



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

Revision number one of

(01-10-2013)

Practice Direction on the Conditional Early Release of Persons

Convicted by the Special Court for Sierra Leone

Revised on 02.12.2016

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
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NAME	Frances Ngaboh-Smart
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TIME	12:10

PREAMBLE

The President of the Residual Special Court for Sierra Leone;

NOTING the Statute of the Special Court for Sierra Leone as annexed to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone signed in Freetown on 16 January 2002, and in particular Articles 22 and 23 thereof;

FURTHER NOTING the Statute of the Residual Special Court for Sierra Leone as annexed to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Residual Special Court for Sierra Leone signed in Freetown on 11 August 2010, and in particular Articles 23 and 24 thereof;

FURTHER NOTING the Rules of Procedure and Evidence of the Special Court for Sierra Leone and as applicable pursuant to Article 14 of the Statute and in particular Rules 19, 123 and 124 thereof;

FURTHER NOTING the Rules of Procedure and Evidence of the Residual Special Court for Sierra Leone, as Amended, and as applicable pursuant to Article 16 of the Statute and in particular Rules 19, 123 and 124 thereof;

FURTHER NOTING that this Practice Direction is subject to the provisions of the Statute and the Rules of the Special Court;

RECALLING Article 10 (3) of the International Covenant on Civil and Political Rights which provides *inter alia* that '[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation';

RECALLING FURTHER the Standard Minimum Rules for the Treatment of Prisoners in particular General Principle 59 which provides that penal institutions should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of prisoners;

MINDFUL that Conditional Early Release can serve as an incentive for rehabilitation and encourage the Convicted Person to engage in meaningful contributions to reconciliation and ongoing peace;

AWARE that public safety and the protection of victims and witnesses are of paramount importance in any Conditional Early Release decision;

CONCLUDING that Conditional Early Release best serves the goals of rehabilitation, public safety and protection of victims and witnesses by allowing supervised placement of the Convicted Person in the community on conditions promoting good behaviour while still continuing to respect the original sentence and subjecting the Convicted Person to re-incarceration should the conditions be violated;

HEREBY ISSUES this Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court of Sierra Leone:

1. Definitions

Agreement:	The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone signed in Freetown on the 11 August 2010, superseding the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed in Freetown on 16 January 2002;
Conditional Early Release:	Release from prison pursuant to Rules 123 and 124 of the Rules and in accordance with this Practice Direction;
Conditional Early Release Agreement:	The Agreement referred to in Article 9(C) of this Practice Direction;
Convicted Person:	Any person convicted of a crime by the Special Court who is serving a custodial sentence;
Designated Judge:	The person appointed pursuant to Article 12(G)(i);
Enforcement of Sentences Agreement:	The agreement between the Special Court for Sierra Leone and the State of Enforcement as referred to in Article 22 of the Statute;
Home State:	In relation to a Convicted Person, the country in which the Convicted Person is entitled to live or to which the Convicted Person seeks to be released;
Judge:	A Judge appointed in accordance with Article 2 of the Agreement;
Monitoring Authority:	In relation to a Convicted Person, the authority in the Home State with which the Special Court enters an agreement to provide monitoring and supervision services;
President:	The President of the Special Court as referred to in Article 12 of the Statute;
Principals:	The President, the Prosecutor and the Registrar of the Special Court.
Principal Defender:	The Principal Defender referred to in Rule 45 of the Rules or the defence staff as recruited by the Registrar;

Prison:	A custodial facility or facilities where the Convicted Person is or has been serving a Special Court sentence, including the Detention Centre of the Special Court;
Prosecutor:	The Prosecutor appointed pursuant to Article 3 of the Agreement;
Registrar:	The Registrar appointed pursuant to Article 4 of the Agreement;
Requested Area of Release:	In relation to a Convicted Person, the location in the Home State designated by the Convicted Person pursuant to Article 5(B) (i) and (ii) of this Practice Direction;
Rules:	The Rules of Procedure and Evidence of the Special Court for Sierra Leone made pursuant to Article 14 of the Statute, and applying <i>mutatis mutandis</i> in accordance with Article 16.1 of the Statute of the Residual Special Court for Sierra Leone;
Special Court:	The Special Court for Sierra Leone established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed in Freetown on 16 January 2002, and its successor the Residual Special Court for Sierra Leone established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone signed in Freetown on 11 August 2010.
State of Enforcement:	In relation to a Convicted Person, the State with which the Special Court has entered an Enforcement of Sentences Agreement pursuant to Article 22 of the Statute;
Statute:	The Statute of the Residual Special Court for Sierra Leone superseding the Statute of the Special Court for Sierra Leone;
Supervision and Transfer Order:	The document referred to in Article 9(C)(iv) and set out in Annex D by which the President orders the Convicted Person to comply with Conditions of Early Release and provides for the immediate arrest and detention of the Convicted Person if there is reason to believe that he has violated any Condition of Early Release or poses a risk to any person.

Victim: A person as defined by Rule 2 of the Rules;

Witnesses and Victims Section: The section established pursuant to Rule 34 of the Rules or, where there is no such section, witness and victim protection and support staff recruited by the Registrar.

2. Eligibility for Consideration for Conditional Early Release

- (A) A Convicted Person shall be eligible for consideration for Conditional Early Release no sooner than upon serving two-thirds of his total sentence provided he meets the requirements set out in paragraphs (B) through (D) below.
- (B) Should the Convicted Person wish to apply for consideration for Conditional Early Release, he shall demonstrate the following:
 - (i) Successful completion of any remedial, educational, moral, spiritual or other programme to which he was referred within the Prison;
 - (ii) That he is not a danger to the community or to any member of the public; and
 - (iii) Compliance with the terms and conditions of his imprisonment.
- (C) In addition the Convicted Person shall provide proof that the following requirements have been met:
 - (i) Respect for the fairness of the process by which he was convicted;
 - (ii) Refraining from incitement against the peace and security of the people of Sierra Leone while incarcerated; and
 - (iii) Positive contribution to peace and reconciliation in Sierra Leone and the region such as public acknowledgement of guilt, public support for peace projects, public apology to victims, or victim restitution.
- (D) The Convicted Person shall further provide a written and signed statement of understanding that his release will be subject to entering into and complying with a Conditional Early Release Agreement.
- (E) Where the application follows a previous rejection by the President of any application for Conditional Early Release, the Convicted Person shall provide details of a change in circumstances warranting re-consideration.
- (F) The decision on eligibility for consideration for Conditional Early Release is not subject to appeal or review. In the event of denial, the President may permit re-application within a time-frame designated by the President.
- (G) The Principal Defender shall provide advice and assistance to the Convicted Person if requested at any stage covered by this Practice Direction.

3. Initiating the Process to Determine Eligibility for Consideration of Conditional Early Release

- (A) The process to determine eligibility for Conditional Early Release shall be initiated by the State of Enforcement in accordance with the applicable Enforcement of Sentences Agreement, EITHER:
 - (i) Pursuant to a Direct Application by the Convicted Person to the State of Enforcement (using the relevant form in Annex A) that shall be copied to the Registrar; OR
 - (ii) Pursuant to Notification based on the applicable law of the State of Enforcement (using the form in Annex B).
- (B) The application or notification shall be accompanied by documentation from the Convicted Person establishing that he meets the requirements for eligibility set out in Article 2 above.
- (C) The convicted person may initiate the Conditional Early Release review process five months prior to the date on which he has served two-thirds of his total sentence or at any time thereafter.

4. Determination of Eligibility for Consideration for Conditional Early Release

- (A) Determination of eligibility for consideration for Conditional Early Release shall be made by the President. The President shall determine whether the requirements set out in Article 2 have been met.
- (B) A determination of eligibility for consideration for Conditional Early Release shall be made in writing and copies served on the Registrar, the Prosecutor, the Principal Defender and the Witnesses and Victims Section.

5. Duties of the Registrar

- (A) The Registrar shall inform the State of Enforcement and the Convicted Person of the determination of eligibility for consideration for Conditional Early Release referred to in Article 4.
- (B) If the Convicted Person is determined to be eligible for consideration for Conditional Early Release, the Registrar shall request the Convicted Person to provide the following information within a timeframe ordered by the President:
 - (i) A proposed address of residence in the Home State ("Requested Area of Release") in the event that the Conditional Early Release is granted;
 - (ii) An alternative proposed address in the event the President deems the Convicted Person's first choice to be unsuitable;

- (iii) Reasons why the Requested Areas of Release are suitable for his resettlement including details of his personal connections to the area; and
- (iv) How the Convicted Person will be supported financially.
- (C) If the President so directs, the Registrar shall request from the prison authorities of the State of Enforcement:
 - (i) Forensic psychiatric evaluation(s) prepared on the mental condition of the Convicted Person both at the time of the request and during the period of imprisonment; and
 - (ii) Medical report(s) on the general health of the Convicted Person.
- (D) The Registrar shall request report(s) from the prison authorities of the State of Enforcement on the behaviour of the Convicted Person during imprisonment, including the following information:
 - (i) Details known to prison authorities and staff regarding the Convicted Person's demonstrated ability to refrain from:
 - (a) Prohibited contact or threats made personally or through others to persons involved in the prosecution and conviction of the Convicted Person or other Accused or Convicted Persons who appear or have appeared before the Special Court;
 - (b) Violent or threatening behaviour within the prison;
 - (c) Violation of prison rules;
 - (d) Violation of any Special Court order;
 - (e) Commission, incitement or promotion of any crime in or outside of the prison; and
 - (f) Otherwise disrespecting law, rules and authority while in prison;
 - (ii) Details of the Convicted Person's:
 - (a) Participation in remedial, educational, moral, spiritual or other programmes to which he was referred within the Prison;
 - (b) Acknowledgement of, and remorse for, crimes for which he was convicted;
 - (c) Evidence of renunciation of an ideology which is violent or contrary to peace and reconciliation;
 - (d) Evidence of willingness to make restitution to victims individually and collectively; and
 - (e) Evidence of empathy towards victims;
 - (iii) Assessments of:
 - (a) The likelihood of the Convicted Person committing criminal offences; and
 - (b) The likelihood, based on his behaviour in prison, of the Convicted Person instigating or participating in discrimination or political unrest;

- (iv) Confirmation that the Convicted Person has demonstrated a commitment to agree to conditions of residency, behaviour and supervision if he is conditionally released;
 - (v) Any explanation given by the Convicted Person for his offending behaviour; and
 - (vi) Any other information that the President considers relevant.
- (E) The Registrar through the Witnesses and Victims Section shall inform victims, relevant witnesses, witnesses' and victims' families and any others who are at risk on account of testimony given before the Special Court of any impending Conditional Early Release of any Convicted Person. The Registrar shall ensure their views are provided to the President through the Prosecutor or the Witnesses and Victims Section.
- (F) The Registrar shall communicate with the Witnesses and Victims Section, the Government of the Home State, with representatives from the Requested Area of Release and with other persons and organizations that the Registrar believes may have relevant information, and collect from the relevant authorities the following information:
- (i) Effects upon the well-being and safety of the local community, especially the victims, relevant witnesses, witnesses' and victims' families and any others who are at risk on account of testimony given before the Special Court if the Convicted Person is released;
 - (ii) Any evidence of threatening behaviour, and in particular threats to victims, witnesses and Special Court Judges, Principals or personnel made directly or indirectly by the Convicted Person;
 - (iii) Any evidence that the Convicted Person may use his Conditional Early Release to incite members of the political or military faction with which he fought to use violence against the community, victims, witnesses or their families, or the Special Court Judges, Principals and personnel;
 - (iv) The circumstances and attitudes of the family of the Convicted Person to his release;
 - (v) Any risk to the personal safety of the Convicted Person;
 - (vi) The Convicted Person's response to any previous periods of community supervision;
 - (vii) The suitability of the Requested Area of Release;
 - (viii) The willingness of the population of the community of the Requested Area of Release to accept the Convicted Person as a resident;
 - (ix) The acknowledgement by the local community of the Requested Area of Release that the Convicted Person is guilty of the crimes of which he was convicted;
 - (x) The acknowledgment by the local community of the Requested Area of Release of the pain and suffering caused to the victims and their families by the Convicted Person's crimes;
 - (xi) Recommendations regarding conditions for release having regard to the above factors;

- (xii) A proposed programme of supervision tailored to the Convicted Person based on information from the Monitoring Authority; and
- (xiii) Any other information that the President considers relevant.
- (G) The Registrar shall request the Prosecutor to submit a report to the Registrar for onward transmission to the President within 30 days of the request, outlining the Prosecutor's views on the Conditional Early Release request and any information relevant to paragraphs (B), (C), (D), and (F) and of any co-operation the Convicted Person has provided to the Prosecutor that was not a consideration in sentencing and the significance thereof in bringing other perpetrators to justice.
- (H) The Registrar shall prepare a portfolio which shall include:
 - (i) Personal details and detention record of the Convicted Person;
 - (ii) Documents relating to previous applications made by the Convicted Person for Conditional Early Release, if any;
 - (iii) Comments and conclusions of the Trial Chamber or a designated Judge when passing sentence on the Convicted Person;
 - (iv) Comments and conclusions of the Appeals Chamber in respect of any appeal by the Convicted Person against conviction and/or sentence;
 - (v) Any pre-trial and pre-sentence reports examined by the Special Court when sentencing the Convicted Person; and
 - (vi) Periodic Reports from the State of Enforcement submitted pursuant to the applicable Enforcement of Sentences Agreement.
- (I) The Registrar shall provide a copy of the reports and information received pursuant to paragraphs (A) to (H), to the President and the Judges with whom he or she will consult pursuant to Article 4(A) and to the Convicted Person, the Prosecutor and the Principal Defender.

6. Participation in the Determination Process

- (A) The Convicted Person may, within 30 days after the Registrar has served the portfolio, reports and written information on him, submit in writing to the Registrar any relevant information that may assist the President in determining whether to grant Conditional Early Release. A copy of this submission shall be sent by the Registrar to the Prosecutor.
- (B) The Prosecutor shall, within 30 days after the receipt of the portfolio, reports and information on the Convicted Person, submit a response in writing to the Registrar for onward transmission to the President with any additional information that may assist the President in determining whether to grant Conditional Early Release, which shall incorporate the interests of Prosecution witnesses and victims. A copy of this submission shall be sent by the Registrar to the Convicted Person and the Principal Defender.

- (C) The Convicted Person and the Prosecutor may, within 15 days after receipt of the copies of submissions referred to in paragraphs (A) and (B) file written responses with the Registrar. A copy of the responses shall be sent by the Registrar to the respective parties.
- (D) The President may hear the Convicted Person by way of an oral hearing held at the prison or by video/telephone link, or may make the decision on the written record, taking into account the submissions of the Convicted Person and of the Prosecutor, provided pursuant to paragraphs (A), (B), and (C).

7. Confidentiality

All information received by the Registrar, Prosecutor, Principal Defender, President and the Judges pursuant to an application for Conditional Early Release shall be confidential, unless otherwise provided by this Practice Direction or as authorised by the President.

8. Determination of Application for Conditional Early Release

- (A) In determining the application for Conditional Early Release, the President shall consult with the Judges who imposed the sentence if available or, if unavailable, at least two other Judges.
- (B) The President, in consultation with the Judges and based on the written record and the oral submissions, if any, shall determine whether the Convicted Person has shown clear and convincing evidence that he will be a safe member of society and comply with conditions imposed by a Conditional Early Release Agreement.
- (C) The President shall not grant release if he or she finds any of the following:
 - (i) The Convicted Person refuses to agree to enter into and comply with the terms of the Conditional Early Release Agreement specified by the President;
 - (ii) The Convicted Person is unable to provide a suitable Requested Area of Release, by reason of:
 - (a) Absence of a suitable programme of supervision; or
 - (b) Unwillingness of the community to accept the Convicted Person;
 - (c) Any other cause which the President finds renders the Requested Area of Release unsuitable.
 - (iii) The Convicted Person is unable to provide evidence of adequate means of financial support; or
 - (iv) The Convicted Person refuses to reconfirm his commitment to comply with all protection orders granted pursuant to Rule 75 of the Rules and to refrain from revealing the identity of witnesses and potential witnesses whose names were disclosed to him and refrain from contacting directly or indirectly those who were designated as witnesses or potential witnesses against him at his original trial(s).

- (D) The President shall deliver a decision on Conditional Early Release that shall be accompanied by a reasoned opinion in writing. The reasoned opinion shall include an evaluation of:
 - (i) The safety of victims, relevant witnesses, witnesses' and victims' families, and others who are at risk on account of testimony given before the Special Court, if the Convicted Person is released;
 - (ii) The safety of the community if the Convicted Person is released;
 - (iii) The views and concerns, if any, of victims, relevant witnesses, witnesses' and victims' families, and others who are at risk on account of testimony given before the Special Court regarding the Conditional Early Release of the Convicted Person;
 - (iv) 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;
 - (v) 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
 - (vi) The views, concerns, willingness and the acknowledgements of the Requested Area of Release, as provided pursuant to Article 5(F) and, in particular, Article 5(F)(ix) and (x).
- (E) The decision on Conditional Early Release is not subject to appeal or review.
- (F) The Conditional Early Release Agreement shall be based on the *pro forma* agreement in Annex C.

9. Post-decision procedure

- (A) The Registrar shall provide a copy of the decision to the Home State, State of Enforcement, the Convicted Person, the Witnesses and Victims Section, the Prosecutor and other interested parties, as designated by the President. The decision shall be public unless in the discretion of the President parts thereof shall be made confidential for the protection or the safety of any person.
- (B) If Conditional Early Release is denied, the President may specify the earliest date upon which the Convicted Person may re-apply for consideration for Conditional Early Release.
- (C) If Conditional Early Release is granted the decision shall be conditional upon and accompanied by a Conditional Early Release Agreement containing:
 - (i) General Conditions applicable to all persons granted Conditional Early Release;
 - (ii) Special Conditions relevant to the individual Convicted Person;

- (iii) The name of the Monitoring Authority responsible for overseeing compliance with the conditions;
- (iv) Notice that the Convicted Person is subject to immediate detention and transfer to the Special Court pursuant to the *pro forma* Supervision and Transfer Order in Annex D, upon an allegation by the Monitoring Authority or the Prosecutor of violation of any condition of the Conditional Early Release Agreement in accordance with Article 12 (A); and
- (v) Notice of the consequences should the President or Designated Judge determine, after review, pursuant to Article 12 that the Convicted Person has violated a condition of release.

10. Execution of the Decision

- (A) The Principal Defender shall advise the Convicted Person of:
 - (i) The provisions of this Practice Direction;
 - (ii) The terms of the Conditional Early Release Agreement;
 - (iii) The consequences of any breach of the Conditional Early Release Agreement; and
 - (iv) The terms of the Supervision and Transfer Order.
- (B) If the Convicted Person accepts the Conditional Early Release Agreement, he shall sign it before two witnesses who shall attest that the Convicted Person confirms that he has been fully advised by the Principal Defender in accordance with paragraph (A), and understands the Agreement, and has freely and voluntarily signed it with knowledge of the binding nature of the Agreement and its terms.
- (C) The Convicted Person shall reaffirm to the Registrar or to her appointee, his understanding of the terms of the Conditional Early Release Agreement, his intention to comply with it and that he has freely and voluntarily signed the agreement.
- (D) If the Registrar is not satisfied that the Convicted Person:
 - (i) Understands the terms of the Conditional Early Release Agreement;
 - (ii) Intends to comply with the terms of the Conditional Early Release Agreement; or
 - (iii) Has entered the Conditional Early Release Agreement freely and voluntarily;
 the Convicted Person shall continue to be held in custody pending the President's further consideration of his Conditional Early Release.
- (E) If the Registrar is satisfied with the Convicted Person's understanding of and agreement to the terms of the Conditional Early Release Agreement, and that he has entered the Agreement freely and voluntarily, the Registrar shall coordinate transfer of the custody of the Convicted Person from the State of Enforcement to the Home State within a reasonable time.
- (F) The President shall after consultation with the Prosecutor and the Witnesses and Victims Section, instruct the Registrar to notify relevant witnesses and victims of the impending

release of the Convicted Person and of the terms and conditions of his Conditional Early Release. The Registrar shall provide them with such other information as the President considers appropriate.

- (G) The Convicted Person shall be released pursuant to the terms of the Conditional Early Release Agreement after service upon him of the Supervision and Transfer Order.

11. Review of Conditions of Release

- (A) The Monitoring Authority shall submit an annual report relating to the Convicted Person's compliance with the Conditional Release Agreement to the Registrar.
- (B) The President may, from time to time, review the conditions of the Conditional Early Release Agreement, *proprio motu*, or upon the request of the Convicted Person, the Monitoring Authority or the Prosecutor. In the absence of a finding pursuant to Article 12 that the Convicted Person has violated a condition, the President may modify a condition of the agreement only with the consent of the Convicted Person, and after consideration of the views of the Prosecutor and the Monitoring Authority.

12. Violation of Conditions of Release

- (A) In the event that the Monitoring Authority has reason to believe that the Convicted Person has violated a condition of the Conditional Early Release Agreement, the Convicted Person shall be arrested and transferred to the Special Court for detention pursuant to the Supervision and Transfer Order and pending a decision of the President as to whether or not there is probable cause to believe that the Convicted Person has violated a condition of his Conditional Early Release Agreement.
- (B) The Monitoring Authority shall consider any request from the Prosecutor that it take all necessary actions to comply with Article 12 (A). The Monitoring Authority shall promptly respond to the Prosecutor by communicating its determination whether there is reason to believe a violation has occurred. The communication between the Prosecutor and the Monitoring Authority shall be made through the Registrar.
- (C) Upon detention of the Convicted Person, the Monitoring Authority shall immediately submit to the Registrar in writing the specific condition(s) of the Conditional Early Release Agreement the Convicted Person is alleged to have violated together with the supporting evidence using the Notice of Violation Form in Annex E.
- (D) As soon as possible after the Convicted Person has been detained but in no event later than 24 hours after the detention of the Convicted Person, the Registrar shall report the detention of the Convicted Person and transmit the supporting documentation to the President, the Prosecutor and the Principal Defender.
- (E) Within 48 hours of the Convicted Person being detained, the President shall determine whether there is probable cause to believe that a violation has occurred.

- (F) If the President determines that there is no probable cause to believe that a violation has occurred, the President shall order that the Convicted Person be released on the same terms and conditions of the original Conditional Early Release Agreement.
- (G) If the President determines that there is probable cause to believe that a violation has occurred, the President shall:
 - (i) Designate a Judge to hear the matter;
 - (ii) Direct the Prosecutor to prosecute the matter;
 - (iii) Direct the Principal Defender to represent the Convicted Person; and
 - (iv) Direct the Registrar to set a preliminary hearing within 7 days.
- (H) If the Convicted Person admits the allegation, the matter shall proceed to disposition pursuant to Article 12 (J).
- (I) If the Convicted Person denies the allegation, the President or the designated Judge shall instruct the Registrar to set a date for a hearing on the merits, at which:
 - (i) If the Judge finds by the preponderance of the evidence that the Convicted Person violated the Conditional Early Release Agreement, the matter shall proceed to disposition; or
 - (ii) If the Judge does not find that the allegation has been proven by the preponderance of the evidence, the Convicted Person shall be released upon the terms and conditions of the original Conditional Early Release Agreement.
- (J) Upon admission by the Convicted Person or a finding that the allegations have been proved, the Judge shall:
 - (i) Revoke the order for Conditional Early Release and order re-imprisonment of the Convicted Person for the time remaining on the sentence at the date that Conditional Early Release went into effect, with credit for time served in detention pending disposition of the violation and any credit the Judge may order for time served under Conditional Early Release;
 - (ii) Revoke the order for Conditional Early Release and order the release of the Convicted Person subject to modified conditions of the Conditional Early Release Agreement; or
 - (iii) Order the release of the Convicted Person on the terms and conditions of the original Conditional Early Release Agreement.
- (K) If the Judge orders that the Convicted Person shall be re-imprisoned, the Judge shall direct the Registrar to notify the relevant authorities in the State of Enforcement of the decision and to arrange for the transfer of the Convicted Person for imprisonment according to the applicable Enforcement of Sentences Agreement.

13. Expiration of Sentence

- (A) In the calculation of the maximum term of the sentence, the Convicted Person shall receive credit for each day of his sentence served under Conditional Early Release, subject to Article 12 (J).
- (B) The Convicted Person shall be discharged from the conditions of the Conditional Early Release Agreement at the expiration of the term of his sentence.


14. Applicability

- (A) This Practice Direction shall apply immediately upon its entry into force to any proceedings for Conditional Early Release brought before the Special Court.
- (B) This Practice Direction shall apply, *mutatis mutandis*, to any proceedings for Conditional Early Release brought before the Residual Special Court for Sierra Leone that relate to persons convicted by the Special Court for Sierra Leone or by the Residual Special Court for Sierra Leone.

15. Annexes

- (A) **Annex A:** Form A (1) Petition by the Convicted Person to Establish Eligibility for Conditional Early Release (Article 3(A) (i)).
Form A (2) Subsequent Petition by the Convicted Person to Establish Eligibility for Conditional Early Release (Article 3(A) (i)).
- (B) **Annex B:** Form B Notification from the State of Enforcement to Establish Eligibility for Conditional Early Release (Article 3(A) (ii)).
- (C) **Annex C:** *Pro forma* Conditional Early Release Agreement (Article 8(F)).
- (D) **Annex D:** *Pro forma* Supervision and Transfer Order (Article 9(C) (iv)).
- (E) **Annex E:** Form E Notice of Violation of Conditional Release Agreement (Article 12(B)).

This Practice Direction as amended shall enter into force on 02nd December 2016


Justice Philip Waki
President



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

ANNEX A

FORM A (1)

**Petition by Convicted Person to Establish Eligibility for Consideration for
Conditional Early Release**

I..... having been sentenced to a term of imprisonment by The Special Court for Sierra Leone, submit that I (will have) / (have now) served two-thirds of my total sentence as of (date) _____.

I have not previously applied for Conditional Early Release.

I hereby assert that I am eligible to be considered for Conditional Early Release and certify the following statements as true by placing my initials before each.

- ☐ I have successfully completed all remedial, educational, moral, spiritual or other programmes to which I was referred within the Prison.
- ☐ I do not pose a risk of danger to the community or to any member of the public, in particular the witnesses who testified against me.
- ☐ I have complied with all terms and conditions of my imprisonment.
- ☐ I have done nothing during my incarceration to incite against the peace and security of the people of Sierra Leone, either personally or through others.

In addition I acknowledge that:

- ☐ I respect the fairness of the process by which I was convicted; and
During my incarceration I have made a positive contribution to peace and reconciliation in Sierra Leone and the region by (Initial any that are true):
- ☐ (A) Publicly acknowledging my guilt for the crimes for which I was convicted; (Explain and document)
- ☐ (B) Providing public support for peace projects; (Explain and document)
- ☐ (C) Offering apologies to the victims of my crimes; (Explain and document)
- ☐ (D) Providing restitution to the victims of my crimes; (Explain and document)

☐ (E) Other. (Specify and document)

I understand and accept that if Conditional Early Release is granted I must enter into and comply with a Conditional Early Release Agreement. I acknowledge that the general terms and conditions of the Conditional Early Release Agreement have been shown to me. I further acknowledge and accept that the President may impose further Special Conditions of Release.

JURAT [as applicable to jurisdiction]

Petitioner

[signed]

Date

WITNESS 1

.....
Name

.....
Position

.....
Address

.....
Date

WITNESS 2

.....
Name

.....
Position

.....
Address

.....
Date



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

ANNEX A

FORM A (2)

Subsequent Petition by Convicted Person to Establish Eligibility for Consideration
for Conditional Early Release

I..... having been sentenced to a term of imprisonment
by The Special Court, submit that I have now served two-thirds of my total
sentence.

I was denied Conditional Early Release on [date], but since that time
there has been a change in circumstances. (Explain)

I hereby assert that I am eligible to be considered for Conditional Early Release and
certify the following statements as true by placing my initials before each.

- ☐ I have successfully completed all remedial, educational, moral, spiritual or other
programmes to which I was referred within the Prison.
- ☐ I do not pose a risk of danger to the community or to any member of the public, in
particular the witnesses who testified against me.
- ☐ I have complied with all terms and conditions of my imprisonment.
- ☐ I have done nothing during my incarceration to incite against the peace and
security of the people of Sierra Leone, either personally or through others.

SPECIAL COURT FOR SIERRA LEONE

In addition I acknowledge that:

- ☐ I respect the fairness of the process by which I was convicted; and

During my incarceration I have made a positive contribution to peace and reconciliation in Sierra Leone and the region by (Initial any that are true):

- ☐ (A) Publicly acknowledging my guilt for the crimes for which I was convicted; (Explain and document)
- ☐ (B) Providing public support for peace projects; (Explain and document)
- ☐ (C) Offering apologies to the victims of my crimes; (Explain and document)
- ☐ (D) Providing restitution to the victims of my crimes; (Explain and document)
- ☐ (E) Other. (Specify and document)

I understand and accept that if Conditional Early Release is granted I must enter into and comply with the Conditional Early Release Agreement. I acknowledge that the general terms and conditions of the Conditional Early Release Agreement have been shown to me. I further acknowledge and accept that the President may impose further Special Conditions of Release.

JURAT [as applicable to jurisdiction]

Petitioner.....

[signed]

Date

WITNESS 1

.....
Name

.....
Position

.....
Address

.....
Date

WITNESS 2

.....
Name

.....
Position

.....
Address

.....
Date



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

ANNEX B

Notification by State of Enforcement to Establish Eligibility for Conditional Early Release

I _____, affirm that I am the Governor of _____ Prison in _____ [State], the State of Enforcement of the Sentence of (convicted person), who was sentenced to a term of imprisonment by The Special Court. Notice is hereby given that on _____ [date] the convicted person will have served two-thirds of his total sentence,

And (if applicable)

Under the Law of _____ [State] _____ [cite Law] and Article 2 of the Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court dated _____,

The convicted person is eligible to be considered for Conditional Early Release.

Attached hereto is the official documentation establishing that:

The convicted person has successfully completed all remedial, educational, moral, spiritual or other programmes to which he was referred within the Prison (Documentation designated as Annex I);

The convicted person does not pose a risk of danger to the community or to any member of the public, in particular witnesses who testified against him (Psychological Risk assessment designated as Annex II);

The Convicted person has complied with all terms and conditions of his imprisonment (Disciplinary record designated as Annex III); and

The Convicted person has done nothing during his incarceration to incite against the peace and security of the people of Sierra Leone, either personally or through others (Prison records and other relevant material designated as Annex IV).

In addition, I attach Form A1 / A2* as completed by the convicted person.
(Completed Form Annex A).

Name

Position

Date



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

ANNEX C

Pro Forma Conditional Early Release Agreement

Name: Date of Birth:

Name of Prison: Prison Number:

1. I Mr..... have read and understand the following terms and conditions of my Conditional Early Release Agreement and agree to be bound by them. I have consulted with the Principal Defender and have been advised of:
 - i. the provisions of the Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone;
 - ii. the terms of the Conditional Early Release Agreement; and
 - iii. the consequences of any breach of the Conditional Early Release Agreement.
2. I understand and agree that if I breach any of the terms and conditions of my Conditional Early Release Agreement I will be detained and transferred to the Special Court and may be required to serve the balance of my sentence in prison.
3. I understand and agree that the monitoring of my Conditional Early Release Agreement expires on (dd mm yyyy) unless this Conditional Early Release Agreement is revoked.
4. In the event that I violate any Conditions of my Early Release Agreement, I understand that the order for Conditional Early Release may be revoked and an order for re-imprisonment for the time remaining on my sentence may be issued.

5. Standard Terms and Conditions

- a) I agree to comply fully with the terms and conditions of this Conditional Early Release Agreement;
- b) I will reside at (village/town) in District for the duration of my Conditional Early Release and will not leave ... (village/town) without the express permission of the Monitoring Authority.

- c) I will be under the supervision of the Monitoring Authority or an agent of the Monitoring Authority (Name) at (Address);
- d) I will keep in contact with the agent of the Monitoring Authority as s/he instructs me;
- e) I will not purchase, possess, or consume alcohol or any drugs that are considered illegal in the State of Sierra Leone;
- f) I will not purchase, possess, use or handle any weapon;
- g) I agree to visits from the Monitoring Authority or an agent of the Monitoring Authority in my residence, place of work or elsewhere as deemed appropriate by the Monitoring Authority. I submit to searches of my person, property and possessions by the Monitoring Authority or an agent of the Monitoring Authority as deemed appropriate by the Monitoring Authority;
- h) I will report in person to my Monitoring Authority or any agent of the Monitoring Authority authorised for that purpose or my local police station or any other location designated by the Registrar or the Monitoring Authority at the times stipulated by the Registrar or the Monitoring Authority;
- i) I will immediately relinquish to the Monitoring Authority or any agent of the Monitoring Authority, any suspected illegal drugs, alcohol or weaponry should any be found in my possession;
- j) I will undertake only such employment or occupation (including voluntary work) as approved in writing by the Monitoring Authority prior to its commencement and will not change such employment or occupation without prior written permission of the Monitoring Authority;
- k) I will not commit any offence;
- l) I will not publicly or privately incite or promote crime or behave in a way which undermines public peace and security;
- m) I will not violate any orders of the Special Court. I confirm my commitment to comply with all protection orders granted pursuant to Rule 75 of the Rules and to refrain from revealing the identity of witnesses and potential witnesses whose names were disclosed to me, and refrain from contacting directly or indirectly those who were designated as witnesses or potential witnesses against me at my original trial(s);
- n) I will not engage in violent, intimidating, threatening or coercive behaviour towards:

- i. the Monitoring Authority or any agent of the Monitoring Authority;
 - ii. any civilian or law enforcement officer of the Home State;
 - iii. any persons involved in my or other Defendants' prosecutions and convictions before the Special Court, including Judges, former Judges, personnel or former personnel of the Special Court or any Witnesses, their families or other persons who are at risk on account of their testimony.
- o) I will notify the Monitoring Authority of:
 - i. any arrest, summons or questioning of me by a law enforcement officer;
 - ii. any requirement imposed upon me to take a drugs or alcohol test.
 - p) I will not associate with any person or category of person with whom the Monitoring Authority has, directed me in writing not to associate.

6. Special Conditions

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____

- 7. I agree that any change in the foregoing terms and conditions can only be authorised by the President of the Special Court.
- 8. I understand and agree that under the terms and authority of the Supervision and Transfer Order with which I have been personally served if the Monitoring Authority has reason to believe that I have failed to comply with any requirement of this Agreement or if I pose a risk of harm to any person I shall be detained and transferred to the Special Court without need for any further order of the Court. The President of the Special Court or Designated Judge may, after consideration of my alleged breach revoke this Agreement and return me to prison to serve my sentence.
- 9. I understand and agree that unless this Agreement is revoked or modified, I will be subject to the terms and conditions of this Conditional Early Release Agreement until (dd mm yyyy) (date of sentence expiration).

Signed

Convicted Person

Date

Mr. (convicted person) has signed this Conditional Early Release Agreement before us and has confirmed to us that he has been fully advised by the Principal Defender of its terms and conditions and the consequences of any breach of this Agreement, understands the terms and conditions of this Agreement, and has freely and voluntarily signed it with the knowledge of the binding nature of this Agreement and its terms and conditions.

WITNESS 1

WITNESS 2

.....
Name

.....
Name

.....
Position

.....
Position

.....
Address

.....
Address

.....
Date

.....
Date



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

ANNEX D

Pro Forma Draft SCSL Supervision and Transfer Order

I, Justice _____, President of the Special Court;

COGNISANT of Rule 124 of the Special Court Rules of Procedure and Evidence which declares that "[t]here shall only be pardon, commutation of sentence or early release if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law, but an early release shall only occur after the prisoner has served a minimum of two thirds of his original sentence";

FURTHER COGNISANT of Rule 19 (c) of the Special Court Rules of Procedure and Evidence which declares that "[t]he President shall, in addition to the discharge of his or her judicial functions, be responsible for the proper administration of justice";

FURTHER COGNISANT of the Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court ("Practice Direction");

NOTING that Mr. _____, a citizen of Sierra Leone, born on _____ (dd/mm/yyyy), in _____ (State), _____ (Village), _____ (Chiefdom), _____ (District), was convicted by Judgment of the Special Court Appeals Chamber dated _____ to a term of imprisonment of _____ years for the commission of crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and other Serious Violations of International Humanitarian Law or for Contempt of the Special Court;

FURTHER NOTING that Mr. _____ served two-thirds of his term of imprisonment and applied for early release pursuant to the Practice Direction;

RECALLING Article 17 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court which provides that "[t]he Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:

- (a) Identification and location of persons;
- (b) Service of documents;
- (c) Arrest or detention of persons;

(d) Transfer of an indictee to the Court."

RECALLING Part V Section 20 Special Court Agreement 2002 (Ratification) Act, 2002 which provides that "[f]or the purposes of execution, an order of the Special Court shall have the same force or effect as if it had been issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone Court."

CONSIDERING the Conditional Early Release Agreement signed by Mr. _____ on _____ in accordance with Article 10 of the Practice Direction, by which Mr. _____ indicated that he had been advised by the Principal Defender of his obligations and the consequences of the Agreement and understood and agreed that:

- A. In the event that he violates any Conditions of his Early Release he understands that the order for Conditional Early Release may be revoked and an order for re-imprisonment for the time remaining on his sentence may be issued;
- B. He is subject to immediate detention and transfer to the Special Court upon the reasonable belief by the Monitoring Authority that he is in violation of any condition of the Conditional Early Release Agreement or poses a risk of harm to any person;
- C. He may be returned to prison to complete his sentence should the Special Court find that he breached any of the terms or conditions of his Conditional Early Release Agreement.

CONSIDERING FURTHER that Mr. _____ agreed to comply with the terms and conditions of the Conditional Early Release Agreement which he signed on _____:

HEREBY ORDERS THAT MR. _____ SHALL:

- a) Comply fully with the conditions of the Conditional Early Release Agreement;
- b) Reside at _____ (village/town) in _____ District for the duration of his Conditional Early Release and will not leave (village/town) without the express permission of the Monitoring Authority;
- c) Be subject to the supervision of the Monitoring Authority _____ (Name) at _____ (Address);
- d) Keep in contact with the Monitoring Authority or an agent of the Monitoring Authority as instructed;
- e) Refrain from purchasing, possessing, or consuming alcohol or any drugs that are considered illegal in the State of Sierra Leone;
- f) Refrain from purchasing, possessing, using or handling any weapon;

- g) Agree to visits from the Monitoring Authority or an agent of the Monitoring Authority in his residence, place of work or elsewhere as deemed appropriate by the Monitoring Authority. Submit to searches of his person, property and possessions by the Monitoring Authority or an agent of the Monitoring Authority as deemed appropriate by the Monitoring Authority;
- h) Report in person to the Monitoring Authority or an agent of the Monitoring Authority or to his local police station or any other location designated by the Registrar or the Monitoring Authority at the times stipulated by the Registrar or the Monitoring Authority;
- i) Immediately relinquish to the Monitoring Authority or an agent of the Monitoring Authority any suspected illegal drugs, alcohol or weaponry found in his possession;
- j) Undertake only such employment or occupation (including voluntary work) as approved in writing by the Monitoring Authority prior to its commencement and not change such employment or occupation without prior written permission of the Monitoring Authority;
- k) Not commit any offence;
- l) Not publicly or privately incite or promote crime or behave in a way which undermines public peace and security;
- m) Not violate any orders of the Spécial Court. Confirm his commitment to comply with all protection orders granted pursuant to Rule 75 of the Rules and to refrain from revealing the identity of witnesses and potential witnesses whose names were disclosed to him, and refrain from contacting directly or indirectly persons who were designated as witnesses or potential witnesses against him at his original trial(s);
- n) Not engage in violent, intimidating, threatening or coercive behaviour toward:
 - i. the Monitoring Authority or any agent of the Monitoring Authority;
 - ii. any civilian or law enforcement officer of the Home State;
 - iii. any persons involved in his or other Defendants' prosecutions and convictions before the Special Court, including Judges, former Judges, personnel or former personnel of the Special Court or any Witnesses or other persons who are at risk on account of their testimony.

- o) Notify the Monitoring Authority of:
 - i. any arrest, summons or questioning of him by a law enforcement officer;
 - ii. any requirement imposed upon him to take a drugs or alcohol test;
- p) Not associate with any person or category of person(s) with whom the Monitoring Authority has directed him in writing not to associate.

Special Conditions

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____

HEREBY ORDERS THE RELEVANT AUTHORITIES OF THE GOVERNMENT OF SIERRA LEONE:

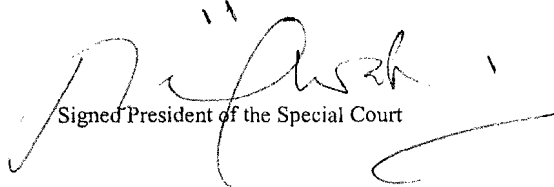
- (A) To immediately detain Mr. _____ if there is reason to believe that Mr. _____ has violated a condition of the Conditional Early Release Agreement signed by him on _____ or he poses a risk of harm to any person;
- (B) To immediately detain Mr. _____ upon notification by the Monitoring Authority that there is reason to believe that Mr. _____ has violated a condition of the Conditional Early Release Agreement signed by him on _____ or poses a risk of harm to any person;
- (C) To promptly thereafter notify the Registrar of the Special Court of the detention of Mr. _____ for the purposes of effectuating his transfer to the Special Court;
- (D) To transfer Mr. _____ to the custody of the Special Court without delay, or to such other place as the President of the Special Court may decide. The transfer shall be arranged between the relevant national authorities of the Government of Sierra Leone and the Registrar of the Special Court;

- (E) If unable to give effect to this order, to provide a written report to the President of the Special Court stating the reason for its inability to give effect thereto, within 24 hours of notification by Monitoring Authority.

HEREBY ORDERS THE REGISTRAR OF THE SPECIAL COURT

To remand Mr. _____ to the Special Court Detention Facility or such other Detention Facility as determined by the President in accordance with Rule 57 of the Rules of Procedure and Evidence.

Done at Freetown, Sierra Leone, this 02nd day of DECEMBER 2016.


Signed President of the Special Court



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

ANNEX E

FORM E

Draft Notice of Violation of Conditional Early Release Agreement

I, _____, [Monitoring Agent] of Mr. _____ who was placed on Conditional Early Release by the Supervision and Transfer Order of the Special Court on _____ (a copy of which is attached hereto), have reason to believe that Mr. _____ violated his Supervision and Transfer Order and Conditional Early Release Agreement by engaging in the following activity:

- a) Changed residence from _____ (village/town) in _____ District without notification to and approval by the Special Court.
- b) Failed to keep in contact with the agent of the Monitoring Authority as s/he was instructed.
- c) Purchased, possessed, or consumed alcohol or any illegal drugs.
- d) Purchased, possessed, used or handled any weapon.
- e) Refused visits from the Monitoring Authority or an agent of the Monitoring Authority in his residence, place of work or elsewhere as deemed appropriate by the Monitoring Authority.
- f) Refused to submit to searches of his person, property and possessions by the Monitoring Authority or an agent of the Monitoring Authority as deemed appropriate by the Monitoring Authority.
- g) Failed to report in person to the Monitoring Authority or agent of the Monitoring Authority or to his local police station or any other location designated by the Registrar or the Monitoring Authority at the times stipulated by the Registrar or the Monitoring Authority.
- h) Refused to immediately relinquish to the Monitoring Authority or an agent of the Monitoring Authority any alcohol, weapons or illegal drugs.

- i) Undertook employment or occupation (including voluntary work) without approval in writing by the Monitoring Authority prior to its commencement and/or changed such employment or occupation without prior written permission of the Monitoring Authority.
- j) Committed an offence.
- k) Publicly and/or privately incited or promoted crime or behaved in a way which undermines public peace and security.
- l) Violated orders of the Special Court, such as failing to comply with all protection orders granted pursuant to Rule 75 of the Rules, revealing the identity of witnesses and potential witnesses whose names were disclosed to him, and contacting directly or indirectly those who were designated as witnesses or potential witnesses against him at his original trial(s);
- m) Interfered with the administration of justice of the Special Court.
- n) Engaged in violent, intimidating, threatening or coercive behaviour towards:
 - the Monitoring Authority or any agent of the Monitoring Authority;
 - any civilian or law enforcement officer of the Home State;
 - any persons involved in his or other Defendants' prosecutions and convictions before the Special Court, including Judges, former Judges, personnel or former personnel of the Special Court or any Witnesses, their families or other persons who are at risk on account of their testimony.
- o) Failed to notify the Monitoring Authority of:
 - any arrest, summons or questioning of him by a law enforcement officer;
 - any requirement imposed upon him to take a drugs or alcohol test.
- p) Associated with a person or category of persons who the Monitoring Authority has, in writing, directed him not to associate with.
- q) Violated a Special Condition under the Conditional Early Release Agreement.

Brief Description of Alleged Violation

--

Signed

Monitoring Agent

Attachment: Supervision Order