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SCSL-04-14-1
(21997 - 22005)

THE SPECIAL COURT FOR SIERRA LEONE

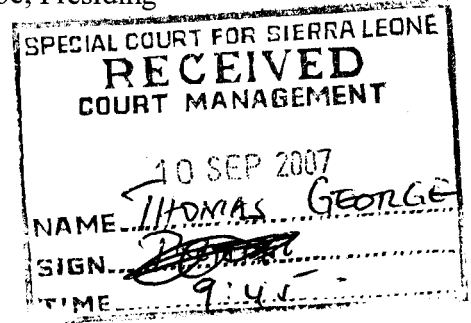
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In Trial Chamber I

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

Registrar: Herman Von Hebel

Date: 10 September 2007



THE PROSECUTOR

-v-

MOININA FOFANA and ALLIEU KONDEWA

SCSL-04-14-T

PUBLIC

**REQUEST FOR LEAVE TO SUPPLEMENT
THE FOFANA SENTENCING BRIEF**

Office of the Prosecutor:

Stephen Rapp
Christopher Staker
James Johnson
Joseph Kamara
Anne Althaus

Counsel for Fofana:

Victor Koppe
Michiel Pestman
Arrow Bockarie
Steven Powles

Counsel for Kondewa:

Charles Margai
Ansu Lansana
Yada Williams
Susan Wright

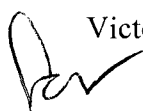
SUBMISSIONS

1. Counsel for Moinina Fofana (the “Defence”) hereby requests leave of the Trial Chamber to supplement the Fofana Sentencing Brief.¹
2. The Brief is currently supported by, *inter alia*, the unsigned statement of Simon Arthy.² It was submitted in the Brief that Counsel would provide further explanation at the Sentencing Hearing regarding the taking of the statement with a view to explaining the absence of a signature.³ However, since filing the Brief, the Defence has made contact with Mr Arthy who is currently on assignment in Nepal. Mr Arthy has reviewed, signed, and dated his statement which is attached hereto.⁴ As stated in the Brief, the Defence submits that the statement is relevant for purposes of sentencing.⁵
3. The Defence has shown good cause for the late filing, and the other parties will suffer no prejudice by the admission of the statement at this juncture. Accordingly, the Defence respectfully submits that it is in the interests of justice for the Trial Chamber to consider the statement pursuant to Rule 100 of the Rules of Procedure and Evidence.

COUNSEL FOR MOININA FOFANA



Victor Koppe



¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-787, Fofana Sentencing Brief, 31 August 2007 (the “Brief”).

² See Brief, Annex A.

³ Brief, n. 123.

⁴ *N.B.* Mr Arthy has dated his statement 20 October 2003, the time he recalls having originally given it.

⁵ Brief, para. 20.

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ANNEX

**Statement of Simon Arthy
(including Covering Email)**

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"Simon Arthy"
<S-arth@dfid.gov.uk>
09/10/2007 08:25 AM

To "SCSL Defence-Fofana" <defence-fofana@un.org>
cc
bcc
Subject Statement of Simon Arthy re Moinina Fofana

<<20070910135938Statement of Simon Arthy0002.tif>>
Dear Andy,

Please find attached a scanned copy of my statement with signature and date (I've dated it to when I originally wrote it). Please confirm receipt.

I'll write separately to Moinina and forward to you, but for now just want to make sure you have this document straight away.

Best wishes,

Simon

Simon Arthy
Conflict Adviser
DFID Nepal
98510 38351

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<http://www.peapod.co.uk/cleanmail> 20070910135938Statement of Simon Arthy0002.tif

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 NCDDR), 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 Chiefdom 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 (SL)* 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

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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:

20 October 2003