underlying crimes;⁸² (iii) the targeting of victims as "collaborators";⁸³ (iv) the premeditation of Fofana's actions;⁸⁴ (v) the coercive nature of Fofana's encouragement of the Kamajors at the passing-out parade;⁸⁵ and (vi) the abuse of Fofana's position of responsibility and influence.⁸⁶
25. With respect to the first two alleged factors, the Defence reiterates the rule that only circumstances directly related to the commission of an accused's particular offence may be taken as aggravating.⁸⁷ As these considerations are specifically related to the crimes of the principal perpetrators and not to Fofana's provision of assistance or to his failure to punish, the Defence submits that they are properly considered with regard to the gravity of the underlying crimes and not as aggregating factors.⁸⁸
26. As to the third, fourth, and fifth alleged factors, none of these has been proved beyond a reasonable doubt as required.⁸⁹ Regarding the third claim, Fofana's encouragement to the Kamajors at the passing-out parade was of a *general* nature without any reference to the Kamajors' intended targets. Viewed in light of the Trial Chamber's ruling with respect to crimes against humanity,⁹⁰ it is not clear from the evidence that Fofana himself *specifically* encouraged the inappropriate targeting of collaborators. The fourth putative factor is unsupported by any evidence on the record. The fifth consideration—Fofana's admonition to the Kamajors not to return to Base Zero—is not clearly coercive to the extent that it can be said to aggravate the crime of aiding and abetting. Based on the

⁸⁰ See para. 13, *supra*.

⁸¹ Prosecution Sentencing Brief, para. 116.

⁸² Prosecution Sentencing Brief, para. 117.

⁸³ Prosecution Sentencing Brief, para. 118.

⁸⁴ Prosecution Sentencing Brief, para. 119.

⁸⁵ Prosecution Sentencing Brief, para. 122.

⁸⁶ Prosecution Sentencing Brief, para. 122.

⁸⁷ See para. 15, *supra*.

⁸⁸ See para. 13, *supra*.

⁸⁹ See para. 15, *supra*.

⁹⁰ See Judgement, para. 694 (The Trial Chamber "found that the essential requirement of an attack against the civilian population has not been satisfied beyond reasonable doubt".)

evidence, these words are not necessarily understood as an actual threat—they can be equally understood as strong encouragement to the fighters. As such encouragement formed the basis for Fofana’s liability in this regard, it cannot be “double-counted” for purposes of sentencing.⁹¹

27. Finally, regarding the sixth alleged aggravating factor, Fofana’s mere position of command cannot be considered aggravating unless, as stated above, it has been proved beyond a reasonable doubt that he “actively abused his command position or otherwise promoted, encouraged, or participated in the crimes of his subordinates.”⁹² With respect to his aiding and abetting liability, Fofana’s encouragement of the Kamajors who committed crimes in and around Tongo was expressly relied upon as an *actus reus* element of that offence and cannot therefore—for the same reasons stated in the previous paragraph—be again taken into consideration at sentencing.⁹³ There is no further evidence on the record to suggest that Fofana in any way abused his authority at the passing-out parade. As to the Trial Chamber’s findings pursuant to Article 6(3), there is no evidence that Fofana promoted, encouraged, or participated in any of the crimes committed Kamajors operating in Koribondo and Bo. As noted above, abuse of command position entails more than merely holding or exercising it.
28. For the reasons stated above, the Defence submits that the Prosecution has failed to establish the existence of any aggravating factor beyond a reasonable doubt. Despite the Prosecution’s assertion to the contrary, the Trial Chamber did not find Fofana to be a “primary pioneer and aggravator of the violence” in Sierra Leone.⁹⁴

D. Mitigating Circumstances

29. The Defence submits that each of the following circumstances, individually and *a fortiori* collectively, warrants a significant mitigation of sentence.

1. Prevailing Circumstances and Overall Context

⁹¹ See para. 15, *supra*.

⁹² See para. 16, *supra*.

⁹³ See para. 15, *supra*.

⁹⁴ Prosecution Sentencing Brief, para. 107.

30. Certain Trial Chambers have recognised the difficult circumstances under which a convicted person was required to operate as a basis for mitigation of sentence.⁹⁵ Indeed, in the case of Naser Oric, Trial Chamber II of the ICTY considered this “to be the pivotal consideration for the purpose of establishing the sentence that should be meted out to the Accused”.⁹⁶
31. In *Oric*, the Trial Chamber considered the following factors to be relevant to the issue of mitigation: (i) the Bosnian Muslims faced an “escalating offensive by militarily superior Serb armed forces”; (ii) “the unpreparedness of the Bosnian Muslim forces”; (iii) “an unmanageable influx of refugees”; (iv) “increasing isolation of the town and area resulting in critical shortages of food and other essentials”; (v) “general chaos”; and (vi) “the flight from Srebrenica of all the authorities, civilian and otherwise, soon after the outbreak of hostilities and the take-over of the town by the Serb forces.”⁹⁷ The Trial Chamber found that these combined factors “resulted in a total breakdown of society in Srebrenica including a collapse of law and order.”⁹⁸ The Trial Chamber further considered that, in the midst of this chaos, Oric was appointed to his position as chief of police in a small town near Srebrenica that soon became “a focal point in the Serb offensive”.⁹⁹ He quickly earned “public esteem as a local hero” for his contribution to the successful Bosnian effort to recapture Srebrenica.¹⁰⁰
32. In describing the Bosnian Muslim’s efforts to “re-constitute the basics of authority and government”¹⁰¹ in Srebrenica, the Trial Chamber noted:

The evidence demonstrates that the difficulties were enormous, especially since the persons who would have filled in the various positions had fled the town and the general situation was worsening. There was also the predicament of resisting the on-going siege on Srebrenica by the Serb forces without a proper army, without any effective link with the ABiH and the BiH government and in addition, having to depend of a number of voluntary and poorly armed groups of fighters gathered around local leaders, some of whom were reluctant to accept any superior command structure.¹⁰²

⁹⁵ See, e.g., *Delalic* Trial Judgement, para. 1248; *Hadzihasanovic* Trial Judgement, para. 2081.

⁹⁶ *Oric* Trial Judgement, para. 767. Similarly, the Trial Chamber in *Hadzihasanovic* accepted that fact that the accused was “faced with a generally difficult situation” as a mitigating factor. *Hadzihasanovic* Trial Judgment, para. 2080–2081.

⁹⁷ *Oric* Trial Judgment, para.768.

⁹⁸ *Oric* Trial Judgment, para.768.

⁹⁹ *Oric* Trial Judgment, para.768.

¹⁰⁰ *Oric* Trial Judgment, para.768.

¹⁰¹ *Oric* Trial Judgment, para.768.

¹⁰² *Oric* Trial Judgment, para.769.

33. The situation described above is strikingly similar to the one faced by the CDF during the junta interregnum. Shortly after the overthrow of the SLPP government, the militarily-inexperienced Fofana found himself cast in the role of Director of War at Talia, “a small town which would soon become a focal point” in the war in Sierra Leone. Fofana soon earned a measure of esteem for his role in procuring and supplying food to the swelling Kamajor population assembled there.¹⁰³ From this time onward, elements of the Kamajors leadership at Base Zero attempted to re-constitute the basics of authority. However, as in the case of Srebrenica, the difficulties were enormous. Senior SLPP leaders had either gone into hiding in their local communities or had fled the country altogether,¹⁰⁴ and only sporadic contact with the SLPP government-in-exile was possible. The Kamajors also faced the daunting task of protecting their base as well as CDF territory further afield from junta incursions—without a proper army and with limited links to ECOMOG forces in Liberia and Lunghi. Like the Bosnian Muslims in Srebrenica, the CDF was left to “depend of a number of voluntary and poorly armed groups of fighters gathered around local leaders, some of whom were reluctant to accept any superior command structure.”¹⁰⁵
34. The evidence presented at the CDF trial shows that Fofana, in accepting the position conferred by Norman and the War Council,¹⁰⁶ was faced with an especially arduous task exacerbated by the fact that the Kamajors were expected (by their chieftom authorities as well as by President Kabbah’s government-in-exile¹⁰⁷) to defend their territory “with no proper army, no fully effective command structure, few weapons and [...] local leaders, some of whom not only chose to act independently but considered [Fofana] inexperienced and scorned his authority.”¹⁰⁸

¹⁰³ See Judgment, para. 303 (“Base Zero existed from about 15 September 1997 to 10 March 1998 as the headquarters for the Civil Defence Forces High Command. *Thousands of civilians and Kamajors* traveled to Base Zero for military training and initiation into the Kamajor society during those six months.) (emphasis added).

¹⁰⁴ See Judgment, para. 72 (Following the coup, “President Ahmad Tejan Kabbah and other members of his Government were forced to leave Sierra Leone and many of them proceeded to Conakry, Guinea.”)

¹⁰⁵ *Oric* Trial Judgment, para.769.

¹⁰⁶ See Judgment, para. 339 (citing, *inter alia*, Exhibit 59—a letter from Norman confirming Fofana’s appointment as Director of War, effective 15 January 1998).

¹⁰⁷ See Judgment, para. 77 (“President Ahmad Tejan Kabbah said that the hunters of Sierra Leone were needed to support the people in rejecting the military government.”); *ibid.*, para. 302 (“Upon [Norman’s] arrival [at Talia], he told the Kamajors that welcomed him that President Kabbah had named him the leader of the Kamajors and told him to join the Kamajors in Talia to fight the war. President Kabbah sent a small amount of logistics [...] to Norman for that purpose.”)

¹⁰⁸ *Oric* Trial Judgment, para.770.

35. The Defence further emphasises that the demonstrated aims of the CDF were the defence of its communities from RUF/AFRC aggression and the restoration of the democratically-elected government of Sierra Leone.¹⁰⁹ Indeed, Fofana was commended by the President for his significant contribution to these goals.¹¹⁰
36. Additional contextual factors of relevance are Fofana's lack of formal military training and the fact that he was at all times acting pursuant to superior orders.¹¹¹
37. Accordingly, the Defence submits that the prevailing circumstances at Base Zero and the overall context of the conflict and Fofana's role in it "should have a strong mitigating effect in the assessment of the sentence to be imposed on him."¹¹²

2. Indirect Participation in Criminal Activity and Position of Command

38. While the secondary or indirect character of a mode of liability—such as aiding and abetting or command responsibility—reflects upon the gravity of the particular crime,¹¹³ the indirect manner in which such crime is committed is potentially mitigating.

a. Aiding and Abetting

39. As noted in the Judgement, a finding of liability for aiding and abetting requires a showing of activity "which has a substantial effect on the perpetration of a crime".¹¹⁴ The relevant jurisprudence suggests that such activity covers a wide and varied

¹⁰⁹ See Judgement, para. 693 ("In this regard, the Chamber recalls the admission of the Prosecutor that 'the CDF and the Kamajors fought for the restoration of democracy.'"); see also *Kambanda* Trial Judgment at n.60, *supra*.

¹¹⁰ See Annex G.

¹¹¹ See n. 67, *supra*. The Trial Chamber considered "the role of President Kabbah, and the fact that the accused were fighting to restore his democratically elected government" in relation to "any defence recognised under the law, including the defence of necessity". Although the Trial Chamber ultimately held that "no such defence absolves the accused from individual criminal responsibility for the offences for which they are indicted", it did recall that Article 6(4) of the Statute allows such factor to "be considered in mitigation of punishment if the Special Court determines that justice so requires". *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Trial Transcript, 2 August 2007, pp. 31–32.

¹¹² *Oric* Trial Judgment, para.771 (Ultimately, Oric was sentenced to two years imprisonment for "failing to discharge his duty as a superior to take necessary and reasonable measures to prevent or punish the occurrence" of murder and cruel treatment pursuant to Articles 3 [war crimes] and 7(3) [command responsibility] of the ICTY Statute.); see also *Hadzihasanovic* Trial Judgement, pp. 633–638 (Ultimately, Hadzihasanovic was sentenced to five years imprisonment for "failing to take the necessary and reasonable measures to punish" multiple murders and instances of cruel treatment pursuant to Articles 3 [war crimes] and 7(3) [command responsibility] of the ICTY Statute. Kubura was sentenced to 2.5 years imprisonment for "failing to take the necessary and reasonable measures to punish" multiple instances of plundering pursuant to Articles 3 [war crimes] and 7(3) [command responsibility] of the ICTY Statute.)

¹¹³ See paras. 11–13, *supra*.

¹¹⁴ See Judgement, para. 228.

range.¹¹⁵ In order to account for such variation, both the nature of the assistance provided as well as the accused's absence from the crime scene must be taken in to account when determining the appropriate sentence.¹¹⁶

40. With respect to Fofana's responsibility for the crimes committed by Kamajors in and around Tongo, the Trial Chamber found that Fofana's speech at the passing-out parade at Base Zero in December 1997 "had a substantial effect on the perpetration of those criminal acts" committed one–two months later.¹¹⁷ While the Defence accepts this finding for purposes of the instant proceedings, it is submitted that the nexus between Fofana's words of encouragement and the commission of the principal crimes was so attenuated as to place his involvement at or near the bottom of the substantial-effect spectrum. Fofana was not present in or around Tongo when any of the crimes were committed, and not only was the encouragement rendered "at a location geographically removed from the location of the principal crime",¹¹⁸ a substantial amount of time had passed between the passing-out parade and the commission of the various criminal acts.
41. Accordingly, the Defence submits that Fofana's liability for aiding and abetting is mitigated by his indirect participation in criminal activity.

b. Command Responsibility

42. The Trial Chamber has found Fofana guilty for failing to prevent the crimes committed (i) in Koribondo by Joe Tamidey, Borbor Tucker, Lahai George, Lamin Ngobeh, and the Kamajors under their immediate command¹¹⁹ and (ii) in Bo by James Kaillie, Joseph Lappia, Witness TF2-017, and the Kamajors under their immediate command.¹²⁰ However, the Trial Chamber did not find that these individuals were directly under Fofana's command, but rather that they reported to Albert Nallo who in turn reported to Fofana. While the Defence accepts that Fofana's responsibility for his failure to act has been established by the evidence, it remains the case that he is more remotely

¹¹⁵ See generally ICTY and ICTR jurisprudence on aiding and abetting.

¹¹⁶ *Krstic* Appeal Judgement, para. 272.

¹¹⁷ Judgement, para. 723.

¹¹⁸ Judgement, n. 1544.

¹¹⁹ Judgement, para. 775.

¹²⁰ Judgement, paras. 817–818.

responsible than Nallo who, as the overall commander for the Koribondo and Bo operations,¹²¹ had direct command over the principal perpetrators.¹²²

43. Accordingly, the Defence submits that Fofana's liability for failure to prevent criminal activity is mitigated by his indirect position of command.

3. Capacity for Rehabilitation

44. As indicated in the statements of Simon Arthy,¹²³ Frances Fortune, Rashid Sandi, Foday Seisay, and Shekou Tejan-Sankoh, Fofana was engaged in substantial efforts aimed at promoting peace and reconciliation in Sierra Leone subsequent to his involvement in the conflict. In particular, Fofana is credited with, *inter alia*, (i) representing the CDF at various workshops and other peace-building initiatives at the district level, (ii) mediating disputes and resolving problems at the community level, and (iii) cooperating with NGOs in attempting to curb unacceptable CDF practices. The Defence submits that such activities—in some measure—must be seen as “contribut[ing] to the process of national reconciliation and to the restoration and maintenance of peace”¹²⁴ in Sierra Leone.¹²⁵
45. Additionally, Fofana's good character has been described by various individuals including a Sierra Leonean ambassador, a member of Sierra Leone's parliament, two international NGO workers, and a former RUF combatant.¹²⁶ It is further evidenced by Fofana's exemplary behaviour in the detention unit,¹²⁷ his respectful attitude throughout the lengthy CDF trial proceedings, and his lack of prior criminal charges or convictions.¹²⁸

¹²¹ Judgement, paras. 775, 819.

¹²² See *Strugar* Trial Judgement, n. 61, *supra*.

¹²³ *N.B.* Although it is unsigned, the Statement of Simon Arthy is clearly relevant to these proceedings: “There is no rule that requires, as a precondition for admissibility, that relevant statements or submissions must be signed.” *Prosecutor v. Norman et al.*, SCSL-04-14-A, Decision on Fofana Appeal Against Decision Refusing Bail, 11 March 2005, para. 24. In any event, Counsel will provide further explanation at the Sentencing Hearing.

¹²⁴ United Nations Security Council Resolution 1315 (2000), operative para. 1.

¹²⁵ See, e.g., Judgement, para. 370 (“Sometime in mid-1999 [Fofana] became the Director of the Peace Office in Bo.”) *N.B.* With respect to the Prosecution's submission at paragraph 132 of its Sentencing Brief, the Defence has not alleged that Fofana was a member of the Commission for the Consolidation of Peace. That organisation is distinct from the office Fofana maintained in Bo.

¹²⁶ See Annexes A–E.

¹²⁷ See Annexe F.

¹²⁸ The Defence has made efforts to obtain a Police Clearance from the Sierra Leone Police Force, but to date has not been successful. If required, Fofana is prepared to affirm that he has never been charged with nor convicted of any criminal offence in Sierra Leone or any other country.

46. Following the war, Fofana was appointed as the Chiefdom Speaker of Nongoba-Bullom Chiefdom—a highly respected position indicative of Fofana’s commitment to serve his community. Fofana, a practicing Muslim, is the husband of four wives and the father of several children.
47. The Defence submits that these factors, taken together, are clearly demonstrative of Fofana’s capacity for rehabilitation and potential for further positive contribution to Sierra Leonean society.

V. CONCLUSION

48. For the reasons stated above, the Defence submits that a global sentence of not more than four years would appropriately account for Fofana’s uniquely limited criminal responsibility and significant mitigating circumstances.

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BOOK OF AUTHORITIES

Special Court for Sierra Leone

1. Statute, Articles 5, 6, and 19
2. Rules of Procedure and Evidence, Rules 92*bis*, 92*ter*, 92*quater*, 100, 101
3. *Prosecutor v. Norman et al.*, SCSL-04-14-A, Decision on Fofana Appeal Against Decision Refusing Bail, 11 March 2005
4. *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Judgement, 2 August 2007
5. *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Scheduling Order for Sentencing Hearing and Judgement, 2 August 2007
6. *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Trial Transcript, 2 August 2007
7. *Prosecutor v. Brima et al.*, SCSL-04-16-T, Sentencing Judgement, 19 July 2007

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8. *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement, 24 March 2000 (the “*Aleksovski Appeal Judgement*”)
9. *Prosecutor v. Babic*, IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005 (the “*Babic Appeal Judgement*”)
10. *Prosecutor v. Blagojevic and Jokic*, IT-02-60-A, Judgement, 9 May 2007 (the “*Blagojevic Appeal Judgement*”)
11. *Prosecutor v. Blaskic*, IT-95-14-A, Judgement, 29 July 2004 (the “*Blaskic Appeal Judgement*”)
12. *Prosecutor v. Delalic et al.*, IT-96-21-A, Judgement, 20 February 2001 (the “*Delalic Appeal Judgement*”)
13. *Prosecutor v. Deronjic*, IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005 (the “*Deronjic Appeal Judgement*”)
14. *Prosecutor v. Furundzija*, IT-95-17/1-A, Judgement, 21 July 2000 (the “*Furundzija Appeal Judgement*”)
15. *Prosecutor v. Jokic*, IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005 (the “*Jokic Appeal Judgement*”)
16. *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement, 17 December 2004 (the “*Kordic Appeal Judgement*”)

17. *Prosecutor v. Krstic*, IT-98-33-A, Judgement, 19 April 2004 (the “*Krstic* Appeal Judgement”)
18. *Prosecutor v. Kupreskic et al.*, IT-95-16-A, Judgement, 23 October 2001 (the “*Kupreskic* Appeal Judgement”)
19. *Prosecutor v. Naletilic and Martinovic*, IT-98-34-A, Judgement, 03 May 2006 (the “*Naletilic* Appeal Judgement”)
20. *Prosecutor v. Nikolic*, IT-02-60/1-A, Judgement, 08 March 2006 (the “*Nikolic* Appeal Judgement”)
21. *Prosecutor v. Tadic*, IT-94-1-A, Judgement, 15 July 1999 (the “*Tadic* Appeal Judgement”)
22. *Prosecutor v. Simic*, IT-95-9-A, Judgement, 28 November 2006 (the “*Simic* Appeal Judgement”)
23. *Prosecutor v. Stakic*, IT-97-24-A, Judgement, 22 March 2006 (the “*Stakic* Appeal Judgement”)
24. *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement, 25 February 2004 (the “*Vasiljevic* Appeal Judgement”)
25. *Prosecutor v. Babic*, IT-03-72-S, Sentencing Judgement, 29 June 2004 (the “*Babic* Trial Judgement”)
26. *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgement and Sentence, 17 January 2005 (the “*Blagojevic* Trial Judgement”)
27. *Prosecutor v. Blaskic*, IT-95-14-T, Judgment and Sentence, 3 March 2000 (the “*Blaskic* Trial Judgement”)
28. *Prosecutor v. Delalic et al.*, IT-96-21-T, Judgement and Sentence, 16 November 1998 (the “*Delalic* Trial Judgement”)
29. *Prosecutor v. Deronjic*, IT-02-61-S, Sentencing Judgement, 30 March 2004 (the “*Deronjic* Trial Judgement”)
30. *Prosecutor v. Erdemovic*, IT-96-22-T, Sentencing Judgement, 5 March 1998 (the “*Erdemovic* Trial Judgement”)
31. *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-T, Judgement and Sentence, 15 March 2006 (the “*Hadzihasanovic* Trial Judgement”)
32. *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement and Sentence, 15 March 2002 (the “*Krnojelac* Trial Judgement”)
33. *Prosecutor v. Krstic*, IT-98-33-T, Judgement and Sentence, 2 August 2001 (the “*Krstic* Trial Judgement”)

34. *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-T, Judgement and Sentence, 22 February 2001 (the “*Kunarac Trial Judgement*”)
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37. *Prosecutor v. Nikolic*, IT-02-60/1-T, Judgement and Sentence, 2 December 2003 (the “*Nikolic Trial Judgement*”)
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41. *Prosecutor v. Simic et al.*, IT-95-9-T, Judgement and Sentence, 17 October 2003 (the “*Simic Trial Judgement*”)
42. *Prosecutor v. Stakic*, IT-97-24-T, Judgement and Sentence, 31 July 2003 (the “*Stakic Trial Judgement*”)
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45. *Prosecutor v. Vasiljevic*, IT-98-32-T, Judgement and Sentence, 29 November 2002 (the “*Vasiljevic Trial Judgement*”)

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46. *Prosecutor v. Semanza*, ICTR-97-20-A, Judgment, 20 May 2005 (the “*Semanza Appeal Judgement*”)
47. *Prosecutor v. Musema*, ICTR-96-13-A, Judgment, 16 November 2001 (the “*Musema Appeal Judgement*”)
48. *Prosecutor v. Bisengimana*, ICTR-00-60-T, Judgement and Sentence, 13 April 2006 (the “*Bisengimana Trial Judgment*”)
49. *Prosecutor v. Gacumbitsi*, ICTR-01-64-T, Judgement and Sentence, 17 June 2004 (the “*Gacumbitsi Trial Judgement*”)

50. *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-01-T, Judgement and Sentence, 21 May 1999 (the “*Kayishema* Trial Judgement”)
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52. *Prosecutor v. Ndindabahizi*, ICTR-01-71-T, Judgement and Sentence, 15 July 2004 (the “*Ndindabahizi* Trial Judgement”)
53. *Prosecutor v. Niyitegeka*, ICTR-96-14-T, Judgement and Sentence, 16 May 2003 (the “*Niyitegeka* Trial Judgement”)
54. *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Judgement and Sentence, 25 February 2004 (the “*Ntagerura* Trial Judgement”)
55. *Prosecutor v. Ntakirutimana and Ntakirutima*, ICTR-96-10, 96-17-T, Judgement and Sentence, 21 February 2003 (the “*Ntakirutimana* Trial Judgement”)
56. *Prosecutor v. Nzabirinda*, ICTR-01-77-T, Sentencing Judgement 23 February 2007 (the “*Nzabirinda* Trial Judgement”)
57. *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003 (the “*Semanza* Trial Judgement”)
58. *Prosecutor v. Serugendo*, ICTR-05-81-T, Judgement and Sentence, 12 June 2006 (the “*Serugendo* Trial Judgement”)

Other

59. United Nations Security Council Resolution 1315 (2000)

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ANNEX A

Statement of Simon Arthy

Statement of Simon Arthy on behalf of Moinina Fofana

Generally

During my time as the Southern Region Coordinator for the European Commission/Sierra Leone Resettlement and Rehabilitation Programme (EC/SLRRP) -July 1998-February 2001, I worked regularly with Moinina Fofana, the Director of War and Operations of the Civil Defence Forces (CDF). In particular, I worked with him and other members of the CDF hierarchy in support of an initiative to foster reconciliation and harmony between the CDF and civil society in the Southern Region, and to provide civic education to CDF commanders and civil society leaders. Throughout this period, Fofana's commitment to promoting peace and reconciliation in the Southern Region was irrefutable, and he worked tirelessly to promote responsible behaviour within the CDF, resolve problems which arose between kamajors and civilians, and to generally do all in his power to stabilize the situation in the south and prepare the ground for a future peaceful coexistence between CDF, RUF and civilians. These activities were conducted throughout a very unstable period, which included the crises of early 1999 and mid 2000. However, his actions remained principled throughout this time, and he consistently showed a willingness to face up to the reality of CDF related problems and to try and resolve them, rather than cover them up. Indeed, his honesty in exposing and admitting to unacceptable behaviour within the CDF (when it occurred) and attempting to openly deal with it left him open on several occasions to severe criticism by other senior members of the CDF. However, to me, it was exactly this honesty and determination to 'do the right thing' which made Moinina Fofana stand out and gain my respect and admiration.

1999-Mid-2000

After January 1999, in response to the invasion of Freetown and continued threat of the RUF and ex-SLA forces, recruitment and initiation into the Kamajor militia (the Mende arm of the wider CDF movement) increased at a remarkable rate. Whilst on the one hand this represented a legitimate and understandable response to the perceived national threat and desire to protect communities, the commercialization of the initiation process by CDF initiators (charging initiates to be initiated) and increasingly antisocial behaviour of CDF members towards civilians quickly led to a growing divide between the CDF and the very communities they purported to be protecting. In particular, by April/May 1999, there was serious concern within civil society over perceived:

- increasing lack of CDF regard for Chieftom, law enforcement, judicial, education authorities, parental authorities, and humanitarian organizations;
- continued recruitment and initiation of children (i.e. under 18 years); and
- increasingly unclear chain of command, especially regarding power and authority of initiators versus that of commanders.

To address these issues, increase public confidence in the CDF, and increase the sense of social responsibility within the CDF, a two day workshop was held in Bo Town on 17/18 June 1999. This brought together senior CDF Commanders, Initiators and Administrators, Paramount Chiefs and civil society leaders, government officials (including six ministers and

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deputy ministers) and humanitarian providers. After two days of frank and open discussion, a number of very positive outcomes were achieved:

- firm commitments with corresponding action plans by all represented groups to conduct specific actions and initiatives aimed at improving the relationship between CDF and civil society;
- a seven-point declaration by Chief Hinga Norman to the CDF¹ (broadcast repeatedly over radio in local languages, and distributed in writing to all CDF commanders);
- the formation of a Regional Reconciliation Committee (RRC) to monitor the implementation of the action plans of all stakeholder groups, coordinate all activities relating to improving the CDF/Community relationship in the Southern Region, and report on a regular basis to central and regional government on the status of the CDF/community relationship.

It is the actions and activities of Moinina Fofana in supporting these peace building and reconciliation initiatives that I would like to particularly draw attention to.

The RRC comprised of senior representation from the CDF, the police, NCRRR (and later NCDIDR), the Drivers Union, Petty Traders Union and Teachers Union, the regional Peace Building and Reconciliation Committee, the Child Protection Committee, the Bo District Paramount Chief Parliamentary Representative, and a representative from the donor community (myself). It met on a fortnightly basis, and members would report on particular CDF related problems being faced by those sectors of society they represented, and on actions being taken to improve CDF/community relationships. Where problems were being faced, the committee would agree on a small team of relevant stakeholders going to the area in question to resolve whatever conflict was occurring. In almost all cases, such teams included the CDF.

Representing the CDF was the office of the Director of War and Operations. Due to his limited literacy and discomfort in conversing in English, Fofana himself did not attend the meetings in person, but rather sent one of his senior, more formally educated, colleagues (David Kobe). However, whenever CDF/community problems were reported at the meeting, Fofana always went in person to whichever part of the region the problem was occurring to address and resolve the problem. Within the first few weeks, he visited a number of schools in Bo District to resolve CDF related problems, and he conducted similar visits together with the Chairman of the Drivers Union to sort out problems at checkpoints. In addition, he personally called a meeting for all CDF commanders in the South to educate them on the outcomes and commitments of the workshop, and to make it clear that they should ensure these were all followed by both themselves and their Kamajors. He also had all the commitments produced in written form and distributed to all battalions. Indeed, over the coming months, Fofana moved around the southern region tirelessly, educating the CDF on what constituted acceptable behaviour, emphasizing their role as being that of protecting the

¹ The seven points were as follows: (1) Every member of the CDF must respect Chieftaindom and government authorities, including the police. (2) Every member of the CDF is subject to the laws of Sierra Leone, not just of the Society. (3) The initiation of child combatants into the CDF must cease immediately. (4) No initiated children should be considered as fighters or involved in security related matters. (5) Children already initiated must accept the authority of their parents and teachers above that of the Society. (6) Initiators get their powers free from God, and must therefore pass them on freely. Therefore no fees should be charged for initiation. (7) Vehicle commandeering is prohibited (unless in a life and death combat situation - after which they should be returned).

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civilian populace, and discussing with them the implications of the Lome Peace Agreement. In fact, his personal commitment and contribution was such that by September 1999, the RRC was able to state in its August/September Situation Report to central government that:

Although minor problems have continued to occur between CDF and community members during this reporting period, the CDF leadership has been extremely proactive in solving problems as they arise, and in trying to prevent them in the first place through engaging its membership in dialogue. Of note, the *Director of War and Operations CDF (SI)* has conducted a large number of sensitisation meetings with his forces throughout the region, sensitising them on the practical realities of the DDR process, and discussing reintegration and reconciliation issues. (My italics)

Fofana continued to promote responsible behaviour and reconciliation amongst the CDF throughout the rest of the year and through the first half of 2000. He participated in district level CDF/Civil Society workshops in each district headquarter town in the south, at which district level reconciliation committees were formed. In addition, he supported a series of 30 European Commission funded civic education/reconciliation workshops for all CDF commanders and initiators in the south, speaking personally at many of these events.

Mid-2000–2001

When in late-April 2000 the RUF resumed hostilities and again threatened Freetown and other government held areas, the CDF remobilised to face this threat. Check-points inevitably sprung up again all over the Southern Region, and many of those who had disarmed were armed again. Given the immediacy of the RUF threat, this remobilisation of the CDF had the full support of civil society in the South.

However, within a short period after remobilisation, CDF behaviour rapidly deteriorated, and Kamajors reverted to committing crimes against the general public and peaceful citizens. On the roads of the region, drivers and traders were once again subjected to harassment and intimidation. Commandeering of vehicles became rampant, and recovery of such vehicles was often blocked by the apparent involvement of senior members of the CDF. Many of the commandeered trucks were subsequently used by CDF commanders and initiators in Bo North to trade at great profit in fuel and food with the RUF to their north. Raids on towns and villages in the region and looting of properties by the CDF occurred, and shooting incidents (CDF/CDF or CDF/Community) became increasingly common. Armed robbery in Bo Township reached an all time high, with the public convinced of CDF involvement. Arbitrary arrests, beatings and detention of civilians, including chieftom authorities, by the CDF have also led to increased public bitterness, condemnation and fear.

In parallel to this, the CDF initiators resumed their initiation activities, supposedly to 'top up' the power of Kamajors ready for the war front. However, because of a lack of reference to chiefs and authorities to assist in screening procedures, many new members were also initiated, including children, criminals and law breakers. In addition, the charging of a fee for these 'topping up' ceremonies resulted in ever increasing extortion of the public at check points by the CDF to raise money to meet these initiation payments. For the initiators themselves, of course, this charging netted them millions of Leones worth of personal revenue.

Throughout this period, as before, Moinina Fofana worked with the RRC try to curb these unacceptable CDF practices which were becoming rampant. However, the weakness of the CDF command structure was shown clearly during this period, and Fofana's influence proved

incapable of curbing these excesses. Eventually, having failed to get any meaningful action out of the CDF hierarchy, a full report was written on the situation by the RRC in August to the CDF National Coordinating Committee (which included the Vice President and Deputy Defence Minister), copied to the President and donor community.

Following the August report, corrective action begun in earnest. The High Priest initiator, Kondowa, was forced to publicly abolish his self styled and highly disruptive Banya Moli movement, and state that all Kamajors are of equal power. A meeting was held in Bumpe Chiefdom, Bo District, for all CDF initiators which resulted in a reduction of their numbers, a revised code of behaviour for initiators, and a pledge that Kamajors should henceforth give their loyalty to the CDF movement, not individual initiators. The number of CDF check-points in the Southern Region were reduced, leading to a reduction in the number of complaints related to check point behaviour. Commandeering of vehicles by CDF ceased completely, and the trading of food and fuel to the RUF through Bo North reduced significantly. In addition, joint night time patrols in Bo Township commenced, between the CDF, Police and UNAMSIL, resulting in a reduction in the crime rate, and the CDF stopped handling criminal cases, and handed over all cases to the Police for investigation.

One might well ask what was the role and level of involvement and sanction of Moinina Fofana, as Director of War and Operations, during this four month period of CDF misbehaviour and excess. A cynic might claim that the only reason he was not able to effectively calm the situation was because he must have been benefiting from it, and therefore did not want to calm it. However, I would argue very strongly against this viewpoint. I met with Fofana on a very regular basis throughout this period, and it was quite clear to me that he was genuinely extremely upset by the deterioration of CDF behaviour and apparent lack of action from the National Coordinating Committee. As far as he was concerned, the role of the CDF was very clear – to protect the civilian population and restore peace – and each new round of criminal behaviour made him visibly more and more depressed. Indeed, when he found that he personally could not control what was happening, I would argue that he showed great moral courage in his decision to help compile the August situation report, knowing that his involvement in exposing the ongoing excesses of the CDF would get him personally into serious trouble with his superiors (and in fact this happened when his furious superiors met in Bo with the RRC after the distribution of the report, and he was publicly admonished for involving himself in the work of the RRC). But as usual, he did not flinch from doing what he considered to be the right thing, and had no regrets for standing up in this way, even after his public reprimand.

Summary

In summary, therefore, I can state clearly that throughout my period of involvement with Moinina Fofana, he proved himself to be a committed advocate of peaceful coexistence between the CDF and civilian community, and very proactive in promoting reconciliation between all factions in Sierra Leone. This effort to bring stability and peace was not conducted merely through speeches, but through day to day practical actions and interventions, and through travelling widely to resolve problems as they occurred and to prevent future problems from arising. His honesty in accepting CDF responsibility for many of the problems occurring in the community, and his determination to address these problems whenever and wherever he could, deserve particular recognition. He repeatedly proved himself committed to taking the course of action which he believed was morally correct, even when this went against the immediate interests of the CDF as a movement, or against his

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immediate interests as a senior member of the CDF. However, it was this honesty and this commitment that made Moinina Fofana stand out in the southern region, and which gained, and still retains, my respect and admiration.

Simon Arthy

Southern Region Coordinator, EC/SLRRP (July 1998-February 2001)

Programme Manager, EC/SLRRP (April 2001 - July 2002)

Recovery and Reintegration Adviser, NaCSA (August 2002 - August 2003)

Dated: 10 September 2003

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ANNEX B

Statement of Frances Fortune

2007

**SPECIAL COURT FOR SIERRA LEONE
APPEALS CHAMBER**

Before: Justice Ayoola, President
Justice A. Raja N. Fernando
Justice Renate Winter
Justice Geoffrey Robertson
Justice Gelaga King

Registrar: Robin Vincent

Date: 12 November 2004

THE PROSECUTOR

-Against-

SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA

CASE NO. SCSL-2004-14-T

AFFIRMATION OF FRANCES FORTUNE

Office of the Prosecutor:

Luc Côté
James C. Johnson
Raimund Sauter

**Court Appointed Counsel
for Moinina Fofana:**

Michiel Pestman
Arrow J. Bockarie
Victor Koppe

**Court Appointed Counsel
for Samuel Hinga Norman:**

Dr. Bu-Buakei Jabbi
Quincy Whitaker
Tim Owen, Q.C.

**Court Appointed Counsel
for Allieu Kondewa:**

Charles Margai
Yada Williams
Ansu Lansana

I, Frances Fortune of 13C off Garbar Lane, Juba Hill, Freetown, in the Western Area of the Republic of Sierra Leone do hereby make oath and say as follows:

1. I am the Regional Director of Search for Common Ground presently residing at the above address. I have lived and worked in Sierra Leone since 1985.
2. Search for Common Ground is an international non-governmental organisation which seeks to transform the manner in which the world deals with conflict. Using media as a tool for peace building, we have developed an independent multi-media studio called the Talking Drum Studio. We have small offices in Makeni and Bo, as well as one in Freetown at 44 Bathurst Street. We seek to link community issues and concerns to the national dialogue ensuring voices of everyone are consulted and considered. Working around four major thematic areas of corruption—quality education, governance and marginalized people—Search for Common Ground integrates media work with community outreach to ensure an engaged and informed populace.
3. I first met Mr. Moinina Fofana in 1998 when I was working for Conciliation Resources (CR), a small British non-governmental organisation.
4. I began working with the CDF in 1998 to assist them with the development of a methodology to address the increasingly problematic interface between the CDF and some communities. We sought to facilitating dialogue between the community elders, chiefs, and youth, and the CDF was wholly committed to this process. Following the signing of the Lomé Peace Agreement, we established 'Campaign for Peace' within the CDF. Its objective was to ensure the CDF was informed and prepared for the peace process. We worked mainly in the southern and eastern parts of the country, and I worked closely with Mr. Fofana for over two years. Funded by the European Union, we hosted reconciliation workshops in every regional headquarters and in selected district headquarters.
5. Mr. Fofana was a key member of the team, talking to CDF all over the south and east to convince them that the peace process was in their best interests. We travelled extensively together and spent many hours in each other's company as well as the company of other members of his office. A willing interlocutor, Mr. Fofana greatly assisted in bringing the CDF on board to the peace process through his active engagement and travel with us to many

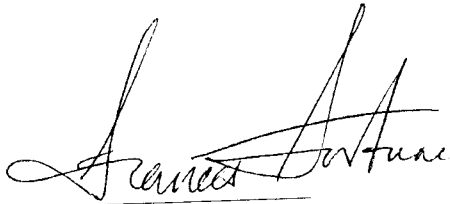
- communities, particularly in the south. Mr. Fofana was not paid for his services. In recognition of his efforts, he was dubbed by the CDF the 'Director of Peace'.
6. In June 2000, I accepted the work with Search for Common Ground and moved to Freetown from Bo. After this time, I did not see Mr. Fofana frequently; only a few times in Freetown and twice in Bo.
 7. Although the collaboration between the CR and the CDF began as an effort of the CDF Administrator in Bo—Mr. Kosseh Hindowa—we quickly found out that his office was not interested in problem-solving and did not actively support the work. We were put in touch with Mr. Fofana through Mr. I.F.M. Kanneh, another prominent CDF member, who was helping us with the community facilitation. This is why we reached out to Mr. Fofana.
 8. I found Mr. Fofana's office very willing to support the peace work that we were doing and prepared to actively engage without any payment. We called on him on many occasions to help our work and to develop a conceptual framework for action with his office once the Lomé Peace agreement was signed—this was the Campaign for Peace. He was an active member and gave his full support.
 9. With the support of locally-sourced European Union funds, two provincial workshops and then six district ones were held to talk to the localised and horizontal leadership of the CDF about the peace process. Reports for these workshops are with the European Union office in Bo. Also a number of other workshops in strategic areas were held which Mr. Fofana attended and supported often driving long miles in his own vehicle (with no pay and no fuel) to give a speech about peace.
 10. As part of a team, Mr. Fofana and I also negotiated a reconciliation agreement between two chiefdoms that had been actively fighting—Kagboro and Bumpeh in Moyamba district—over the course of a three day workshop. Subsequently, other members joined the Campaign for Peace, including an RUF member.
 11. Mr. Fofana's role in the reconstruction of the hearts and minds of the CDF to embrace peace is substantial. No other member of the CDF actively engaged at the community level to ensure that the membership had a clear understanding of the expectations integral to the

Lomé Peace Agreement. His contribution to the restoration of peace and democracy was significant and meaningful.

12. Mr. Fofana poses no threat to peace in any way whatsoever. He is a peace-loving man who believes in authority and the institution of the state. He will comply with the rules and obligations which are clearly explained to him.
13. He will not abscond, nor does he pose a threat to others if he is released. Mr. Fofana has a firm belief that he has done nothing wrong and has nothing to hide, therefore he expects that justice will be done in his case and he will eventually be acquitted of the charges against him. This is the reason he will not abscond. As previously stated he poses no threat to others as he is highly respectful of other people.
14. If Mr. Fofana is released on bail, I am willing to have him stay with me, either in my house in Freetown or in my family farm in Senehun, Kamajei, Moyamba district. I live in an extended family system with the family of my husband and our two children, amongst others. Therefore, there are always people in both houses where I live, despite the fact that I travel frequently. I undertake to report personally to the Court if Mr. Fofana breaches any bail conditions that may be imposed, such as an overnight curfew or an obligation to report to local authorities. In the event of my absence, I will ensure that other responsible members of my family take on this obligation.
15. I attended the scheduled hearing on Mr. Fofana's application for bail on 5 March 2004 in order to testify to the fact contained in this affidavit, as well as to give the Court the opportunity to put any questions to me they considered relevant. However, the hearing was postponed to 17 March 2004, on which date I was unfortunately out of the country. I very much regretted that I was unable to attend the postponed hearing and had hoped that this would not have had a negative impact on Mr. Fofana's application.
16. I am, in short, quite convinced that Mr. Fofana will neither abscond nor pose any threat to other persons.

I, Frances Fortune, affirm that the information contained herein is true to the best of my knowledge, information and belief. I understand that wilfully and knowingly making false statements in this declaration could result in prosecution before the Special Court for Sierra Leone for giving false testimony. I have not wilfully or knowingly made any false statements in this declaration.

Dated: Freetown, Sierra Leone
11 November 2004

A handwritten signature in cursive script, appearing to read 'Frances Fortune', written over a horizontal line.

Frances Fortune

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ANNEX C

Statement of Rashid Sandi

21893

Witness Information:

Last Name: Sandi

First Name: Rashid

Middle Name: Abdul

Sex: Male

Nickname and/or Alias: -I-Rash

Date and place of Birth: 3 November 1960/Tikonko

Address: Talking Drum Studio - Makeni

Telephone Number(s): 076-645593

Home:

Work:

Address: 35 Missirie Street-Makeni

Town: Makeni

Chiefdom: Bombali Seborá

District: Bombali

Language(s) spoken: Mende, English and Krio

Language(s) written: English

Language(s) Used in Interview: English

Current Occupation: Journalist

Date/Place of Interview: 10 February 2004 (Defence Office/SCSL)

Interviewer(s): Prince Taylor and Marieke van Eik

Others present:

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**STATEMENT TAKEN FROM RASHID ABDUL SANDI ON TUESDAY 10TH
FEBRUARY 2004 AT THE DEFENCE OFFICE OF THE SPECIAL COURT SIERRA
LEONE**

Name: Rashid Abdul Sandi
Age: Adult
Sex: Male
Occupation: NGO worker
Contact Address 35 Missirie Street Makeni
Mobile: 076 645 593

DATE: 10th Feb, 2004

STATEMENT

I am Rashid Abdul Sandi born in Tilanko on 3 November 1960. I was a commander in the Revolutionary United Front (RUF). In the RUF I was given a Military Rank by our leader Foday Sankoh as captain due to my disciplinary performance in 1996, October. After which I was taken to Kailahun with the hope of going to Abijan to attend the Abijan peace meeting. However, it was unfortunate that we cannot make the trip because the leader of transportation SYB Rogers (LATE) informed us that the plane had space for only seven people instead of nine. After the arrest of Foday Sankoh in Nigeria in 1996 Sam Bockarie aka Mosquito was given the RUF leadership and he promoted me to the rank of Major. I joined the RUF on 8 May 1991 at Potory by then I was a teacher at the Barri Secondary School in Potoru when the RUF attacked the village and captured me. At that time I have no option but to join the RUF.

In May 1999 I was part of the RUF delegation that went to Lomé to sign the Peace agreement. I was representing the RUF in the Humanitarian Committee.

I came to know Moinina Fofana in Bo the 9th of May 2000. At that time I was a Lieutenant Colonel in the RUF. My arrest was due to the May episode when there was a shoot out in Freetown after a civilian demonstration against the arrest of UNAMSIL officers by the RUF. I was in Bo by then. It was at night on that day when the boys of one CDF Commander by the name of Joe Nuni called at my house and arrested my family and me. That very night we were taken to Moinina Fofana's house at Chief Boima's compound along New Gerihun Road. My family and I were presented to Moinina and he immediately cautioned the people who arrested me not to hurt us and we should be kept in custody until the following morning. We were taken to the CDF office of Mr. Kosseh Hindowa, Joseph Koroma and others. We were kept in a room which was regarded as the cell. The five of us spent the night in the cell: my wife, uncle of my wife, my two children and myself. My wife's uncle was released after the intervention and approval of Moinina the following day. My wife and children were released after 10 days; that was around 19 May 2000.

Moinina was a very nice man. The morning after my arrest he called at the office and asked that I should come out of the cell with my family for questioning. After interrogating me, he gave me Le5000/00(five thousand Leones), for me and my family, to buy food and eat. He also ordered the CDF guards that I should be allowed to receive food from my family and relatives. He also asked the guards to allow me to get my bath and also to assist me with water for bathing.

Other members of the RUF who were arrested were taken to another cell in Koribondo but I understood Moinina was also making a follow-up to make sure that they

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were also properly taken care of. From the 10th, only four of us were in the cell at 88 Mahin Boima Road. On the 19th, I was left alone in the cell, though my wife and children paid me visits.

In August 2000, on the request of the government I was handed over to the police. It was at the police station that I met my other RUF comrades who were arrested and taken to Koribondo. Mr Karrow Kamara was the Officer commanding crime at the police station by then. I also spent two weeks in the police cell, but was released by the police after series of interrogations.

Just after my release in September 2000, Moinina, Khobe and IFM Kanneh contacted me while they were on their membership drive for their organisation campaign for peace. I was asked by Moinina, the chairman of this organisation called Campaign for Peace, to join the organisation. We worked together from September 2000 to March 2001 when I was recommended by the Campaign for Peace to Mrs. Frances Fortune, who later employed me in the organisation, Search for Common Ground. Through out my period of work with Moinina I assessed him as a man who is actually determined to seek perfect peace and tranquillity in this country.

While I was behind the line, the name Moinina was associated with war, because he was always made mentioned of by the BBC reporter, late Prince Brima, as the Director of War. Moinina's name was almost changed to Director of Peace.

This is all I know about Moinina and I am willing to testify on his behalf.

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Witness Information:

Last Name: SAUNDI

First Name: RASHID

Middle Name: ABU L

Sex: MALE

Nickname and/or Alias: - I - RASH

Date and place of Birth: 3rd NOVEMBER 1960 / TIKONKO

Address: TALKING DRUM STUDIO - MAKENI

Telephone Number(s): 076-645593.

Home:

Work:

Address: 35 MISSIRE STREET - MAKENI

Town: MAKENI

Chiefdom: BOMBALI SEBOKA

District: BOMBALI

Language(s) spoken: MENDĒ, ENGLISH AND KRIO

Language(s) written: ENGLISH

Language(s) Used in Interview: ENGLISH

Current Occupation: - JOURNALIST

Date/Place of Interview: 10th FEB. 2024 (DEFENCE OFFICE / SCSL)

Interviewer(s): PRINCE TAYLOR AND ~~MARIEKE VANEIK~~

Others present:

MARIEKE VANEIK

STATEMENT TAKEN FROM RASHID ABDUL SANDI ON 21/8/97

TUESDAY 10th FEBRUARY 2004. AT THE DEFENCE OFFICE

OF THE SPECIAL COURT SIERRA LEONE.

NAME RASHID ABDUL SANDI.

AGE Adult.

SEX Male

OCCUPATION NGO Worker.

CONTACT ADDRESS 35 Mission Street Makoni
mobile 076-645-593

DATE 10th Feb, 2004

STATEMENT

I am Rashid Abdul Sandy born in Titenko on 3rd November 1960. I was a Commander in the Revolutionary United Front (RUF). In the RUF I was given a Military Rank in the RUF by our leader Foday Sankoh as Captain due to my disciplinary performance in 1996. October. After which I was taken to Kailahun to with the hope of going to Abijan to ~~see~~ attend the Abijan Peace meeting. However, it was unfortunate that we cannot make the trip because the Leader of transportation SYB Rogers (LAF) informed us that the plane have space for only seven people instead of nine. After the ~~Arrest~~ arrest of Foday Sankoh in Nigeria in 1996 Sambockanic aka Mosquito was given the RUF Leadership and he promoted me to the rank of Major. I joined the RUF on 8th May 1991 at Potory by then I was a teacher at the Barri Secondary School in Potory when the RUF attacked the village and captured me. At that time I have no option but to join the RUF.

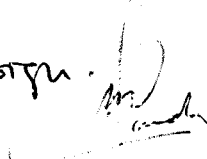
In 1999 May I was part of the RUF delegation that went to Lome to sign the Peace agreement. I was representing the RUF Humanitarian Committee.

Prepared by,

Pounce-L. Kye.
10/2/04

witnessed by,

Mireka Vonick.
Mareike van Eik

Sign. 
14/2/04.


I came to know Moinena Fofana ^{2/2/2000} ~~in 2000~~

On the 9th May 2000, At that time I was a Lieutenant Colonel in the RUF. My arrest was due to the may episode when there was a shoot out in Freetown after a ^{Civilian} demonstration against the arrest of UNAMSIL officers by the RUF. I was in Bo by then. It was at night on that day when one C.D.F Commander by the name of Joe Nunn^{boy?} called at my house and arrested my family and I. That very night we were taken to Moinena Fofana's house at chief Boima's Compound along New Geriker Road. My family and I were presented to Moinena and he immediately cautioned the people who arrested me not to hurt us and we should be kept in custody until the following morning. We were taken to the C.D.F office at 88 Malin Boima Road, that is the office of Mr. Kosseli Hindower, Joseph Korona and others. We were kept in a room which was regarded as the cell. The five of us spent the night in the cell. My wife, uncle of my wife, ~~and~~ my two children and my self. My wife uncle was released after the intervention and approval of Moinena the following day. My wife and children were released after ~~10~~ days that was around the 19th May 2000.

Moinena was a very nice man. The morning after my arrest he called at the office and asked that I should come out of the cell with my family for questioning. After interrogating me, he gave me five thousand Leones for me and my family to buy food and eat. He also ordered the C.D.F. ~~guards~~ guards that I should be allowed to receive food from my family and relatives. He also asked the guards to be allowing me get my ~~water~~ bath and also to assist me with ~~water~~ for bathing.

Prepared by
Prince-L. Tyh.

witnessed by
A. K. M. M. M. M. M.


17/5/04.

21899

~~##~~ Other members of the RuF who were arrested were taken to another cell in Keribondo but I understood Moinina was also making a follow up to make sure that they were also properly taken care of. From the 10th July four of us were in the cell at 88 Malin Boina Road. On the 19th I was left alone in the cell though by wife and children paid me visits. ~~In~~

In August 2000, ~~##~~ on the request of the government ~~##~~ I was handed over to the police. It was at the police station I met my other RuF comrades who were arrested and taken to Keribondo. Mr. Karrou Kamara was the officer Commanding crime at the police station by then. He also spent two weeks in the police cell but were later released by the police by the ~~force~~ after series of interrogations.

Just after my release in September 2000 Moinina, Khobe and I.F.M. Kannel contacted me while they were on their membership drive. I was asked by Moinina the Chairman ~~##~~ of the organisation which was ~~##~~ called Campaign for Peace. He worked together from September 2000 to March 2001 when I was recommended by the Campaign for Peace to Md. Frances Fortune, who later employed me in the search for common ground. Through out my period of work with Moinina I assessed him as a man who is actually determined to see perfect peace and tranquility in this country. While I was behind the line ~~##~~ the name Moinina was associated with was because he was always made mentioned of by the BBC reporter the late Prince Boima as the director of war.

Princ-L. Y. W.
10/2/04.

Marulle van Et
#E6

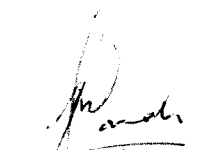
10/2/04

Moinana's name was almost ~~all~~ ^{2/900} changed
to director of peace.

This is all I know about Moinana and

I am willing to testify on his behalf.

Prepared by
J. L. 10/2/04.
Alice L. Tyler.


10/2/04.

ANNEX D

Statement of Foday Seisay

21902



SPECIAL COURT FOR SIERRA LEONE
JOMU KENYATTA ROAD • FREETOWN • SIERRA LEONE

DEFENCE WITNESS STATEMENT
on behalf of
THE SECOND ACCUSED MOININA FOFANA

Name	Foday Mohammed Duramani Seisay
Address	20 Reinalle, Bonn, Germany
Occupation	Ambassador of the Republic of Sierra Leone
Date of Birth	26 October 1945
Place of Birth	Taigbe, Bendu-Sha Chiefdom, Bonthe District
Father's Name	Duramani Seisay
Mother's Name	Fatmata née Parson
Tribal Affiliation	Mandingo
Languages Spoken	Mandingo, Mende, Krio, English

I am the current ambassador of the Republic of Sierra Leone to Austria, Germany, Italy, and Switzerland. I received my appointment from H.E. President Ahmad Tejan Kabbah and assumed my official duties on 3 May 2005. I am a resident of Bonn, Germany.

At the time of the AFRC coup of 25 May 1997, I was the Deputy Minister of Health and Sanitation in the SLPP government in Freetown. Sometime in July 1997, I fled to Conakry, Guinea where I remained in exile until shortly after the restoration of President Kabbah. During my stay in Conakry, I had nothing to do with the activities of the Civil Defence Forces (the "CDF"). My exile was a personal one, and I did not continue my official duties.

Around May or June 1998, President Kabbah appointed me as Minister of State for the Southern Region, with a mandate to coordinate the activities of all government ministries and departments in the Southern Region. I moved to Bo with my family, where I was given an official office with a staff of more than fifteen civil servants.

Although the fighting had largely ended when I arrived in Bo, there was no effective police force in place. ECOMOG had, by then, established a battalion in the city and both ECOMOG and Kamajors were seen patrolling the streets, armed and dressed in their respective uniforms. Up to that point, although I had heard of the CDF and the Kamajors, I did not have any personal exposure to their activities or knowledge of their structures and operations. Essentially, what I met in Bo was a tenuous security situation, with ECOMOG operating as the *de facto* police force and various groups of Kamajors operating without apparent leadership.

In order to create some sense of governance and semblance of security in the region, I decided to assemble a core of local figures to assist me. My first official interaction with the CDF came shortly after my arrival in Bo in June 1998. I invited CDF District Administrator Kossseh Hindowa to my hotel, introduced myself, and expressed my interest in working together with the CDF for peace and security in the area. As the top CDF official in Bo at the time, I was eager to gain his support and cooperation. Some of Mr Hindowa's colleagues were present at the meeting. Moinna Fofana was not.

Sometime shortly thereafter, I arranged a similar meeting with Mr Hindowa, some of his staff, and ECOMOG Brigade Commander Colonel Jack Eketibossi at the brigade headquarters situated on Joseph Mattar's compound in central Bo. It was decided that, although there was little fighting in the south, regular security patrols were necessary. As ECOMOG was overextended in terms of manpower and had been given a limited mandate, Mr Hindowa agreed to devote some Kamajors to the effort. Again, Mr Fofana was not present at this meeting, nor was his name mentioned. I had approached the CDF District Administrator, and not the CDF Director of War, because it was well-known that Mr Hindowa was in charge of CDF affairs in Bo, even though Mr Fofana was resident in the town at that time. Mr Hindowa occupied a large, staffed office at 88 Mahei Boima Road, while the official location and activities of Mr Fofana were unknown to me, if they existed at all. In fact, Colonel Eketibossi and I would later come to wonder why a man with such a title

appeared to be so uninvolved in CDF affairs. We both had heard of the position, but neither one of us had any official dealings with him in 1998 or any sense of his official duties. According to my own assessment, a lot of the positions within the CDF were just big names.

It was only some time in 1999 that I met Mr Fofana personally, when he came to plead with me on behalf of some Kamajors who had been arrested by ECOMOG regarding an incident in Pujehun District. I learnt that Mr Fofana had some clout among Kamajors from Bonthe District, his home district, from my friend and former SLPP colleague Charles Moiwo, to whom I often turned when I encountered problems with Kamajors in Bo. I also learned that Mr Fofana was an illiterate man with no formal education.

Sometime later in 1999, possibly March, Mr Fofana came to me and announced that he, Augustine Ngaugia, and some others from the area had managed—through their personal connections—to secure office space along Mahei Boima Road in the Shenge section of Bo. Mr Fofana told me that they intended to use the office to apply for peace-building grants from certain NGOs like Conciliation Resources and government bodies like the European Commission. By this time, Mr Fofana had taken me as a kind of elder brother, as we hailed from the same district, and I provided a desk and chair for the office—which I later heard referred to as the Peace Office—as well as encouragement for their activities. At one point, a gentleman called Simon Arthy, who worked for the European Commission, later inquired as to Mr Fofana's personality in connection with a grant, and I described him as the very docile and very cooperative individual I believe him to be.

Based on my own personal and professional observations, Mr Fofana was not capable of effectively directing a war. To me, he was a sort of personal assistant to Mr Norman, who took care of chores unrelated to war or fighting. Although I reported directly to the SLPP government in Freetown and had no formal relationship with Mr Fofana or the CDF administration in Bo, I know from personal experience with initiators like Kamoh Lahai Bangura and Mama Munda Fortune that the bonds of chiefdom and tribe were greater than any authority that may have been associated with official titles. I know, for example, that Mr Fofana considered me to be his superior, not because I was a government minister, but because I was his senior from Bonthe District.

AFFIRMATION

I hereby affirm that the contents of this statement have been read to me in a language that I understand and that the information contained herein is true and correct to the best of my present knowledge and was given freely by me to the legal representatives of Moinina Fofana without the expectation of any material or personal gain. I understand that this statement and some or all of the information contained herein may be used in criminal proceedings before the Special Court for Sierra Leone and may become part of the public record of that tribunal.

Done and witnessed at Bonn, Germany on 29 August 2006.

FOFINA FOFANA
Name

Fofina Fofana
Signature

MARY JOSEPHINE BALLADA
Witness

[Signature]
Signature



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

DEFENCE WITNESS STATEMENT
on behalf of
THE SECOND ACCUSED MOININA FOFANA

Name:	Foday Mohammed Duramani Seisay
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SCSL-2004-14-T

21906
SCSL-04-14-T
SCSL-ERN-168
10-10-2006

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Sometime shortly thereafter, I arranged a similar meeting with Mr Hindowa, some of his staff, and ECOMOG Brigade Commander Colonel Jack Eketibossi at the brigade headquarters situated on Joseph Mattar's compound in central Bo. It was decided that, although there was little fighting in the south, regular security patrols were necessary. As ECOMOG was overextended in terms of manpower and had been given a limited mandate, Mr Hindowa agreed to devote some Kamajors to the effort. [REDACTED]

[REDACTED] I had approached the CDF District Administrator, and not the CDF Director of War, because it was well-known that Mr Hindowa was in charge of CDF affairs in Bo, even though Mr Fofana was resident in the town at that time. Mr Hindowa occupied a large, staffed office at 88 Mahei Boima Road, [REDACTED]

[REDACTED]

It was only some time in 1999 that I met Mr Fofana personally, when he came to plead with me on behalf of some Kamajors who had been arrested by ECOMOG regarding an incident in Pujehun District. I learnt that Mr Fofana had some clout among Kamajors from Bonthe District, his home district, from my friend and former SLPP colleague Charles Moiwo, to whom I often turned when I encountered problems with Kamajors in Bo. I also learned that Mr Fofana was an illiterate man with no formal education.

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[REDACTED]

[REDACTED]

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AFFIRMATION

I hereby affirm that the contents of this statement have been read to me in a language that I understand and that the information contained herein is true and correct to the best of my present knowledge and was given freely by me to the legal representatives of Moinina Fofana without the expectation of any material or personal gain. I understand that this statement and some or all of the information contained herein may be used in criminal proceedings before the Special Court for Sierra Leone and may become part of the public record of that tribunal.

Done and witnessed at Bonn, Germany on 29 August 2006.

F. O. D. J. M. A. S. E. N. I. N. Y.
Name

[Handwritten Signature]
Signature

MARY JOSEPHINE BALLADA
Witness

[Handwritten Signature]
Signature

ANNEX E

Statement of Shekou Tejan-Sankoh

21911

**Statement of Shekou Tejan-Sankoh
on behalf of Moinina Fofana**

I am currently representing Moymaba Central Constituency as a Member of Parliament in the Government of Sierra Leone. I was born on 23 June 1947 in Kpatema, Kaiyanba Chiefdom, Moyamba District.

I became a member of the CDF in 1997, around April. My role was to coordinate CDF affairs in Moyamba District related to the provision of food and logistics for the commanders on the ground. I went to Guinea in July 1997 and remained there until late-February 1998 when I returned to Moyamba.

I know Moinia Fofana very well. I first met him in August 1997 in Moyamba. At times he would visit Moyamba District if there was a problem with the Kamajors there. Part of his role as Director of War was to mediate disputes, and he would sort out differences between feuding CDF parties. For example, at one point the Kamajors of Bumpeh and Kagboro Chiefdoms were at each other necks so he was forced to come and relieve the tension.

Occasionally we would have workshops in Moyamba District with organisations like the European Union—Moinia and I brought them in to achieve some amount of peace.

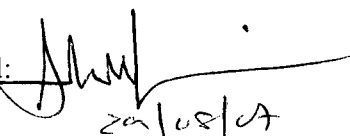
Based on my dealings with Moinina, I consider him to be an individual of good moral character, committed to the defence of his country and the cause of peace.



Shekou Tejan-Sankoh
39 Sanders Street
Freetown, Sierra Leone

Dated: 29 August 2007

Witnessed:



20/08/07

Arben Lanzari

21912

ANNEX F

Memorandum from Robin Paul

21913



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)
UN Intermission 178 7000 or 178 (+Ext)
FAX: +232 22 297001 or UN Intermission: 178 7001

INTEROFFICE MEMORANDUM

To: SCSL Defence- Fofana/SCSL
From: Robin Paul OIC Detention Centre
Through:
Date: 30 August 2007
Subject: Request from SCSL Defence- FOFANA

As per your e-mail request dated 28/08/07 to briefly outline **MONININA FOFANA'S** behaviour while in the SCSL Detention Centre.

SUBJECT: MOININA FOFANA

Date of birth: 1950
Date of Admission to Centre:10, August 2003.

INSTITUTIONAL PROFILE:

Institutional Charges:none to current date
Reported Incidents of disruptive behaviour:none to current date
Visitors.....regular and include approved
Family
Friends
SCSL Defence Team
Involvement in Detention offered School Programs.....English / Yes
Computer / Yes

BEHAVIOURL OVERVIEW

During Mr. FOFANA detention at SCSL his over all behaviour has been very good.

Reports from both National and International Detention staff indicated that during their interactions with Mr. FOFANA both professional and personal he has conducted himself in an appropriate and respectful manner.

Mr FOFANA has always used proper channels when placing formal or informal requests within the Detention Centre. It should be noted that this is in light of the challenges and frustrations he must face from not only being detained but also include the cultural diversity of Detention staff and the language barriers he has had to deal with on a daily basis.

Detention staff reported that when Mr. FOFANA first arrived he had very little understanding of the English language and that his first language was Mende. As indicated Mr. FOFANA is currently taking English lessons and in the most recent conversation I had with Mr. FOFANA in English he was quite able to articulate himself in requesting that the lessons be increased from two times per week to three. This indicated to me Mr. FOFANA has a willingness and commitment to learn.

Mr. FOFANA more so keeps to him self but does interact with other detainees and there have been no reports of conflicts that were not handled diplomatically. Staffs have indicated to me that when Mr. FOFANA has an opinion on some issue that may arise with other detainees Mr. FOFANA has no problem voicing his views and handles the situation with poise, understanding and tact and has never had been draw into Detention Politics.

Mr. FOFANA'S close associates are Mr. KONDEWA and the late Mr. NORMAN. I believe this is due to them all sharing a common cultural background, language and political experience. It has been noted that Mr. KONDEWA was affected by the death of Mr. NORMAN and appeared to grieve at the loss. Mr. FOFANA has on many occasions assisted Mr. KONDEWA deal with various issues that have arisen in Detention.

As indicated Mr. FOFANA receives a number of visitors on a regular basis. This includes regular visits from family members. What staff has observed during these visits is that Mr. FOFANA appears to be very committed to his families and friend's physical and mental well being. Mr. FOFANA always appears upbeat during visits, laughing, joking and affectionate. He always ensures the visitors have food or other items to share with him.

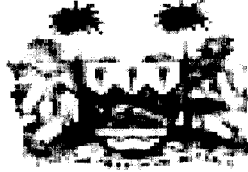
To date Mr. FOFANA'S display of a calm demeanour and composure and his successful ability to adapt has been a positive example to those currently detained at the Special Court Detention Centre.

21915

ANNEX G

Letter from the Office of the President

21916



SIERRA LEONE GOVERNMENT

Office of the President

24th April 2001

Dear Sir/.

NATIONAL HONOURS AND AWARDS 2001

I wish to inform you that it has pleased His Excellency the President to confer on you a National Award at a ceremony at State House, Tower Hill at 4 p.m. on the 27th of April 2001.

Your Award and Citation are as follows:

“The Nyagua Medallion

Moinina Fofanah: in recognition of his Bravery, Gallantry, Courage and Dedication to the cause of Democracy.”

I should be grateful if you would attend a rehearsal at State House at 4 p.m. on Wednesday 25th April or Thursday, 26th April 2001, (whichever is convenient). On the 27th April 2001, you are kindly requested to arrive at State House at 3.15 p.m., at the latest, to enable us to sort out final arrangements.

Congratulations on your achievement and your contribution to the national development of our country.

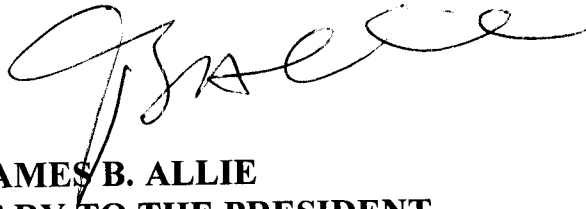
21917

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Please let me know by telephone Nos. 234003 or 231056 or by letter whether you accept the President's offer.

I count on your cooperation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Allie', written in a cursive style.

JAMES B. ALLIE
SECRETARY TO THE PRESIDENT

Mr. Moinina Fofanah
Freetown.