

CONDITIONAL EARLY RELEASE AT THE RESIDUAL SPECIAL COURT FOR SIERRA LEONE

*Sierra Leone Rezidüel Özel Mahkemesi'nde
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Abstract

It appears to be a general rule amongst international tribunals that prisoners do not have to serve the entirety of the prison term to which they have been sentenced; instead, once two-thirds of a custodial sentence has been served, prisoners are eligible for early release. This has led to accusations of decreased transparency, and of being out of step with the aims of international criminal law.¹ It, however, provides prisoners the right to hope, which is particularly true for those sentenced to life imprisonment. The early release mechanism has some benefits for both the public and the prisoners. Firstly, the possibility of achieving early release could be an incentive for prisoners to behave well during the time of their punishment.² Secondly, the mechanism is consistent with Article 10(3) of

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¹ Jonathan H. Choi, "Early Release in International Criminal Law," *Yale Law Journal* 123, (2014): 1784,

<https://digitalcommons.law.yale.edu/ylj/vol123/iss6/4/>.

² William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 1st ed. (Oxford: Oxford University Press, 2010), 1102.

the International Covenant on Civil and Political Rights³ regarding the reformation and social rehabilitation of prisoners. Rehabilitation is a significant factor by which the international courts grant early release.⁴ In this paper, the conditional early release scheme at the Residual Special Court for Sierra Leone will be examined by referring to recent practices.

Key Words: Conditional Early Release, International Criminal Law, International Crimes, Residual Special Court for Sierra Leone, Rights of Prisoners.

Öz

Uluslararası mahkemelerde hükümlüler mahkum edildikleri hapis cezasının tamamını çekmelerinden önce mahkum oldukları cezanın üçte ikisini çekmeleri durumunda erken tahliye edilebilirler. Bu durum, şeffaflığın azalmasına neden olduğu ve uluslararası ceza hukukunun amaçlarının dışında olduğu gerekçeleri ile eleştirilmiştir. Ancak koşullu salıverilme hakkı mahkumlara, özellikle ömür boyu hapis cezasına çarptırılanlar için umut hakkını sağlar. Erken tahliye mekanizmasının hem toplum hem de mahkumlar için bazı yararları vardır. İlk olarak, erken tahliye edilme olasılığı cezaevinde hükümlülerin iyi davranması için bir teşvik olabilir. İkinci olarak, mekanizma hükümlülerin reformu ve sosyal rehabilitasyonu ile ilgili Uluslararası Medeni ve Siyasi Haklar Sözleşmesi'nin 10 (3) maddesi ile tutarlıdır. Uluslararası mahkemeler tarafından sağlanan erken tahliye hakkı mahkumların rehabilitasyonu için önemli bir

³ "The International Covenant on Civil and Political Rights" adopted by the General Assembly of the UN on 19th December 1966, accessed August 19, 2019, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

Article 10(3): *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation...*

⁴ Jessica M. Kelder, Barbora Hola, and Joris van Wijk, "Rehabilitation and Early Release of Perpetrators of International Crimes: A Case Study of the ICTY and ICTR," *International Criminal Law Review* 14, no. 6 (2014): 1177-1203, 1178, <https://doi.org/10.1163/15718123-01406008>.

faktördür. Bu çalışmada, Sierra Leone Rezidüel Özel Mahkemesi'nde koşullu salıverilme kurumu son uygulamalara atıfta bulunarak incelenecektir.

Anahtar Kelimeler: Koşullu Salıverilme, Hükümlülerin Hakları, Uluslararası Suçlar, Uluslararası Ceza Hukuku, Sierra Leone Rezidüel Özel Mahkemesi.

INTRODUCTION

The Special Court for Sierra Leone (hereinafter referred to as SCSL) was founded in 2002 by the request of the Government of Sierra Leone to the UN in 2000 in order to address serious crimes against civilians and UN peacekeepers committed throughout a decade (1991-2002) long war. The SCSL, the first international court founded by voluntary contributions, became the first court to complete its mandate and transition to a residual mechanism in 2013.⁵ After the closure of the SCSL in 2013, the Residual Special Court for Sierra Leone (hereinafter referred to as the RSCSL) was founded by an agreement⁶ with the United Nations (hereinafter referred to as the UN) and the Government of Sierra Leone in order to manage residual functions.⁷ In this essay, conditional early release scheme at the RSCSL, one of the ongoing functions of the RSCSL, will be analysed.

⁵ "The Special Court for Sierra Leone Its History and Jurisprudence," Residual Special Court for Sierra Leone, accessed August 20, 2019, <http://www.rscsl.org/>.

⁶ "Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone," Residual Special Court for Sierra Leone, accessed August 20, 2019, <http://www.rscsl.org/Documents/RSCSL%20Agreement%20and%20Statute.pdf>. The agreement was signed by the UN on 29th July 2010 and by the Government of Sierra Leone on 11th August 2010. According to article 14 of the Agreement, the Agreement shall enter into force on the day after both Parties have notified each other in writing that legal requirements for entry into force have been complied with. The RSCSL shall commence its operations immediately on the closure of the SCSL.

⁷ "Residual Functions The Obligations of the Residual Special Court," Residual Special Court for Sierra Leone, accessed August 20, 2019, <http://www.rscsl.org/residual.html>.

The term "residual functions" is explained by the RSCSL as follows; "... is used to describe the obligations which are derived from the core mandate of the SCSL

Article 24 of the Statute of the RSCSL provides prisoners the opportunity of pardon or commutation of sentences.⁸ Moreover, Rule 124 of the Rules of Procedure and Evidence of the RSCSL (hereinafter referred to as RPE of the RSCSL) which the RSCSL must apply *mutatis mutandis* to the conduct of the legal procedure pursuant to Article 16 of the Statute of the RSCSL provides conditional early release. The conditional early release mechanism at the RSCSL is regulated in detail and governed by the Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone (hereinafter referred to as the Practice Direction).⁹

According to Article 23-24 of the Statute of the RSCSL and Rule 124 of RPE of the RSCSL, the pardon or commutation of sentences is conducted via the laws of enforcement in the state in which the convicted person is imprisoned. The decision-making authority is the President of the RSCSL, who is obliged to be in consultation with the judges who imposed the sentence. The decision must be made on the basis of the interests of justice and the general principles of law.¹⁰ The Practice Direction regulates different issues regarding early release. Various issues that have been dealt with by the RSCSL regarding three such decisions given by the Court until now will be examined.

I. ELIGIBILITY FOR CONSIDERATION FOR EARLY RELEASE

Article 2 of the Practice Direction requires certain criteria to be met by the convicted person in order to be eligible.¹¹ The Article states that for consideration for conditional early release, the prisoner must first serve two-thirds of his/her total sentence provided

as a criminal tribunal mandated to prosecute persons who bear the greatest responsibility for the war in Sierra Leone.”

⁸ See Article 24 of the Statute.

⁹ “The 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, accessed August 20, 2019, http://www.rscsl.org/Documents/PRACTICE_DIRECTION_Conditional_Early_Release.pdf.

¹⁰ See Articles 23-24 of the Statute of the RSCSL and Rule 124 of the RPE of the RSCSL.

¹¹ See Article 2 of the Practice Direction.

he/she meets the requirements set out in paragraphs B through D of Article 2.¹² Serving two-thirds of the sentence does not mean the prisoner has the right to be released; in the Senessie case, the President of the RSCSL stated “a Convicted Person has no entitlement to Conditional Early Release from his or her sentence. The President considers whether it is safe and proper for the convict to serve the remaining part of the sentence other than in prison”.¹³ He/she has the right for his/her application for early release to be considered. If a prisoner applies for conditional early release before serving two-thirds of their sentence, the application will be dismissed by the reason of its being premature at the time of application, as happened in the Fofana case.¹⁴

The prisoner must initiate and follow the process to determine eligibility for conditional early release as provided by Article 3 of the Practice Direction.¹⁵ If they do not follow this process, the application will be rejected, as it happened in the Senessie case.¹⁶ In the Decision of the President on Senessie’s Application for Conditional

¹² See Article 2 of the Practice Direction.

¹³ The RSCSL Prosecutor v. Eric Koi Senessie, Decision of the President on Application for Conditional Early Release, 04.06.2014, 4, para. 15, accessed August 20, 2019, <http://www.rscsl.org/Documents/Decisions/Contempt/2011-01/035/SCSL-11-01-ES-035.pdf>.

¹⁴ The RSCSL Prosecutor v. Moinina Fofana and Allieu Kondewa, Decision of the President on Application for Conditional Early Release, 11.08.2014, 3, para. 3, accessed August 20, 2019, <http://www.rscsl.org/Documents/Decisions/CDF/836/SCSL-04-14-ES-836.pdf>.

¹⁵ See Article 3 of the Practice Direction: “(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.”

¹⁶ *Prosecutor v. Eric Koi Senessie* Supra note 13, para. 7.

Early Release, the application was rejected due to non-compliance with the Practice Direction,¹⁷ though it is not clear what rules were not complied with. Mujuzi recommends that if this occurs because the prisoner was unaware of the appropriate procedure, then they must be educated in this regard. Similarly, if the application is rejected for other reasons, these must be resolved.¹⁸

Article 2(B) of the Practice Direction sets out various conditions that prisoners must demonstrate, such as successful completion of any remedial, educational, moral, spiritual, or other programme to which they are referred; that they are not a danger to community, or to any member of the public; and compliance with the terms and conditions of their imprisonment.¹⁹ Annex A to the Practice Direction adds some other conditions: not posing any risk to specially the witnesses who testified against them; doing nothing during their incarceration to incite against the peace and the security of the people of Sierra Leone, either personally or through others.²⁰

It has been argued whether referral to appropriate programmes raises the possibility that the prisoner may attend the programme merely to increase the chance of early release, rather than the intended purpose of aiding rehabilitation.²¹ The present writer believes that attending any of those programmes at least allows for the possibility for prisoners to rehabilitate themselves. For this reason, this practice does not present any real danger, even if a prisoner's

¹⁷ *Prosecutor v. Eric Koi Senessie* Supra note 13, para. 7.

¹⁸ Jamil Ddamulira Mujuzi, "The Conditional Early Release of Offenders Transferred from the Special Court for Sierra Leone to Serve Their Sentences in Designated States: Some Observations and Recommendations," *African Yearbook on International Humanitarian Law*, (2014), 154-170, 160, http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/2343/Mujuzi_Conditional%20early%20release_2014.pdf?sequence=1.

¹⁹ See Article 2(B) of the Practice Direction.

²⁰ Annex A to the Practice Direction, Form A (1), Petition by Convicted Person to Establish Eligibility for Conditional Early Release, accessed August 25, 2019, http://www.rscsl.org/Documents/PRACTICE_DIRECTION_Conditional_Early_Release.pdf.

²¹ Mujuzi, "The Conditional Early Release," 161.

intentions are less than honourable. It is also suggested that the requirements in Form A and Article 2 need to be harmonised so prisoners know exactly what is required of them.²²

II. DETERMINATION OF APPLICATION FOR CONDITIONAL EARLY RELEASE

A. Consulting with the Judges who Imposed the Sentence

Pursuant to Article 8(A) and 8(B) of the Practice Direction,²³ Rule 124 of the RPE of the RSCSL²⁴ and Article 24 of the Statute of the RSCSL,²⁵ the President of the RSCSL must consult with the judges who imposed the original sentence if available or, if unavailable, at least two other judges on the basis of the interests of justice and the general principles of law. While the President makes the decision, he/she must determine whether or not the Convicted Person has shown clear and convincing evidence that he/she will be a safe member of society and comply with conditions imposed by a Conditional Early Release Agreement.

The question is whether there must be a consensus between the President and the judges who imposed the sentence. The answer here is that there does not have to be such a consensus, as the President has the ultimate power to decide whether the prisoner should be allowed conditional early release, or otherwise. The obvious criticism here is whether the President should have such unilateral power. The present writer believes that the President should have such power, as the prisoners fall under the auspices of the RSCSL, despite the fact that they serve their sentences in designated countries.

In the Fofana case, the President emphasised that “...*their views form part of the process through which I have to make my decision ... One report was supportive of the application but the other expressed serious*

²² Mujuzi, “The Conditional Early Release,” 160- 161.

²³ See Article 8(A)-8(B) of the Practice Direction.

²⁴ See Rule 124 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

²⁵ See Article 24 of the Statute of the RSCSL.

reservations mainly because Fofana has not, at any stage, acknowledged his own responsibility and the leadership role he played in the armed conflict."²⁶ In the Senessie case, the President stated "I ... consulted with the Judge who imposed the sentence."²⁷ Whether or not the judge's opinion is in favour of the prisoner is not mentioned in the Decision of the President.²⁸ As can be seen from these cases, the President has followed due process.

The President's decision must be accompanied by a reasoned opinion in writing and the factors which must be considered and evaluated. The factors are stated in the Kondewa case as follows; "(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;(v) the views and concerns of the community to which he seeks to be released."²⁹ These factors mirror at Article 8(D) of the Practice Direction.³⁰

The decision on conditional early release is final. It is not subject to appeal or review.³¹

²⁶ *Prosecutor v. Moinina Fofana and Allieu Kondewa* Supra note 14, para. 18.

²⁷ *Prosecutor v. Eric Koi Senessie* Supra note 13, para. 9.

²⁸ *Prosecutor v. Eric Koi Senessie* Supra note 13, para. 9.

²⁹ The RSCSL Prosecutor v. Allieu Kondewa, Decision of the President on Application for Conditional Early Release, 29.05.2017, 6, para. 11, accessed August 25, 2019, <http://www.rscsl.org/Documents/Decisions/CDF/860/RSCSL-04-14-ES-860.pdf>.

³⁰ See Article 8(D) of the Practice Direction.

³¹ See Article 8(E) of the Practice Direction.

B. Terms of the Conditional Early Release Agreements

Article 8(C)(i) and Article 9(C) of the Practice Direction stipulate that prisoners must comply with the terms of the Conditional Early Release Agreement specified by the President.³² If they fail in this regard, or pose a risk of harm to any person, the prisoner will be detained and transferred to the RSCSL. There are certain terms listed in Annex C, Pro Forma Conditional Early Release Agreement to which terms can be added if the President deems such additions necessary.³³

In the Fofana case, the President found it necessary to impose five further Special Conditions that do not appear in Annex C.³⁴ The prisoner may be released if he adheres to the Conditional Early Release Agreement. Fofana, however, violated the terms at least twice each month.³⁵ Despite such violations, he will not be returned to prison, but will face restrictions that are more stringent on his ability

³² See Article 8(C)(i) and Article 9 (C) of the Practice Direction.

³³ See Annex C of the Practice Direction, Pro Forma Conditional Early Release Agreement, accessed August 25, 2019, http://www.rscsl.org/Documents/PRACTICE_DIRECTION_Conditional_Early_Release.pdf.

³⁴ *Prosecutor v. Moinina Fofana and Allieu Kondewa* Supra note 14, 22, para. 49.

The five further special conditions are as follows :” (i) After the six-month Training session, the applicant shall publicly apologize for his wrongful conduct, acknowledge his guilt and show remorse; (ii) The applicant or any person acting with his consent or authority shall not, directly or indirectly, approach any of the witnesses in future, to directly or indirectly try to harm, intimidate or otherwise interfere with them in any way; (iii) The applicant shall conduct himself honorably and peacefully in the community and shall not engage in secret meetings intended to plan civil unrest or join local politics; (iv) The applicant shall strictly observe the reporting schedules set by the Monitoring Authority and the Registrar, and shall personally report to such centre or centres as are designated, at least TWICE every month; (v) Regular visits shall be made by the office of the Registrar to provide assurance of security to such vulnerable former witnesses as may desire it.”

³⁵ “Moinina Fofana Admits Violating Terms of His Conditional Early Release Agreement,” The RSCSL Press Release, Freetown, Sierra Leone, 18.03.2016, 1, para. 2, accessed August 28, 2019, <http://www.rscsl.org/Documents/Press/2016/pressrelease-031816.pdf>.

to travel outside his community.³⁶ He will also be taking an intensive two-week training programme on the modified terms and conditions of his release; after the training program, he must reaffirm his understanding of the terms and conditions of the release, including the modified special conditions.³⁷

The President did not find it necessary to impose further special conditions in the Senessie case; where it was deemed sufficient to complete and execute the terms listed in Annex C.³⁸ However, Senessie was not willing to follow the terms imposed. He chose to stay in detention for the short remaining period of his sentence.³⁹ He was released at the end of his sentence on the 13th June, 2014.⁴⁰

In the Kondewa case, the President decided to impose four further Special Conditions that do not appear in Annex C. The conditions are as follows; *“(i) after the ten-month training session, the applicant shall again publicly apologize for his wrongful conduct, acknowledge his guilt and show remorse; (ii) the applicant or any person acting with his consent or authority shall not, directly or indirectly, approach any of the witnesses in future, to directly or indirectly try to harm, intimidate or otherwise interfere with them in any way; (iii) the applicant shall conduct himself honorably and peacefully in the community where he is ordered to live and shall not engage in secret meetings intended to plan civil unrest or join local or national politics. (iv) the applicant shall strictly observe the*

³⁶ “Moinina Fofana Will Face Stricter Conditions for Violating Terms of His Conditional Early Release Agreement,” The RSCSL Press Release, Freetown, Sierra Leone, 25.04.2016, 1, para. 3, accessed August 28, 2019, <http://www.rscsl.org/Documents/Press/2016/pressrelease-042516.pdf>.

³⁷ *Fofana Will Face Stricter Conditions*, 1-2, para. 7-8.

³⁸ *Prosecutor v. Eric Koi Senessie* Supra note 13, 9-10, para. 39.

³⁹ Teresa Anne Doherty and Shireen Avis Fisher, “Enforcement of sentences and oversight of prisoners convicted by the Special Court for Sierra Leone,” in *Research Handbook on the International Penal System*, ed. Roisin Mulgrew and Denis Abels (Cheltenham, UK: Edward Elgar, 2016), 355-383, 359-360.

⁴⁰ “Moinina Fofana Granted Conditional Early Release, After Six More Months in Prison,” The RSCSL Press Release, Freetown, Sierra Leone, 11.08.2014, accessed August 29, 2019, <http://www.rscsl.org/Documents/Press/2014/pressrelease-081114.pdf>.

reporting schedules set by the Monitoring Authority and the Registrar, and shall personally report to such centre or centres as are designated, at least TWICE every month."⁴¹

One of the main criticisms against the terms is the 'one-size-fits-all approach' that means the terms apply equally to all related applications. The criticism here is that the terms should be individualised instead of being general.⁴² Through the individualised approach, the terms would fit the needs and conditions of the particular circumstances.⁴³

C. Suitable Requested Area of Release and Evidence of Adequate Means of Financial Support

Article 8(C)(ii) of the Practice Direction stipulates certain conditions for early release to be granted. According to Article 8(C)(ii):

"the President must not grant release if a convicted person is not able to provide a suitable requested area of release by reason of:

- a) Absence of a suitable program of supervision; or*
- b) Unwillingness of the community to accept the Convicted Person; or*
- c) Any other cause which the President finds renders the Requested Area of Release unsuitable."*

Early release against Article 8 (C)(ii) is absolutely prohibited.⁴⁴ In the Fofana,⁴⁵ Kondewa⁴⁶ and Senessie⁴⁷ cases, each individuals provided areas of release, but the President deemed the first choice to be unsuitable in the Senessie case.⁴⁸ After the Registrar's report upon the requested area of early release, the President considered that Senessie would not pose a risk to the community in his first choice.⁴⁹

⁴¹ *Prosecutor v. Allieu Kondewa* Supra note 29, 22-23, para. 61.

⁴² Mujuzi, "The Conditional Early Release," 164, para. 2.

⁴³ Mujuzi, "The Conditional Early Release," 164, para. 2.

⁴⁴ *Prosecutor v. Moinina Fofana and Allieu Kondewa* Supra note 14, 12, para. 21.

⁴⁵ *Prosecutor v. Moinina Fofana and Allieu Kondewa* Supra note 14, 12, para. 22.

⁴⁶ *Prosecutor v. Allieu Kondewa* Supra note 29, 8, para. 16-18.

⁴⁷ *Prosecutor v. Eric Koi Senessie* Supra note 13, 5, para. 19.

⁴⁸ *Prosecutor v. Eric Koi Senessie* Supra note 13, 5, para. 19.

⁴⁹ *Prosecutor v. Eric Koi Senessie* Supra note 13, 6, para. 25.

Under Article 8(D)(i) and (v) of the Practice Direction, the President shall consider the safety and the views and concerns of the community where the prisoner will be released.⁵⁰ In order to learn the views and concerns of the community, the Registrar must prepare a portfolio and submit it to the President and the Judges, who were consulted under Article 5(H) of the Practice Direction.⁵¹

In the Kondewa case, In Bo District, where Kondewa wished to be conditionally released, most of the people interviewed agreed that there was concern after the violation of conditional early release agreement by Fofana, but the people expressed their hope that he will have learnt from the experience of Fofana.⁵²

With regards to evidence of adequate means of financial support, Article 8(C)(iii) stipulates a requirement for evidence of adequate means of financial support for the prisoners in order to be granted conditional early release. The Practice Direction does not define the amount that is considered adequate means of support. In this regard, it seems that the Practice Direction diverges from the one-size-fits-all approach and adopts an individualised approach for each applicant. The amount may be specified where prisoners will be released as expenses may differ from city to city or country.

In the Fofana case, Fofana said *"he would continue his vocation as a fisherman and agriculturist to support himself financially."*⁵³ In the Senessie case, Senessie submitted that *"he is a carver by profession and earned his living and that of his family through sales of his art work. He also served as Priest in a local Church and Chairman of the Board of Governors of the National Secondary School, which positions entitled him to monetary allowances."*⁵⁴ As a fair criticism, Mujuzi doubts the prisoners, on release, would have been able to continue some of the jobs they did before imprisonment.⁵⁵ As he points out, some jobs require

⁵⁰ See Article 8(D)(i) and (v) of the Practice Direction.

⁵¹ See Article 5 of the Practice Direction.

⁵² *Prosecutor v. Allieu Kondewa* Supra note 29, 9, para. 21.

⁵³ *Prosecutor v. Moinina Fofana and Allieu Kondewa* Supra note 14, 12, para. 22.

⁵⁴ *Prosecutor v. Eric Koi Senessie* Supra note 13, 6, para. 20.

⁵⁵ Mujuzi, "The Conditional Early Release," 167, para. 1.

high moral integrity, and a person who has a criminal record from an international criminal tribunal would not be able to meet the criteria for being a Priest or Chairman of the Board of Governors of a National Secondary School.⁵⁶ Being a fisherman or agriculturist, however, would not be a problem for compensating expenses. In the Kondewa case, Kondewa said he has access to farm land to continue agricultural work with which he will support himself and his family.⁵⁷

CONCLUSION

The conditional early release scheme at the Residual Special Court for Sierra Leone is a mechanism for convicted persons to be released conditionally before they serve their entirety term of prison. Once two-thirds of a custodial sentence has been served, convicted persons are eligible for consideration to be early released conditionally. Serving two-thirds of the sentence does not mean the convicted has right to be released. Prisoners must meet the requirement in Article 2 of the Practice Direction.

If a prisoner applies for conditional early release before serving two-thirds of their sentence, the application will be dismissed by the reason of its being premature at the time of application, as it happened in the Fofana case.

The prisoner must initiate and follow the process to determine eligibility for conditional early release as provided by Article 3(A) of the Practice Direction. If they do not follow this process, the application will be rejected, as it happened in the Senessie case.

Article 2(B) of the Practice Direction sets out various conditions that prisoners must demonstrate, such as successful completion of any remedial, educational, moral, spiritual, or other programme to which they are referred; that they are not a danger to community, or to any member of the public; and compliance with the terms and conditions of their imprisonment.

⁵⁶ Mujuzi, "The Conditional Early Release," 167, para. 1.

⁵⁷ *Prosecutor v. Allieu Kondewa* Supra note 29, 8, para. 17.

The decision-making authority is the President of the RSCSL, who is obliged to be in consultation with the judges who imposed the original sentence if available or, if unavailable, at least two other judges on the basis of the interests of justice and the general principles of law. The President has the ultimate power to decide whether the prisoner should be allowed conditional early release, or otherwise. The decision on conditional early release is final. It is not subject to appeal or review.

There are certain terms that the convicted must comply with and listed in Annex C, Pro Forma Conditional Early Release Agreement to which terms can be added if President deems such additions necessary. The President applied further conditions in the Fofana and Kondewa cases. One of the main criticisms against the terms is the 'one-size-fits-all approach' that means the terms apply equally to all related applications. The criticism here is that the terms should be individualised instead of being general. Through the individualised approach, the terms would fit the needs and conditions of the particular circumstances.

According to Article 8 (C)(ii), the President must not grant release if a convicted person is not able to provide a suitable requested area of release.

With regards to evidence of adequate means of financial support, the Practice Direction does not define the amount that is considered adequate means of support. In this regard, it seems that the Practice Direction diverges from the one-size-fits-all approach and adopts an individualised approach for each applicant.

Under Article 8(D)(i) and (v) of the Practice Direction, the President shall consider the safety and the views and concerns of the community where the prisoner will be released.

Until now, the conditional early release has been applied in 3 cases; namely Fofana, Senessie, Kondewa. Senessie rejected to be released early, Fofana and Kondewa were conditionally released.

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