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SCSL-11-01-T
(186 – 195)

186

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before:	Justice Teresa Doherty, Single Judge, Trial Chamber II
Registrar:	Binta Mansaray
Case No.:	SCSL-2011-01-T
Date:	12 July 2012

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
THE HAGUE
12 JUL 2012
NAME SAMUEL J. FORNAH
SIGN
TIME 9:00

PROSECUTOR

v.

Eric SENESSIE

SENTENCING JUDGEMENT

Office of the Prosecutor:
Brenda J. Hollis
James C. Johnson
Ruth Mary Hackler
James Pace

Office of Independent Counsel:
William L. Gardner

Defence Counsel:
Ansu B. Lansana

Office of the Principal Defender:
Claire Carlton-Hanciles

I, Justice Teresa Doherty, Single Judge of the Special Court for Sierra Leone ("Special Court");

SEISED of the sentencing recommendations of the Independent Counsel filed on 26 June 2012;[1]

NOTING the public Amicus Curiae Brief filed by the Office of the Prosecutor on the 25 June 2012;[2]

NOTING the Defence response to the Independent Counsel's sentencing recommendations filed on 2 July 2012;[3]

CONSIDERING the submissions of the Defendant Eric Koi Senessie made in alluctus on 4 July 2012;[4]

CONSIDERING the further oral submissions of Counsel for Eric Koi Senessie and Counsel on behalf of the Independent Counsel;[5]

COGNISANT of Articles 17 and 19 of the Statute of the Special Court for Sierra Leone ("The Statute"), and Rules 77 and 101 of the Rules of Procedure and Evidence ("The Rules");

HEREBY deliver my decision as follows:

SUBMISSIONS OF THE PARTIES

1. Eric Koi Senessie was convicted of eight counts of contempt of the Special Court by knowingly and wilfully interfering with the Special Court's administration of justice. These were: four counts of offering a bribe to four persons who had given evidence before this Court; and four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by attempting to otherwise interfere with persons who had given evidence before the Court. The Defendant and the victims all lived in the same Kailahun area. All of the victims had given evidence in the case of *The Prosecutor v. Taylor* in The Hague on various dates in 2008. I found, after a trial, that Eric Senessie was guilty of eight of the nine counts for which he was indicted.[6]
2. Independent Counsel has submitted that Senessie should be sentenced to a term of imprisonment of five to seven years and also to pay the maximum fine permitted by Rule 77

[1] 2011-01-1-T-017.
[2] 2011-01-1-T-016.
[3] 2011-01-1-T-019.
[4] *See* Transcript 5 July 2012.
[5] *See* Transcript 5 July 2012.
[6] *See* Transcript 21 June 2012.

of the Rules in the sum of 2 million Leones.[7] It is acknowledged by Independent Counsel and Defence Counsel that the fine provided by Rule 77 was increased from 2 million to 20 million Leones by resolution of a plenary of the judges in May 2012. It has been submitted, and I agree, that the amendment to Rule 77 was made after the dates when these offences occurred and cannot have a retrospective application.

3. In his sentencing recommendations, Independent Counsel annexes an article in which the history of contempt proceedings in the International Tribunals is examined and commented upon.[8] I am of the view that there is no doubt that this Tribunal has inherent jurisdiction to punish persons found guilty of contempt by, *inter alia*, attempting to bribe or otherwise interfering with witnesses in an attempt to have them recant their evidence.

4. In its comprehensive Amicus Brief, the Office of the Prosecutor reminds me of the duties under Article 19 of the Statute to have recourse to the practice regarding prison sentencing at the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.[9] No information or submission in relation to the national courts of Sierra Leone was made.

5. The Amicus Curiae submits that in cases of contempt a sentence must adequately serve the purposes of retribution and deterrence.[10] I accept that the Trial Chamber of the Special Court has stated that retribution and deterrence are the factors most in mind when sentencing for war crimes and crimes against humanity.[11] This has also been confirmed by the Appeals Chamber.[12] In the instant case, however, Senessie is not convicted of crimes against humanity, war crimes or crimes against international humanitarian law but of the crime of contempt. In these circumstances, I consider that rehabilitation is also a matter I am entitled to consider and do consider when sentencing in the instant case.

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[7] SCSL-11-01-T-017

[8] SCSL-11-01-T-017-Annex, Silvia D'Ascoli, *Sentencing Contempt of Court in International Criminal Justice: An Unforeseen Problem Concerning Sentencing and Penalties*, 5 J. INT'L CRIM. JUST. 735 (2007).

[9] SCSL-11-01-T-016, para. 3.

[10] SCSL-11-01-T-016, para. 7.

[11] The Prosecutor v. Charles Taylor, SCSL-03-01-T-1285, Sentencing Judgement, 30 May 2012, para. 13.

[12] The Prosecutor v. Alex Tamba Brima et al., SCSL-04-16-A-675, Judgement, 22 February 2008, para. 532.

6. In its Amicus Brief the Prosecutor further reminds me of the duty charged in Article 19 of the Statute and Rule 101 of the Rules to take into consideration the gravity of the offence, the circumstances of the contempt, and other aggravating and mitigating circumstances in imposing an adequate sentence but states that a Judge's discretion is not limited to considering these factors alone, and is given great discretion in assigning weight to any given factor in a particular case.[13]

7. Amicus Curiae also referred to sentences that have been imposed in other international criminal tribunals as well as the Special Court and submits that these Chambers have considered the gravity of the crime the most determinative factor in choosing a penalty to impose, as matters of contempt "strike at the very heart of the criminal justice system" and warrant "a significant term of imprisonment."[14] She points to the history of sentences imposed in contempt cases in the International Tribunals and notes that there are only two cases where non-custodial sentences were imposed but that these turned on their particular facts. She emphasises that the gravity of the offence, including the position of the contemnor, motive, and the continued and repeated nature of the offences were matters considered in assessing gravity. The brief also outlined the several aggravating and mitigating circumstances considered by other tribunals.[15]

8. Independent Counsel submits that the precedents outlined by the Amicus Curiae indicate that a starting sentence benchmark is approximately one year's imprisonment, but submits that the facts in virtually all of those cases were "far less egregious" than the facts of the instant case.[16]

9. Independent Counsel submits that the factors I am obliged to consider under Rule 101 of the Rules include any aggravating and mitigating circumstances, and that mitigating

[13] SCSL-11-01-T-016, para. 9.
[14] SCSL-11-01-T-016, paras. 11-12.
[15] S CSL-11-01-T-016, paras. 24-28.
[16] SCSL-11-01-T-017, para. 2.

circumstances include a "substantial cooperation with the Prosecution."[17] He submits that there are no mitigating circumstances whatsoever, but that there are three aggravating circumstances: 1) that the contempt arose from and is inextricably linked to the Charles Taylor case, which the convicting Trial Chamber found involved some of the most heinous and brutal crimes recorded in human history; 2) that Senessie perjured himself at trial and likely suborned the perjury of others; and 3) that he concealed the complete truth of the involvement of others in the offence. Independent Counsel submits that the Defendant did not act alone but worked with and on behalf of someone else, or more than one person.[18] Independent Counsel submits that notwithstanding that these aggravating circumstances warrant the maximum penalty, some degree of mercy and regard for the defendant's family warrant a reduction to five to seven years rather than the maximum.[19]

10. Defence Counsel submits that what amounts to an appropriate sentence will not necessarily be determined by the number of years imposed but by a reasoned approach that sets out the basis upon which the penalty is imposed. He submits that the Independent Counsel's recommendation of heavy punishment is too harsh.[20] Defence Counsel points to the variations between the Tribunals and sets out the following mitigating circumstances: 1) that the offences were "more inchoate than substantive in nature;" and 2) that although convicted of having offered a bribe, no amounts were stated and no bribes were paid. He also points to the Defendant's background and submits that the Defendant in no way could pay the money offered to the witnesses. In relation to the conviction for interfering with Prosecution witnesses, Defence Counsel notes that there were not any recantations of testimonies.[21] Defence Counsel also submits that the offences had "an element of entrapment" and points

[17] SCSL-11-01-T-017, para. 6.
[18] SCSL-11-01-T-017, paras. 7-9.
[19] SCSL-11-01-T-017, para. 11.
[20] SCSL-11-01-T-019, para. 5.
[21] SCSL-11-01-T-019, paras. 8-9.

in particular to the actions of TF1-585, who procured a mobile phone for the sole purpose of recording Senessie's voice.[22]

11. The Defence also submits that the Accused has been of good comportment throughout the trial, appeared when ordered to do so, has a good reputation in the Kailahun community, is a family man with two wives and eight children, is a farmer, a pastor of the Evangelical New Apostolic Church with approximately three hundred to four hundred members, and a chairman of the RUFP in the Kailahun District. Defence Counsel stresses Senessie's work as a peacemaker during the end of the war and his assistance to officers of the Special Court, both Prosecution and Defence, in finding witnesses in the past trials held by the Special Court.[23]

12. In alluctus, the Defendant spoke on his own behalf and stated that he had never thought to undermine the justice of the Court, referred to his assistance rendered to both Defence and Prosecution Counsel when they searched for witnesses, and acknowledged that he made a mistake. He said that he realised that he had been misled by others and was now the only one standing to pay the price for having taken action at the behest of another. He acknowledged that he was approached by Prince Taylor, who told him of "certain developments that took place in The Hague." However, he also restated that TF1-274 was the person who prepared the document to be sent to Prince Taylor. He said that he hid the truth because Taylor told him not to incriminate him (Taylor) and if there was a charge "they would acquit his case." He also stated that he was used. The Defendant again restated his positions as a family man, an evangelist, a member of the tribal authority in the Louwa chiefdom, and chairman of the national secondary school committee, and emphasised that he was sorry that the Prosecution would not concede any mitigation on his side.[24]

[22] SCSL-11-01-T-019, para. 10.
[23] SCSL-11-01-T-019, para. 11-15.
[24] *See* Transcript 5 July 2012.

13. Further oral submissions were made by Defence Counsel and by Counsel on behalf of the Independent Counsel. Mr. Lansana emphasised Senessie's own words that it was "better late than never" to make his statement and restated his submission concerning entrapment and the comparison of this case to the decisions of other International Tribunals. Mr. Lansana further emphasised Senessie's prior good behaviour and standing in the community and the effects a custodial sentence would have on his family.[25]

14. Mr. Herbst, on behalf of Independent Counsel, sought to distinguish entrapment in the instant case from the principles applied in other jurisdictions; rebutted the submissions that the crimes could not be considered inchoate because no bribe was actually given and no recantation was made; and acknowledged the hardship on Senessie's family but indicated that the submissions showed his family would have support within the community.[26]

DELIBERATIONS

15. I consider that one of the most distinguishing features of this case were the number of former witnesses who were approached by Senessie with a view to having them recant their evidence. I do not put any weight on Senessie's evidence and submission that the witnesses themselves made it known that they had testified in The Hague. As I have already noted in my judgement, whether a person publicises the fact that they gave evidence in a trial is, in no way, an invitation to others to seek to have them change their testimony.

16. I do not accept that deliberate entrapment was used to bring the Defendant before the Court. The first approaches, offers and persuasion to recant evidence had been made, particularly in the case of TF1-585, before TF1-585 recorded all that was said by the Defendant. I consider this is not entrapment; it is the collection of evidence after the offence had been instigated.

[25] *See* Transcript 5 July 2012.
[26] *See* Transcript 5 July 2012.

17. Likewise I do not accept that the offences were inchoate rather than substantive. Clearly bribes of money and possible relocation were offered. The fact that they were not paid and that the Defendant himself could not pay them does not detract from the fact that the elements of the offence were proved. The fact that each of the victims stood their ground and refused to recant does not mean that the crime is either inchoate or less serious.

18. I consider the aggravating factors in this case include the multiple victims who were approached. I have not been referred to any precedent involving this number of victims who were offered bribes and/or interfered with in order to persuade them to recant testimony. This shows a determination and planning on the part of the Defendant to achieve his aims. Further, his persistence in approaching each of the witnesses after being rebuffed also contributes to that image of persistence.

19. I accept that Senessie is a leader in his community but leadership in this case was abused. Leaders must lead by example, not by saying one thing and doing another. His duty was, as he now very properly acknowledges, to uphold the justice system and not to abuse his position to erode it. I consider serious the Defendant's accusations levied against four of the victims in which he accused them of plotting against him and his brothers during the war in a way that led to the death of two of his brothers. As I noted, this was not put to any of the witnesses, and I consider it a serious abuse of an accused's right to speak on his own behalf at trial. Likewise, his evidence that the five complainants colluded together in order to achieve their own ends, using him as a victim, was without foundation and was a very serious accusation.

20. I accept that Senessie has now realised the error of his ways and it is commendable that even at this late hour he has acknowledged his offences and shown sincere remorse. On his side I accept that he is a senior member of the community and a leader of the RUFP, in the church and as a committee member of the school board. These are all important and notable

positions. However, as I have already noted, they carry with them the responsibility not to abuse that position or to break the law.

21. I also accept that the fact that Senessie assisted the Prosecution and the Defence in their investigations and searches for witnesses in Kailahun area but that also has two sides. Senessie knew the witnesses who could or did give evidence and subsequently used that knowledge and experience to commit the crimes for which he is convicted.

22. I have not been informed that the Defendant has any prior convictions and he comes before this court as a first offender. He did not, however, cooperate with the Prosecution, and it is only now that he shows remorse and concedes his role in these crimes. I accept that remorse but obviously it would have benefited him even more if he had acknowledged his involvement at the beginning of this investigation and avoided a trial. I do not fully accept that family relationships between his family and TF1-585 are a factor to which I must give weight. Their extended family is a large one; it is not solely dependent on two individuals. I restate that the number of offences and the persistence of the Defendant are two of the most notable factors in this case and warrant sentences of imprisonment. I do not consider a non-custodial sentence and fine appropriate. However, I have allowed for the remorse that the Defendant has shown, in his own words, "better late than never." In relation to each of these counts I impose the following penalty:

COUNT 1: Two years imprisonment

COUNT 2: Two years imprisonment

COUNT 3: Two years imprisonment

COUNT 4: Two years imprisonment

COUNT 6: Two years imprisonment

COUNT 7: Two years imprisonment

COUNT 8: Two years imprisonment

COUNT 9: Two years imprisonment

Each term is to be served concurrently and the period spent in remand is to be deducted.

Rendered in Freetown, Sierra Leone on this 5th day of July 2012.

Justice Teresa Doherty

Single Judge, Trial Chamber II