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**RESIDUAL SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRESIDENT**

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(BRANCH OFFICE :) JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

Before: Justice Philip Nyamu Waki, President

Ag. Registrar: Ms. Binta Mansaray

Date: 04 June 2014

PROSECUTOR **Against** **ERIC KOI SENESSIE**

**PUBLIC
DECISION OF THE PRESIDENT ON APPLICATION FOR CONDITIONAL
EARLY RELEASE**

Office of the Prosecutor:
Ms. Brenda Hollis

Defence Office:
Ms. Claire Carlton-Hanciles

The Republic of Sierra Leone

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
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NAME	Frances Ngabli-Smet
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I, JUSTICE PHILIP NYAMU WAKI, PRESIDENT OF THE RESIDUAL SPECIAL COURT FOR SIERRA LEONE (“Residual Special Court”)

SEIZED OF an application by Mr. Eric Koi Senessie (“Senessie”) for Conditional Early Release dated 16 April 2014 as set out in Form A(1) of “Annex A” and Form B of “Annex B” of the Practice Direction on the Conditional Early Release of Persons convicted by the Special Court for Sierra Leone (“Application” and “Practice Direction” respectively);

RECALLING that pursuant to Rule 19 (C) of the Rules of Procedure and Evidence of the Residual Special Court for Sierra Leone (“ Rules”), the Practice Directions obtaining at the time of the closure of the Special Court shall apply *mutatis mutandis* to the functions of the Residual Special Court;

PURSUANT TO Article 24 of the Statute of the Residual Special Court for Sierra Leone (“Statute”), Rule 124 of the Rules and Article 8 of the Practice Direction;

BASED ON THE WRITTEN SUBMISSIONS OF THE CONVICTED PERSON, THE DEFENCE OFFICE, THE PROSECUTOR AND THE ACTING REGISTRAR;

HEREBY DECIDE AS FOLLOWS:

I. BACKGROUND

1. Eric Koi Senessie was a former member of the Revolutionary United Front (RUF). He was charged before the Special Court for Sierra Leone with nine counts of tampering with five Prosecution witnesses who had testified against Charles Taylor in the Prosecutor v. Charles Taylor trial (“Taylor trial”) in The Hague. The particulars of the indictment were that he knowingly and willfully interfered with the Court's administration of justice by offering a bribe to witnesses (counts 1, 3, 6 and 7) and knowingly and willfully interfering with the Court's administration of justice by otherwise interfering with witnesses who had given evidence in the Taylor trial (counts 2, 4, 5, 8 and 9).
2. At his initial appearance before a Single Judge of Trial Chamber II, Justice Teresa Doherty on 15 July 2011, Senessie pleaded not guilty to all nine counts. The trial opened in Freetown on 11 June 2012 and held five court sessions, during which the Prosecution called five witnesses; the Defence called six witnesses, including Senessie ; and one witness was called by the Court.
3. On 21 June 2012 Justice Doherty found Senessie guilty on eight of the nine counts in the indictment, namely: four counts of offering a bribe to a witness, and four counts of otherwise interfering with a witness, who had testified before

a Chamber. He was acquitted on one count of otherwise interfering with a witness.

4. At his sentencing hearing on 4 July 2012, Senessie admitted his guilt in his *allocutus*. He informed the Court that he had acted under instructions from Prince Taylor, a former Defence investigator who was at the time attached to the Taylor Defence team. On 5 July 2012, Justice Doherty sentenced Senessie to serve two years in prison.
5. Senessie waived his right to appeal, but submitted an application for review to the Appeals Chamber which that Chamber dismissed, finding that there were no new facts upon which the application could be based, as all of the alleged new facts were known to Senessie during the trial proceedings.
6. On 10 May 2013, the Republic of Sierra Leone was designated as the State in which Senessie was to serve his sentence.

II. THE APPLICATION

7. On 28 February 2014, I received a letter from the Registrar transmitting Senessie's Application for eligibility for Conditional Early Release but the Application was rejected due to non compliance with the Practice Direction. Senessie re-initiated the process on 16 April 2014 by making a direct application to the State of Enforcement pursuant to Article 3(A)(i) of the Practice Direction and completed "Form A1" annexed to the Practice Direction. The process was completed by the Republic of Sierra Leone through its Prisons Authorities which on 22 April 2014 submitted information on Form B, annexed to the Practice Direction, notifying the Residual Special Court about Senessie's eligibility to be considered for Conditional Early Release.
8. The Application was also accompanied by documents to show, *inter alia*, Senessie's good behavior whilst in prison, his favourable prospects for reintegration into society and a statement of understanding that his release will be subject to entering into and complying with a Conditional Early Release Agreement as required by Article 2 of the Practice Direction.
9. I considered the application and the information supplied in support thereof, and further consulted with the Judge who imposed the sentence. On 29 April 2014, I determined, in accordance with Article 4(A) of the Practice Direction, that Senessie was eligible for consideration for Conditional Early Release.¹
10. Subsequent to my decision, the Registrar complied with Articles 5(B) through (H) of the Practice Direction and submitted the information required pursuant thereto on 21 May 2014. That information covered, *inter alia*, the proposed

¹ *Prosecutor v. Eric Senessie*, SCSL-11-01-ES-80, Decision on Eric Senessie's Eligibility for Consideration for Conditional Early Release, 29 April 2014, [Senessie Eligibility Decision].

address of residence of Senessie after release (the Requested Area of Release), financial support, psychological and medical reports, affidavits from Prison authorities, views of relevant witnesses and others who are at risk, feedback from the community and local government officials, correspondence from the Government of Sierra Leone, the Prosecutor's views on the application, Senessie's personal details and detention record, comments and conclusions of the Trial Chamber during sentencing and periodic reports on Senessie's behavior and compoment during the period of his detention.

11. On 28 May 2014, Defence counsel for Senessie and the Prosecutor filed submissions pursuant to Articles 6(A) and (B) of the Practice Direction in response to the information submitted by the Registrar. The Registrar transmitted those submissions to me on the same day.
12. No further submissions were received from Registrar on behalf of Senessie or the Prosecutor.

III. APPLICABLE LAW

13. Article 23(3) of the Statute confers on the Residual Special Court the power to supervise the enforcement of sentences including the implementation of the sentence enforcement agreements. Article 24 of the Statute, in relevant part, confers on the President the power to grant pardon or commute the sentence of persons eligible for such pardon or commutation. The power is, however, not exercisable on whim or caprice, but in consultation with the Judges who imposed the sentence, where possible, and on the basis of the interests of justice and the general principles of law.
14. Rule 124 of the Rules echoes Article 24 of the Statute and provides in relevant part that:

“There shall only be..... early release if the President of the residual Special Court in accordance with Article 24 of the RSCSL Statute and in consultation with the Judges who imposed the sentence where possible, and after considering the position of the Prosecutor, which shall incorporate the interests of Prosecution witnesses and victims, as well as the convicted person individually or through counsel, so decides on the basis of the interests of justice and the general principles of law. An early release shall only occur after a convicted person has served at least two-thirds of his or her original sentence”.

15. It follows that a Convicted Person has no entitlement to Conditional Early Release from his or her sentence. The President merely considers, on the basis of facts supplied and the applicable law, whether it is safe and proper for the convict to serve the remaining part of the sentence other than in prison. That is

why it is the convict who initiates the application for consideration for Conditional Early Release. Article 8(B) of the Practice Direction provides that the President, in consultation with the Judges shall determine whether the Convicted Person has shown clear and convincing evidence that he will be a safe member of society and comply with the conditions imposed by a Conditional Early Release Agreement.

16. Article 8(D) of the Practice Direction, specifies in mandatory tone, the manner in which the President's decision shall be made and the factors that shall be considered. They include the following:-
- (i) the safety of the community if the Convicted Person is released,
 - (ii) the views and concerns of the victims, witnesses and their families, if any, regarding the Conditional Early Release of the Convicted Person,
 - (iii) the effect of any conviction for contempt of court for any manner of interference or attempted interference with witnesses, bearing in mind that such a conviction alone may justify denial of conditional early release,
 - (iv) the Convicted Person's participation in any remedial, educational, moral, spiritual or other programme to which he was referred within the Prison, his demonstration of remorse and his commitment to contribute to the restitution of victims and to reconciliation and maintenance of peace in Sierra Leone, and
 - (v) the views and concerns of the community to which he seeks to be released.

IV. DISCUSSION

17. In deciding this Application, I will evaluate the factors outlined above in Article 8(D) of the Practice Direction. I have also carried out the consultations prescribed in the Statute, Rules and Practice Direction.

A. The Safety and Views of the Community to Which Senessie Seeks to be Released

18. It is a mandatory requirement under Article 8(C)(ii) of the Practice Direction, that Conditional Early Release shall not be granted if the Convicted Person is unable to provide a suitable "Requested Area of Release", either by reason of absence of a suitable programme of supervision, or the unwillingness of the community to accept the Convicted Person or for any other cause.

19. In order to satisfy that requirement, Senessie provided the information that his proposed address of residence in the Home State ("Requested Area of Release") will be Kailahun, or alternatively Kenema, in the event that the President deems the first choice to be unsuitable. He also gave reasons why the Requested Areas of Release are suitable for his resettlement including details of his personal connections to the area, and explained how he will be supported financially.

20. Senessie submits that Kailahun is his original home where he has lived with his two Wives and children, who still reside there. On financial support, he submits that he is a carver by profession and earned his living and that of his family through sales of his artwork. He also served as a Priest in a local Church and Chairman of the Board of Governors of the National Secondary School, which positions entitled him to monetary allowances. He submits that one of his daughters also lives in Kenema.
21. The Registrar further submitted a Report on the views of the community, in both Kailahun and Kenema, on the potential Conditional Early Release of Senessie. It is evident from the Report that interviews were conducted with relevant individuals including community activists, opinion leaders, representatives of civil society, local government officials, traditional leaders, women's groups, youth groups, Chiefs and ordinary citizens through questionnaires, phone-in Radio programmes and Town Hall meetings. Other meetings were held in both locations with victims of the war from War Wounded and Amputee Camps and their views were recorded.
22. The general assessment of the views collected from both locations reveals support for Conditional Early Release being granted to Senessie. Some views from Kailahun affirmed that Senessie was a local Pastor who was unlikely to further incite the commission of crimes; that he was a very responsible citizen; and that his presence will have a positive effect on the community being a productive carver and peaceful citizen. In Kenema, interviewees expressed similar sentiments and further reiterated that Senessie had preached non-violence and supported peace building efforts before his incarceration.
23. The Registrar's Report further states that in Kailahun Town, the responses received from the numerous callers during the phone-in radio program confirmed that Senessie was a well-respected person whom they would like to see come back to Kailahun. Callers on the phone-in radio program in Kenema also showed support for Senessie's release. The Town Hall meetings elicited similar support.
24. The Defence counsel for Senessie made a response to the material submitted by the Registrar pursuant to Article 5(I) of the Practice Direction. Counsel submitted that the Defence had carried out additional investigations in Kailahun Town, a report of which was submitted to the court and revealed that the contemplated release of Senessie into that community would pose no threat to the people. On this particular issue, the Prosecutor expressed no views.
25. I have carefully considered the material placed before me on this issue and I am satisfied that Senessie will not pose a risk to the community in Kailahun Town, the first choice of "Requested Area of Release", and that he will re-integrate into the community if granted Conditional Early Release. I am also satisfied that

Senessie has provided sufficient evidence of financial support, should he be granted Conditional Early Release.

B. The Views and Concerns of Victims, Witnesses and their Families

26. The material submitted by the Registrar contains the views of the five Prosecution witnesses who testified in Senessie's contempt trial before the Special Court. All five of them expressed concerns about their security citing fears of being targeted either by Senessie himself or by members of his family if he was released. Nevertheless, the witnesses did not express opposition to the Conditional Early Release of Senessie. Those fears and security concerns were echoed by the Prosecutor who strongly submits that the interests and needs of prosecution witnesses must be a primary concern in considering whether to extend mercy to convicted persons.
27. The Defence for Senessie, on the other hand, submits that Senessie interfered with Special Court witnesses out of ignorance; that he has learnt his lessons about the consequences of breaking the law; that he no longer wishes to interfere with witnesses; and that he now wants to live the rest of his life in peace and comfort with his family. The Defence also obtained and submitted five statements from various members of Senessie's family in which they express their intention not to interfere with witnesses by any means.
28. I have anxiously considered this aspect of the matter. The concerns about security raised by the five Prosecution witnesses who testified in the Senessie trial before the Special Court cannot be taken lightly. I cannot but agree with the Prosecution's view that the interests and needs of these witnesses must be a primary concern in considering whether or not to grant Conditional Early Release to Senessie. To their credit, the witnesses in their objectivity, do not oppose the grant of Early Release for Senessie subject to certain conditions being imposed on him, such as, ensuring that he and his family members desist from blaming them for his incarceration, and that Senessie remains peaceful and be closely monitored. The other vulnerable group is the victims of the war in War Wounded and Amputee Camps in Kailahun and Kenema, whose views were not inimical to Senessie's potential Conditional Early Release.
29. I have also considered the overall views of the community in Kailahun Town, the re-assurance given by the Inspector-General of Police about the local police force in Kailahun Town which will be the official Monitoring Authority, a task which they already performed well when Senessie was released on bail pending trial, and the fact that Conditional Early Release is ring-fenced by conditions which Senessie has agreed to enter into and comply with. Furthermore, Senessie has expressed his commitment to desist from interfering in any way with Special Court witnesses, whether protected or not in the future and there are sanctions for breach of such commitment.

30. In view of the foregoing, I find that the concerns of victims, witnesses and their families will be adequately addressed and taken into consideration if the application for Conditional Early Release is granted. I find no basis for the fear expressed by the Prosecution that the concerns of witnesses will not be adequately addressed and given priority by the Police.

C. Reports from the Prison Authorities

31. Article 8(D)(iv) of the Practice Direction requires an evaluation of Senessie's participation in remedial, educational, moral, spiritual or other programmes to which he was referred while in Prison, and his demonstration of remorse and commitment to contribute to the restitution of victims, reconciliation and the maintenance of peace in Sierra Leone.
32. The Prison authorities, at the request of the Registrar, submitted five Affidavits from the Supervisor of the Residual Special Court Prison in Freetown. The Registrar also obtained and filed further information from the Director of Inmate Affairs of the Sierra Leone Prisons Department. In the affidavits, the Supervisor deponed to Senessie's compliance with the factors enumerated in Articles 5(D) of the Practice Direction, and the Director stated that there was nothing adverse reported about Senessie, since his incarceration at the Residual Special Court Prison. Senessie had demonstrated a genuine desire not to repeat the mistakes that led to his incarceration, and that, as a respectable father and clergyman, Senessie would be warmly welcomed back to his community with no risk to his personal safety.
33. The Prosecutor noted in one of the Affidavits submitted by the Supervisor of the RSCSL Prison, that Senessie is said to harbour some anger towards those that he feels are responsible for his crime and incarceration. On that premise, the Prosecutor submits that this shows, firstly, that Senessie lacks a genuine respect for the fairness of the process by which he was convicted, and secondly, that rather than unequivocally acknowledging his commission of the crimes, he still blames others for their commission and his incarceration. The Prosecutor also noted that Senessie was reported to have knowingly contravened some prison regulations and submitted that such disregard for the law "calls into question whether Senessie will abide by conditions imposed on him when he is no longer in a supervised prison setting".
34. There is indeed a disclosure in the records before me which reflects negatively on Senessie. The incidents of violation of Prison regulations, for example, show that: (i) on one occasion Senessie accumulated excess supplies in his cell; (ii) Senessie submitted a request for reimbursement of travel expenses for his daughter from Kailahun, when in fact the said daughter resided in Freetown; and (iii) on more than one occasion Senessie had tried to circumvent the Court's policy against non-family visits when providing Prison Officials with the list of family members entitled to visit him.

35. The same material also discloses that Senessie had acknowledged his crimes and expressed remorse for them despite his statement to the effect that he felt his criminal actions were an accident in the sense that he was taken advantage of due to his naivety. I have weighed the negative information against the favourable one and I am satisfied that the balance tilts towards the conclusion that Senessie's has been substantially rehabilitated whilst in Prison. It is my view that he has, among other things, largely conformed to Prison directions and rules, has undertaken courses and work in constructive use of his time in Prison, and has not exhibited violent behavior during his incarceration. I do not consider therefore, that the incidents referred to by the Prosecutor irreversibly militate against a favourable assessment of the application for conditional early release.

D. The Effect of Senessie's Conviction for Contempt

36. Pursuant to Article 8(D)(iii) of the Practice Direction, a decision on Conditional Early Release shall include an evaluation of the effect of any conviction for contempt of court for any manner of interference or attempted interference with witnesses, bearing in mind that such a conviction alone may justify denial of conditional early release. I have considered the Prosecutor's submissions in this regard, but in this case, the primary convictions were for contempt of court. The effect of those convictions was taken into consideration by the Presiding Judge at the trial and in determining the appropriate sentence.² I consider therefore, that this factor does not militate against the application for Conditional Early Release.

V. CONCLUSION

37. Based on all of the above, and having considered the provisions of the Statute, Rules and the Practice Direction, particularly the crucial factors identified in Article 8(D) thereof, I find that Senessie has shown clear and convincing evidence that he will be a safe member of society and that he will comply with the terms imposed by a Conditional Early Release Agreement.

VI. DISPOSITION

38. For the foregoing reasons and pursuant to Article 24 of the Statute, Rule 124 of the Rules and Article 8 of the Practice Direction, I hereby **GRANT** the Application.

39. This Decision is conditional upon Senessie's completion and execution of a Conditional Early Release Agreement in accordance with Article 9(C) of the

² *Prosecutor v. Eric Senessie*, SCSL -11-01-T-20, Sentencing Judgement, 12 July 2012, pp 7 -9.

Practice Direction, the format of which is contained in Annex C of the Practice Direction. I find it unnecessary to impose further Special Conditions.

Done at The Hague, The Netherlands

This 04 day of June 2014



Justice Philip N. Waki,
President

