

**REPORT ON THE SPECIAL COURT
FOR SIERRA LEONE**

**Submitted by the Independent Expert
Antonio Cassese**

12 December 2006

TABLE OF CONTENTS

I.	Executive summary	1
II.	Introduction	4
A.	The mandate of the Independent Expert and its limits	4
B.	Non-interference in judicial independence.....	5
C.	Cooperation lent by the relevant authorities.....	6
III.	The Special Court – A brief overview of merits and challenges.....	8
A.	Main features	8
B.	Merits and challenges of the Special Court.....	8
i.	Location	10
ii.	Insecure funding	11
iii.	Remote Appeals Chamber	12
iv.	Lack of judicial leadership.....	13
v.	Insufficient contribution of the Defence Office.....	14
vi.	Initial insufficient use of the existing “know-how”	14
IV.	Assessment of judicial output and productivity	16
A.	Introduction	16
B.	Factors influencing the duration of judicial proceedings	18
i.	Inherent reasons shared by all international criminal courts	19
ii.	The adversarial model.....	20
iii.	External factors.....	21
iv.	Insufficient judicial management	22
C.	Use of courtroom space and resources	22
V.	Proposals for ameliorating the functioning of the Special Court.....	24
A.	Ensuring judicial leadership and a more efficient central management.....	24
B.	Enhancing the efficiency of the proceedings.....	25
i.	Improving trial and appeal management	25
(a)	Reducing the charges preferred by the prosecution	26
(b)	Managing the pre-trial phase.....	26
(c)	Admitting written evidence	26
(d)	Ensuring the expeditious and effective conduct of trial proceedings.....	27
(e)	Ensuring Expeditious and Fair Appellate Proceedings	27
(f)	Exchanging experience with other international Judges	28
ii.	Providing adequate legal resources to Chambers	28
(a)	Augmenting the Appeals Chamber’s legal support.....	29
(b)	Increasing legal officers’ competence to assist in the drafting of judgments.....	29
(c)	Recruiting experienced staff.....	30
(d)	Improving working methods in Chambers	31
(e)	Improving the resources available to Chambers	31
C.	Improving the resources of the Defence.....	32
i.	Providing adequate remuneration	32
ii.	Increasing the availability of logistical resources.....	33
iii.	Reducing administrative obstacles.....	34
iv.	Upgrading the substantive legal role of the Defence Office.....	34
v.	Enhancing the appellate expertise of the defence teams.....	35
D.	Maximizing courtroom resources.....	36

i.	Overall Court efficiency in decision making.....	36
ii.	Communication with the parties and the Registry.....	37
iii.	Enforcing the schedule.....	38
E.	Enhancing good management.....	38
i.	Fostering communication within the Registry.....	39
(a)	Administrative Instructions may impede communication.....	39
(b)	Insufficient transparency may obstruct progress.....	40
(c)	The need to promote more trust.....	42
ii.	Combating staff turnover.....	42
(a)	Implementing the Personnel Policy.....	43
(b)	Offering training incentives.....	44
iii.	Preventing discrimination and abuse.....	45
F.	Improving conditions of detention of indictees.....	46
VI.	Problems relating to the Taylor Trial in The Hague.....	48
A.	Strategic and operational plans should be worked out.....	48
B.	An Alternate Judge should be appointed.....	50
C.	Prosecution concerns should be addressed.....	50
D.	Defence issues should be resolved.....	51
E.	Potential problems with witness movement.....	52
F.	Expanding outreach from The Hague to Liberia.....	52
VII.	Completion Strategy.....	53
A.	Milestones of the remaining years.....	53
B.	What should be done.....	54
i.	Securing adequate funding.....	54
ii.	Planning for Appeals.....	55
iii.	Setting up the residual mechanism.....	57
iv.	Laying the foundations for a legacy.....	58
(a)	Downsizing staff in a reasonable way.....	58
(b)	Training local staff.....	58
(c)	Extending the Outreach Program.....	59
(d)	Improving the Court’s website.....	60
VIII.	The Special Court’s legacy.....	61
A.	Use of the Court’s physical infrastructures.....	61
B.	Handing over the Court’s legal materials to Sierra Leonean courts.....	62
C.	Supporting trials of mid-level defendants.....	63
D.	Reaching out to the Sierra Leonean legal profession.....	63
E.	Redeploying Local Staff.....	63
IX.	Summing up of conclusions.....	65
A.	Merits of the Special Court that should be enhanced.....	65
B.	Major shortcomings.....	65
i.	“Shoestring justice”.....	65
ii.	Lack of a strong judicial leadership from the outset.....	66
iii.	Insufficient reliance on the existing “know-how”.....	66
iv.	Other failings.....	67
X.	Recommendations.....	68

I. EXECUTIVE SUMMARY

1. The Special Court for Sierra Leone has been rightfully hailed as having created a new model of international criminal justice. It has shown that it is possible to have an international court that is directly accessible to the population affected by the crimes committed, both by locating the Court in the country where the crimes took place and by developing a very effective outreach program. Likewise, the establishment of the Defence Office to provide an institutional counterbalance to the Prosecution has been widely viewed as a creative advance that should be considered in all future courts.

2. The Special Court was also designed to avoid some of the pitfalls of its international predecessors, the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR). It was envisaged as a cost effective and more efficient model that would be fiscally responsible to an external Management Committee and donor countries funding the Court through voluntary contributions. Furthermore, it was decided that the focus of the prosecution should be restricted to “those who bear the greatest responsibility.” As a direct result of this limited prosecutorial mandate, the Special Court has been able to keep its budget to a minimum.

3. This institutional experiment was indisputably innovative and broke new ground in international criminal justice. However, although meritorious in many respects, the new judicial body has not fully lived up to its initial expectations from the viewpoint of expeditiousness. The recommendations I am making in this Report are designed to redirect the Special Court back to its original goals of efficiency. Nothing in this Report is intended to detract from the notable successes of the Court. This entire exercise is focused on improving the Special Court and bolstering its merits.

4. An evaluation of judicial productivity demonstrates that the Judges and their small staff are moving the three ongoing trials towards judgment. Two trials are finished. The first two trial judgments are expected in spring 2007 or, more realistically, in mid-2007. A third trial should be finished by the end of 2007; it is predicted that the judgment will be delivered a few months later. Appeals Judges, who are currently working part-time from abroad, will take permanent office as soon as the first trial judgment is rendered. Appeals, if any, are expected to take six months per case. The trial of Charles Taylor, which has been moved to The Hague for security reasons, is tentatively scheduled to start on 2 April 2007, but seems more likely to begin a few months later. Whether or not the start of the trial is delayed, judgment should be expected in the first half of 2009, with a potential appeal to follow. Realistically, the Special Court for Sierra Leone should complete its judicial activity by the end of 2009.

5. Assuming that this schedule is respected—and it should be respected—proceedings against ten accused will have taken approximately seven and a half years from the Court’s inception in mid-2002, when the Registrar and Prosecutor arrived in Freetown. This is not a significant improvement on the record of the ICTR or ICTY, which within a comparable time frame tried many more accused, albeit with more Judges, staff, and resources.

6. As a result of my inquiries, I have concluded that three main factors have contributed to the inability to fully live up to initial expectations: (i) the financial insecurity resulting from funding based on voluntary contributions; (ii) the lack of strong judicial leadership; and (iii) the initial failure to draw fully upon the available experience in international criminal proceedings.

7. In my view, the time has come to work out a tight and final plan for the completion of the Court's activities. The next three years, which should also be the last years of the Court's existence, are crucial to the success of the Special Court. They may redeem its past inadequacies and, by the same token, further bolster the indisputably positive aspects of the Court. Hence, everyone at the Court should commit themselves to the milestones of the Completion Strategy and focus their work on these goals. In return, the Management Committee and donor countries should secure the necessary financing for the three remaining years.

8. I am recommending that the judicial leadership of the Special Court be strengthened. The failure to demand from the outset that the Court's President reside in Freetown and work on a full-time basis has weakened the Court's structure. *De facto*, the Judges have been excluded from the day-to-day running of the Court and the making of important institutional decisions. Ultimately, it is the Judges who determine the success of the Court and they must be consulted on all important matters affecting the institution.

9. In relation to the ongoing cases, I am recommending a series of procedural innovations geared towards streamlining trial proceedings and giving the Judges more power to control the Prosecution and the defence in court. I have also inquired about the progress of preparations for the Taylor trial and am recommending certain improvements.

10. The Defence Office, no doubt a ground-breaking innovation of this Court, is nevertheless in need of reform. Currently, the Defence Office is unable to provide sufficient financial, administrative, logistical, or legal support to the defence teams. I am making some concrete suggestions that should assist the Defence Office in living up to its important potential.

11. In my interviews, I have observed a growing frustration with management within the Registry. In my opinion, these concerns flow primarily from a breakdown in or at least an insufficient flow of communication. I am recommending measures to re-open or strengthen lines of informal communication and increase transparency. I am also suggesting some ideas to aid with the staff turnover problems at the Court. In addition, I believe that an anti-discrimination policy and mandatory training should be implemented.

12. Finally, with regard to the Completion Strategy and the Court's Legacy, I consider that the Court should begin to focus more on its Sierra Leonean staff. I am recommending some strategies to enhance the enduring impact of the Special Court on the Sierra Leonean legal system. This should include reaching out to local legal professionals and passing on evidence to Sierra Leonean prosecutors to enable future trials of alleged mid-level offenders in Sierra Leonean courts.

13. I am very hopeful that, with these changes, the Special Court will be better able to fulfil its initial promise and set a new standard for international criminal tribunals.

II. INTRODUCTION

A. The mandate of the Independent Expert and its limits

14. The terms of reference the UN Secretary-General set forth in his letter of appointment provide that the Independent Expert shall review the efficiency of the Special Court. In particular, he shall scrutinize the operation and functioning of the Court “with the objective of ensuring the most efficient use of the Court’s resources and the completion of the Court’s work in a timely manner while at the same time maintaining the highest standards of fairness, due process and respect for human rights.” The tasks of the Independent Expert also include conducting “an assessment of judicial output and productivity, the efficient use of courtroom space and resources and factors influencing the duration of judicial proceedings.”

15. In fulfilling this mandate, I have not been asked to undertake a general assessment of the merits and shortcomings of the Special Court. By the same token, I am not requested to propose changes or innovations that would dramatically impact on the present structure and staffing of the Special Court. It is apparent from the terms of reference mentioned above that I must take the current functioning of the Special Court as the starting point and only propose changes and improvements that may ameliorate *the next steps* of the Court’s functioning.

16. It follows that I will take the current status of judicial proceedings as a fact: two trials are about to terminate, a third one is likely to end in December 2007, and the Charles Taylor trial is set to start in The Hague in April 2007.¹ Appellate proceedings are likely to begin in the first half of 2007, as soon as the first trial judgments and, potentially, sentencing judgments are delivered. Starting from this basic premise, I will concentrate on proposing measures designed to:

- (i) Ensure strong leadership of the Special Court;
- (ii) Enhance the efficiency of Trial Chambers with a particular focus on the Taylor proceedings;
- (iii) Augment the resources of the defence;
- (iv) Improve the efficiency and expeditiousness of appeals proceedings,
- (v) Strengthen the management of the Special Court;
- (vi) Achieve the Completion Strategy; and
- (vii) Forge the Court’s legacy.

¹ Trial Chamber I heard closing arguments in the CDF case on 28 and 29 November 2006. Trial Chamber II heard closing arguments in the AFRC case on 7 and 8 December 2006. The RUF trial, also before Trial Chamber I, is set to resume with the Defence case in May 2007 and should finish at the end of 2007.

17. Although my mandate is relatively limited in scope, and geared to proposing workable solutions for the near future, I have nevertheless included a compendious survey of the merits and failings of the Special Court, so as to provide the necessary backdrop against which the current functioning of this judicial institution should be viewed.

B. Non-interference in judicial independence

18. Trial Chamber I (Judges Boutet, Itoe, and Thompson) has contended that this inquiry interferes with judicial independence. Their arguments were set out in their comments on the Draft Report (which are not confidential, since they were also sent to the Chairman of the Management Committee; I reproduce them in Annex C so that those who read this Report may take first-hand cognizance of the legal grounds propounded by the three Judges). There, they contend that the Management Committee's request that the Independent Expert undertake an evaluation of the Special Court's judicial productivity amounts to an undue interference with the "independence of the judges in the performance of their judicial functions" (§2), thereby constituting a breach of Article 13(1) of the Court's Statute and of Article 7 of the Agreement between the UN and the Government of Sierra Leone. It follows that the discharge of this task by the Independent Expert would constitute, in the opinion of the three distinguished Judges, "a flagrant disregard of the doctrine of *sub judice*, fully entrenched in the tradition of the law, whether common law or civil law."

19. I respectfully submit that this criticism is based on a basic misapprehension. Article 13 of the Court's Statute stipulates that the Judges shall be independent and "shall not accept or seek instructions from any Government or any other source." Plainly, this means that no Government nor any other authority or body may give "instructions" to Judges so as to condition their evaluation of evidence or determination of guilt or innocence of the indictees. Judges must be and remain absolutely free to form their own opinions in the cases brought before them. What the Management Committee has requested is a far cry from such prohibited "interference" in the Judges' independence. Neither the Committee nor the Independent Expert are in any way endeavouring to issue "instructions" to the Judges on appraising the evidence or determining whether the indictees are guilty or innocent. The Committee and the Independent Expert do not seek to interfere with the merits and the substance of the decisions taken or to be taken by the Judges.

20. Instead, it is my function as an Independent Expert to assist the Management Committee by establishing whether in the independent and autonomous discharge of their judicial functions, Judges are operating *efficiently*, that is to say, are using all reasonable means necessary to avoid undue delays. Comments and suggestions by the Independent Expert should and will only be directed at *proposing* ways of improving the procedure and enhancing the Court's efficiency. Such comments and suggestions are consonant with, and not in breach of, Article 13 of the Court's Statute. They also fully comport with, and aim at implementing, the primary goals pursued by the founders of the Special Court, who—as I will emphasize below—deliberately set up a hybrid and slim judicial

institution with a view to avoiding the slow pace, efficiency problems, and costly nature of the ICTY and the ICTR.

21. In short, the task at issue, as assigned to me, does not in any way interfere with the *free conviction and judgment* of Judges, but only relates to the *daily management* of judicial business and only aims at bolstering efficiency. As such, the discharge of this task is fully in keeping with Article 7 of the Agreement between the UN and the Government of Sierra Leone, a provision referred to by the Judges in question. Under this Article, the Management Committee can “provide advice and policy direction on all non-judicial aspects of the operation of the Court, **including questions of efficiency.**”

22. I would like to add that there is an important precedent to this task to which I have been assigned. In 1998, by resolutions 53/212 and 53/213 of 18 December 1998, the UN General Assembly requested the UN Secretary-General to conduct a review of the ICTY and the ICTR with a view to evaluating their “effective operation and functioning” so as to ensure the “efficient use of the resources” of the tribunals. Accordingly the Secretary-General set up an Expert Group, consisting of five persons, and mandated them to “prepare an evaluation of the functioning and operation” of the two tribunals, “with the objective of enhancing the efficient use of the resources allocated to the tribunals.” The Expert group conducted in depth inquiries and submitted a detailed report (A/54/634, of 22 November 1999). The Report contained extensive Recommendations (pp.89–94).

23. None of the bodies involved in that exercise objected that it amounted to undue interference in the judicial independence of the Judges. Indeed, it is notable that subsequently the ICTY and the ICTR Judges changed some of their Rules of Procedure and Evidence as well as some of their practices in line with the recommendations of the Expert Group.

C. Cooperation lent by the relevant authorities

24. Throughout this exercise I have received unreserved cooperation. No meeting or information was refused to me in Freetown. I would therefore like to express my gratitude to the Judges, the Registrar, the Acting Prosecutor, the Principal Defender, and all the staff of the Special Court for their open and forthcoming attitude. Former officers of the Special Court, in particular the former Prosecutors, David Crane and Desmond de Silva, the former Registrar, Robin Vincent, as well as other former officers have all taken time out of their busy schedules to assist me in understanding the history of the Special Court. Current and former defence counsel have also made themselves available to discuss their perspectives either with me or my assistant, Laurel Baig. I also owe a debt of gratitude to the various NGOs who have contributed to this project. A full list of all those who have contributed to this project by speaking with us is appended in Annex F. I am grateful to all of them for their assistance.

25. The Judges and other Court officials have also been cooperative in commenting on the Draft Report I circulated to them on 24 November 2006 so as to elicit comments, criticisms and suggestions (an indication of those who have commented on the Draft

Report is found in Annex F). I have taken all these comments into account when revising the 24 November Draft. I have thus been able to remove a few misapprehensions or inaccuracies, to spell out observations already set out in the Draft, as well as more fully highlight the merits of the Court and its major achievements.

III. THE SPECIAL COURT – A BRIEF OVERVIEW OF MERITS AND CHALLENGES

A. Main features

26. The Special Court for Sierra Leone, established on the strength of a 2002 Agreement between Sierra Leone and the United Nations, is a unique institution. It is not part of the national legal system of Sierra Leone, but constitutes an international judicial institution, although hybrid in character. It is composed of Judges, Prosecutors, and Registry staff that are either from Sierra Leone or internationally recruited. The Court's jurisdiction includes both international and Sierra Leonean law. The Court sits in Freetown, Sierra Leone, within the territory where the crimes over which it has jurisdiction were perpetrated.

27. The Special Court is a remarkable achievement. Its success is a tribute to the men and women who worked tirelessly to establish a court to try those persons alleged to bear the greatest responsibility for the crimes committed during Sierra Leone's civil war. Only a short time after the agreement creating the Court was signed, staff were already in the country starting investigations and beginning to set up the institution. Notwithstanding tremendous hurdles, the first years of the Court were successful in many respects. A compound was set up in Freetown to host the Court's offices and a detention facility. The Court building, an architectural landmark, was completed in less than 18 months from the Court's creation. The Prosecutor strictly interpreted the Court's mandate and confined himself to issuing, within a year of his arrival, thirteen indictments against those who were believed to "bear the greatest responsibility." Most accused were taken into custody immediately.

28. The Judges of Trial Chamber I arrived in Sierra Leone in December 2002. In early 2003, indictments were issued and accused were arrested. The Court is now operating at full capacity, with both Trial Chambers preparing to issue their first judgments. To date, the jurisprudence of the Special Court has grappled with a number of novel issues in international criminal law. It is to be expected that the judgments, in addition to establishing the guilt or innocence of the accused persons, will address important factual issues relevant to establishing an historical record of the events; they will also deal with legal issues of worldwide interest.

B. Merits and challenges of the Special Court

29. The Special Court was designed to improve on the international criminal tribunals for the former Yugoslavia and Rwanda, which were perceived to be marred by four essential flaws: (i) their costly nature, (ii) the excessive length of their proceedings, (iii) their remoteness from the territory where crimes had been committed and consequently the limited impact of their judicial output on the national populations, (iv) the unfocused character of the prosecutorial targets resulting in trials of a number of low-ranking accused. Thus it was decided to establish a Court that would be lean and agile as well as inexpensive, that would sit in Sierra Leone, and in addition would prosecute and try only

those most responsible for the crimes perpetrated, restricting the focus of the prosecution to a limited number of persons.

30. In many respects the Special Court has lived up to these expectations. In addition to acting as an international court of law, it has operated as a transitional justice mechanism, interacting with broad sections of civil society as well as the justice sector of Sierra Leone. The Court has incorporated many local staff members, thereby contributing to enhancing the proximity of this new international judicial mechanism to the local population. The direct impact of the Special Court on civil society in Sierra Leone has been strengthened by an exceedingly effective Outreach Programme, which has proved to be exemplary and should constitute a model for future international courts.

31. Initially the attempt to build a judicial institution capable of functioning well and speedily with limited funding proved successful. Investigations were carried out quickly and in a targeted manner. In a matter of few months the Prosecutor issued indictments against persons he considered to be the principal offenders. Trial Chamber I and the Appeals Chamber became operative fairly rapidly and pronounced on many preliminary motions. Thus a sincere effort was made to operate on a lower budget than that of other international tribunals.

32. Recognising a need to provide better institutional resources to the defence, the Special Court established a Defence Office headed by a Principal Defender. Although structured as a body dependent on the Registrar and not endowed with its own independent budget, the Defence Office nevertheless represents an important conceptual step forward on the road to institutional equality with the Prosecution. In spite of certain problems with implementation, to which I draw attention below (see §§136–155), the Defence Office has responded relatively effectively to the needs of the accused.

33. Another accomplishment of the Special Court is that it has taken steps to tackle the issue of its legacy, i.e. the question of what the Court should contribute to Sierra Leone and the region after it completes its mandate. This is only natural given the Court's timeline, its in-country location, and the close links between the Court and the civil society of Sierra Leone. In 2005, a few years into its operation, a project officer was appointed, a legacy white paper was produced, and several projects were initiated. The question is of course still open, and I will discuss it in a section of this Report. Nevertheless, the mere fact that Court officials have started to deal with the question of legacy is, in itself, a notable achievement and is a model for the other international criminal tribunals which have not yet started this process in earnest.

34. In short, the Special Court has in some respects made much headway, establishing a new benchmark for international criminal justice. On the other hand, the Court has also experienced a number of challenges and setbacks that I will endeavour to indicate in this Report.

35. As I will explain in greater detail below, the following factors have affected the performance of the Special Court:

- i. It is located in a place where living conditions are exceedingly hard and many facilities are lacking or insufficient;
- ii. Its funding is based on voluntary contributions of States rather than on United Nations assessed contribution, which results in uncertainty in the Court's budget and financial life;
- iii. The Judges of the Appeals Chamber operate on a part-time basis and are not required to live in Freetown, which may have delayed decisions;
- iv. The Court's President was not required to live in Freetown and thus could not provide necessary judicial leadership to the institution;
- v. In spite of the innovative establishment of a Defence Office, the resources allocated to the defence have been insufficient;
- vi. The initial insufficient reliance on existing know-how and knowledge from the ICTR and ICTY has caused delays and inefficiencies.

i. Location

36. The decision to establish the Special Court in Freetown, the capital of Sierra Leone, immediately bolstered the ability of the Court to have a significant impact on the affected population. Unlike the ICTY and ICTR, which are situated outside of the conflict regions, the Special Court is in the country where the crimes took place. As expected, this has made the Court much more accessible to the local population. Victims and other members of the public can attend the hearings and watch the proceedings firsthand.² Local media representatives have direct access to the proceedings and regularly report on them. Moreover, the Court's early focus on outreach projects has created an enviable model for future international courts.

37. However, as will be detailed in this Report, the Freetown location has also created a number of challenges. Freetown is a "hardship, non-family duty station." This bureaucratic jargon, translated into plain language, means that the internationally-recruited Judges and staff are cut off from their families for long periods, a fact that takes a toll on their personal lives. In addition, in spite of inoculations and medical supervision, many staff members occasionally suffer from such diseases as malaria, typhoid, and stomach troubles. Electricity is scarce in Sierra Leone. Freetown has a power grid, but the Government only provides sporadic electricity. Also, water shortages occasionally occur.

38. These hardships affect all aspects of the court's functioning. Recruitment is difficult because many competent international professionals are not attracted to live in Freetown. Once here, many staff members who choose to come to Sierra Leone grow weary of the

² It has been reported to me that proceedings are broadcast in the public gallery in English only. Even when an interpreter is interpreting a witness or the whole proceedings into a local language, this service is not made available to the public. If this is so, then efforts should be made to allow the non-English speaking public to benefit from the courtroom interpretation.

hardships and the distance from their families, and this contributes to a high turnover rate. Illness decreases productivity and results in delays in the proceedings. Although the Court generates its own electricity, there are still occasional shortages which interfere with the Court's work and occasional surges which damage computer equipment causing interruptions in internet service.

ii. Insecure funding

39. The Special Court was intended to be more cost effective than the other international criminal tribunals. The Court has operated on an extremely limited budget. The total budget for the first four years of the Special Courts' operation is estimated at less than 125 million USD. In comparison, the ICTY consumes this amount in a single year, although these funds are used for a larger number of simultaneous trials. Reliance on voluntary contributions has freed the Court from the strict United Nations financial rules and regulations. However, as will be considered elsewhere in this Report, restricted and uncertain funding has resulted in a variety of difficulties for the Court.

40. Financing the court, even at these low levels, has been an ongoing problem. Unlike the two ad hoc tribunals, which are financed through the United Nations, the Special Court relies in principle on voluntary contributions from the international community. The Special Court's lack of financial stability has been a noteworthy weakness. Often donating States have provided their contributions at the last minute, thus hampering financial planning and more generally creating financial insecurity.

41. From the outset, it has not been clear whether fund-raising was a function devolving upon the Management Committee or instead on the Court's Registrar. Consequently, the administration of the Special court has been forced to divert attention and resources to fundraising. For example, the Registrar and Prosecutor have travelled extensively to raise money for the Court. The Court has also convened a pledging conference to generate additional funds. The annual reports of the Special Court are professionally reproduced in a glossy colour pamphlet, suitable for distribution to potential donors. In contrast, the annual reports of the ICTR and ICTY are printed on plain paper and distributed electronically. These fundraising activities are expensive and require additional staffing.

42. In spite of these efforts, the Special Court has not been able to secure sufficient funding for its core operations. The United Nations has played a significant role in supplementing the financial needs of the Court. In 2004, the Court was unable to procure the necessary funding and the United Nations General Assembly authorized a subvention grant of 16.7 million to supplement the financial resources of the Court from 1 July to 31 December 2004. On 22 December 2004, a further \$20 million was allocated by the United Nations. In 2005, a further 13 million was committed.

43. The lack of stable funding has plagued the Court. In particular, it has made it very difficult to develop a long term plan. It has also affected recruitment, since most staff are recruited on a "just in time" basis and many potential staff are not interested in joining a court with an insecure future.

iii. Remote Appeals Chamber

44. Certain aspects of the Court's organization are also unique in international criminal tribunals. According to the Agreement setting up the Special Court, the "Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed."³ Four of the five Judges of the Appeals Chamber are not yet resident in Freetown and conduct their duties from abroad through telephone and email exchanges. They come together in Freetown for Plenary meetings which are held once or twice a year. While this unique practice has saved considerable resources, it has also resulted in a variety of institutional problems.

45. The Appeals Chamber has, on many occasions, taken a number of months to issue interlocutory appeals decisions. For example, as shown in Annex D at page 9, all four of the decisions issued by the Appeals Chamber in 2006 took more than one month to deliver. Two decisions took over four months from the final filing of the parties, and the longest took almost a year after the Trial Chamber's decision and more than five and a half months from the last filing of the parties.⁴ While these appellate timelines have not necessarily slowed down the trial proceedings, some of the decisions of the Appeals Chamber may involve human rights issues that warrant a quicker procedure.⁵ Even apparently mundane appeals decisions should be decided expeditiously because the outcome of the decision may affect how the parties prepare their cases.⁶

46. One explanation for these delays is that the Appeals Chamber Judges are not able to come together to discuss the issue and must instead communicate by fax, courier, email, or telephone. Since they are not working full time for the Special Court, most of the Appellate Judges have other professional responsibilities. Time zones, travel, communication difficulties, and other commitments may impede their ability to communicate efficiently about pending issues. Without a proper venue for debate and discussion, it is not surprising that many appeals decisions also invite separate or

³ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002, Article 19(4).

⁴ AFRC: Decision on Prosecution appeal against decision on Oral Application for Witness TFI-150 to testify without being compelled to answer questions on grounds of confidentiality, 26 May 2006 (Appeals decision issued 4 months and 10 days after filings completed); CDF: Decision on Prosecution Appeal Against Confidential Decision on Defence Application Concerning Witness TF2-218, 26 May 2006 (Appeals Decision issued almost one year after the Trial Chamber decision of 8 June 2005, and some 5 months and 19 days after the completion of the appeals filings).

⁵ See, e.g., CDF: Appeal against Decision Refusing Bail (Fofana), 11 March 2005 (Appeals decision issued 7 months after trial decision). CDF: Decision on Amendment of the Consolidated Indictment (Norman) (Appeals Chamber), 16 May 2005 (Appeals decision issued more than five months after decision). See also, Human Rights Watch, Justice in Motion: The Trial Phase of the Special Court for Sierra Leone, October 2005 Volume 17, No. 14(A), p. 11.

⁶ See e.g., CDF: Decision on Prosecution Appeal Against Confidential Decision on Defence Application Concerning Witness TF2-218, 26 May 2006 (Appeals Decision issued almost one year after the Trial Chamber decision of 8 June 2005, and some 5 months and 19 days after the completion of the appeals filings). This decision determined that a Prosecution witness could decline to answer questions in cross-examination relating to the sources of confidential information and could have affected the Prosecution's decision to call this or other witness.

dissenting opinions. This creates additional work that contributes to lengthening the time necessary to complete the appeal.

iv. Lack of judicial leadership

47. Like the other Appeals Chamber Judges, the President is not required to live in Freetown or to work on a full time basis. This practice has diminished the significance of the President as the head of the institution. Successive Presidents were expected to fulfil their judicial tasks, to supervise the Registry, to sit on the Council of Judges, to mediate disputes, and to conduct the myriad of other Presidential tasks, while working from abroad on a part-time basis. It has been reported to me that the former Registrar and the Management Committee rejected attempts to have a resident President or Vice-President. In such circumstances, one practical solution might have been to appoint one of the Trial Chamber Judges as President. However, this was precluded by the Statute which provides that the presiding Judge of the Appeals Chamber—elected by the Appeals Chamber and not by all Judges—shall be the President of the Special Court.⁷

48. The President of an international court plays a vital institutional role that does not have an obvious counterpart within a national court. A domestic court is part of a much larger domestic legal system which can rely on other branches of the state apparatus for financing and enforcement. Consequently, it is usually sufficient for domestic judges to focus on their legal duties, without concerning themselves with outside matters because they can take for granted that the executive branch will supply the necessary wherewithal and support. A chief justice in a national court does not usually have any substantial function outside the judiciary, nor is there usually the need for a chief justice to be in close contact with the executive branch.

49. In contrast, an international court of law is not part of a complex state machinery, but rather functions in isolation. An international court, particularly one such as the Special Court which lacks the powers that may be granted under Chapter VII of the UN Charter and is funded through voluntary contributions, must rely heavily on the cooperation of sovereign States and intergovernmental organisations. This requires strong leadership and internal coordination. The person at the helm must for example: (i) keep in touch with the parent body or bodies; (ii) ensure that the necessary funding is regularly allocated; (iii) supervise the coordinated and smooth discharge of functions by the various organs of the court (Registry, Office of the Prosecutor, Defence Office, Security) without interfering in the province of each of these organs; (iv) deal with Governments and international organizations to enlist support and assistance; and (v) take care of relationships with the States whose cooperation is needed to collect evidence, execute search warrants, arrest warrants, and so on.

50. The sole official of the Court who is in a position to supervise, coordinate, and represent all sections of the Court is its President. While both the Prosecutor and the Registrar have a role to play in external relations and in coordinating within their respective sections, only the President can represent the whole Court. The Registry works

⁷ Statute of the Special Court, annexed to the Agreement (16 January 2002), Article 12(3).

under the authority of the President.⁸ The Prosecutor, who is independent, is nevertheless a party to the proceedings and is bound by the orders of the Judges. The success of the Court ultimately lies with the Judges and their President, who must accordingly be at the forefront of shaping the institution.

51. From the beginning, successive Presidents have been hampered in their ability to provide internal leadership and supervision, and to represent the Court externally, because they have been working on a part-time basis from abroad. A President must reside at the Court's venue and work on a full time basis in order to take care of all the exigencies of a tribunal on a daily basis.

v. Insufficient contribution of the Defence Office

52. As noted above, the Defence Office is an important organizational innovation of the Special Court. Headed by the Principal Defender, the Defence Office was intended to become an institutional counterbalance to the Office of the Prosecutor, akin to a public defender's office. By centralizing a number of defence functions into a single office, the supporters of this idea hoped to bolster the value of equality of arms, fairness and efficiency. In some ways, this project has proved successful by giving the various defence teams an institutional voice that is not present at the ICTY and ICTR.

53. For a variety of reasons, it would seem that the Defence Office has not lived up to these high expectations. Many efforts within this Office are devoted to the financial management of the defence teams rather than to providing substantive legal support to those teams. Tensions between the Defence Office and some defence teams have been exacerbated by financial, bureaucratic, and resource constraints.

vi. Initial insufficient use of the existing "know-how"

54. Many of those interviewed for this Report have commented on the initial decision of the Court's principal organs not to draw on existing knowledge and skills from the ICTY and ICTR. Instead, they deliberately attempted to create new methods to avoid the problems plaguing the ad hoc tribunals, chiefly the excessive cost and length of the proceedings. It is notable that not only the Judges, but also the first Prosecutor, the first Deputy Prosecutor, and the first Registrar were chosen from among those who had never worked for either of the two ad hoc tribunals. Justice Hassan Jallow, one of the original Appeals Chamber Judges, had participated in a review of the ICTY and the ICTR and Justice Robertson had represented a journalist claiming testimonial privilege before the ICTY; however neither had judicial experience at these institutions. Whether or not this initial choice was wise, it is a fact that most of the key personnel selected for the Special Court started from scratch. As relative newcomers to international criminal law practice, they were not in a position to have learned first-hand from the experiences accumulated by the two tribunals or from the failings in which these other tribunals had admittedly entangled themselves. Instead, they drew on their extensive experience within their national jurisdictions to assist them in fulfilling their new mandates.

⁸ Rules of Procedure and Evidence, Rule 33 (A).

56. I have learned that within the Office of the Prosecutor there was a deliberate attempt to distance the Special Court from the practices of the ICTY and ICTR. While the Registry and Chambers tried, where possible, to draw on staff with some experience at the other tribunals, the OTP had only two or three senior lawyers with previous tribunal experience. Only later did the OTP begin to recruit staff with significant working experience at the ICTR or the ICTY. These new staff members brought additional skills and experiences that were previously missing.

57. The Judges placed more emphasis on the practice of the ad hoc tribunals. Pursuant to Article 14 of the Statute, the Special Court's Rules were initially drawn from the ICTR. The Judges modified these rules, for example, to introduce a separate sentencing phase and to allow jurisdictional questions to be referred directly to the Appeals Chamber.⁹ The decisions of the Trial and Appeals Chambers demonstrate that the Judges have given due regard to the jurisprudence of the sister tribunals as mandated by Article 20(3) of the Statute.

⁹ Rules of Procedure and Evidence, Rules 72(E), 72(F), 100.

IV. ASSESSMENT OF JUDICIAL OUTPUT AND PRODUCTIVITY

A. Introduction

58. A court of law is not a factory. Its output and productivity cannot be accurately measured by counting either the number of items it has produced or the number of hours or days it takes to produce them. While the efficiency of a Court is one aspect of its overall impact, the true measure of a court is in the quality, and not the speed, of its judgments. It is therefore exceedingly difficult to assess the judicial productivity of an active court engaged in ongoing trials. Statistics depicting the number of sitting days and hours and the number of written decisions rendered by the court can only paint a very *partial* picture of the productivity of a judicial institution.

59. I have reviewed the available data concerning the various indicia of judicial productivity (see Annex D). Not surprisingly, the overall figures demonstrate that the Judges are working hard. They spend a considerable part of their time in the courtroom, hearing witnesses and arguments and rendering decisions.

60. In addition, it must be recognized that a significant proportion of judicial work is conducted outside of the courtroom and does not immediately result in a concrete product. Judges must, for example, review the evidence presented in Court, formulate their personal views on its credibility, consider arguments of the parties, consult with their colleagues, instruct their legal officers, research the law, participate in deliberations and draft their decisions. These core judicial activities cannot be reflected in courtroom usage statistics. The product of much of this work will not be seen until the judgments are eventually delivered.

61. The available statistics, summarized in Annex D pages 1 and 2, demonstrate that from the start of the trials in June 2004 until the end of October 2006, the Judges of Trial Chamber I have held 340 trial days (154 days in the CDF trial and 186 days in the RUF trial). Trial Chamber II started the AFRC trial in March 2005 and has conducted 174 days of trial hearings. Based on the Court Management logs, it is estimated that on average Trial Chamber I sits 3.93 hours per day; Trial Chamber II sits on average 3.71 hours per day.¹⁰ Trial Chamber I has issued 195 written decisions in the CDF case and 178 written decisions in the RUF case since the joinder of the three accused.¹¹ Trial Chamber II has

¹⁰ These figures are based on Court Management records and only count the minutes when the Judges and the parties are in the courtroom. They do not take into account any times when the Judges are deliberating outside of the courtroom. These times do not correspond exactly to the averages derived from the monthly Management Committee summaries.

¹¹ These figures include decisions and orders. While the distinction is not always clear, decisions are generally rendered on motions following submissions of the parties, while orders are usually focused on the conduct of the proceedings, scheduling, or other minor issues and can be rendered by the bench without hearing the parties.

delivered 88 written orders and decisions and 132 oral orders and decisions in the AFRC trial and 12 written orders and decisions in the *Taylor* case.¹²

62. Although hearings were held for some preliminary motions, the current practice of the Appeals Chamber is to render decisions based on the written arguments of the parties. To date, the Appeals Chamber has issued 66 decisions.

63. Delay in issuing decisions is another aspect of judicial output and productivity that is not captured by courtroom statistics. Delays in delivering decisions increase uncertainty in the proceedings and impair a party's ability to prepare its case. Observers have expressed concern about extended delays in rendering important decisions, particularly those involving human rights issues.¹³ The Chambers' recent practice shows that most decisions are decided shortly after the filings are complete (see Annex D, pages 6–8). However, a few decisions are still taking many months.¹⁴ While some delays are understandable, particularly in Trial Chamber I, which is dealing with two trials simultaneously, the Trial Chambers must continue to ensure that all motions are decided in a timely manner.

64. The Appeals Chamber should also make efforts to reduce the time in which it delivers decisions. (See Annex D p. 9).

¹² As of 8 December 2006, Trial Chamber II has issued a total of 104 documents including: 88 majority decisions; 10 dissenting, concurring, and separate opinions; 5 Corrigenda; and 1 Annex.

¹³ See, e.g., Human Rights Watch, *Justice in Motion: The Trial Phase of the Special Court for Sierra Leone*, October 2005 Volume 17, No. 14 (A), pp. 10–11 (recommending that: “Both trial and appeals chambers should identify and address any impediments that may exist to the more consistently efficient rendering of decisions, particularly motions that have implications for the court’s full adherence to protection of the rights of the accused. The trial chambers should consider prioritizing issuing decisions on motions that are key to upholding fair trial rights, and allocating one extra time on a regular basis to dispose of such motions”).

¹⁴ For example: In the **CDF** case, heard by Trial Chamber I, at least seven 2006 decisions took more than 2 months. Three decisions took more than four months: Decision on Urgent Fofana Request for Leave to Appeal the 7 December 2005 Decision of Trial Chamber I, 8 June 2006 (**>5 months**); Decision on Application by the Second Accused Pursuant to Sub Rule 66(A)(iii), 14 June 2006 (**>4 months**); Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2006 (**>4 months**). In the **RUF** case, also before Trial Chamber I, seven decisions took more than 2 months. Four of them took more than four months: Decision on Defence Application for Review of the Registrar’s Decision on the Sesay Defence “Exceptional Circumstances” Motion, 15 November 2006 (**>6 months**); Decision on Sesay Defence motion to direct the Prosecution to investigate the matter of false testimony by Witness TF1-366, 25 July 2006 (**6 months**); Decision on Defence motion for an order directing the Prosecution to effect reasonably consistent disclosure, 18 May 2006 (**5 months**) ; Decision on Prosecution motion for leave to amend the indictment, 1 August 2006 (**>four months**). Trial Chamber II’s practice is much more efficient, even after the addition of the Charles Taylor proceedings in March 2006. The only **AFRC** decision in 2006 to take significantly more than a month is the Decisions on Defence Motions for Judgment of Acquittal Pursuant to Rule 98, 31 March 2006, which took **2 months** from the completion of the filings.

B. Factors influencing the duration of judicial proceedings

65. It was suggested by the Secretary General that the Special Court could complete investigations, prosecution, and trial of a very limited number of accused in a minimum of three years time.¹⁵ The initial set up and investigations by the Prosecution were largely completed within the first year of the Court's operation. However, Trial proceedings at the Special Court have taken longer than this initial expectation:

- The **CDF** trial (against three defendants: Norman, Fofana and Kondewa) began on 3 June 2004 and Trial Chamber I heard final arguments on 28 and 29 November 2006. The judgment (and sentence, if any) is anticipated in mid-2007. Trial proceedings will have lasted **two and a half years**.
- The **RUF** trial (against three defendants: Sesay, Kallon and Gbao) is also being tried by Trial Chamber I on an alternating basis with the CDF case. It commenced on 5 July 2004 and is expected to conclude by the end of 2007. The judgment (and any sentence) is likely to be delivered in mid-2008. Thus, the length of trial proceedings will be approximately **three and a half years**.
- The **AFRC** trial (against three defendants: Brima, Kamara and Kanu) began on 7 March 2005 and Trial Chamber II heard closing arguments on 7 and 8 December 2006. The judgment (and sentence, if any) is anticipated in May 2007 or, more realistically, sometime in mid-2007. The length of trial proceedings will be at least **one year and nine months**.

66. As demonstrated in Annex D page 10, these timelines are similar to those for multi-accused trials at the ICTY and ICTR. In fact, the Special Court's trials have taken longer than many of the ICTR and ICTY multi-accused cases. Even the AFRC case, which ran continuously before Trial Chamber II, does not show a significant improvement over the length of trials at the other tribunals.

67. The excessive length of judicial proceedings not only undermines the credibility of the Court, it also seriously impairs the fundamental right of all defendants to an expeditious trial. This condition is all the more serious in cases, such as those brought before the Special Court, where defendants are being tried while in detention. Excessive deprivation of liberty of persons who are presumed innocent, although accused of the most atrocious crimes, is intolerable.

68. The factors influencing the duration of the proceedings may be grouped into four sets. First, there are inherent reasons, common to all international criminal courts. Second, there are reasons linked, at least in part, to the adoption of the adversarial model of justice. Third, there are external factors which are beyond the control of the Court. Finally, the lack of proactive courtroom management may contribute to the length of the proceedings.

¹⁵ Letter dated 12 January 2001 from the United Nations Secretary General to the President of the Security Council, S/2001/40, para. 12.

i. Inherent reasons shared by all international criminal courts

69. The lack of expeditiousness of international trials flows, to a large extent, from intrinsic problems common to all international criminal courts. By definition, the crimes coming before these courts have been committed on a large-scale and often involve thousands of persons. In many cases, the crimes were perpetrated, ordered, planned, or instigated by organized groups such as government authorities, military units, or organized groups of rebels. Moreover, the crimes may have been committed many years before the trial. The witnesses may be scattered in various countries, and it may be difficult to reach them or to persuade them to travel to the court's venue. Likewise, relevant documents, particularly those coming from the military, may not be available or are not handed over by the competent national authorities, who may insist on problems of national security. If a State where a witness lives or other relevant evidence could be found or where an indictee has absconded refuses to cooperate, the international court has no enforcement means available. In addition, many international trials involve multiple languages, including that of the accused, and translation and interpretation slows down the process.

70. All of these common symptoms are present at the Special Court. For example, failure of State cooperation is responsible for the most significant delay in the life of the Special Court, the late arrest of Charles Taylor. Indicted on 7 March 2003, Taylor was finally taken into the custody of the Special Court on 29 March 2006. The delay in starting this case and the consequent extension of the mandate and budget of the Court are a direct result of this late hand-over. In the case of the Special Court, initial delays were also caused by the failure of the United Nations to provide full cooperation to the start-up operation of the Special Court. UNAMSIL was uniquely situated to assist the Special Court in its early days and its failure to help cost the Court valuable months.

71. Like most international trials, the cases before the Special Court are both factually and legally complex. Each of the three current trials involves three accused who are charged with a geographically diverse set of crimes that cover a broad time frame. For example, the CDF case charges the accused with acts alleged to have occurred across the country from 1 November 1997 to December 1999. The RUF and AFRC cases span an even larger geographic zone and time period. In spite of prosecutorial efforts to focus the indictments on the most important crimes, the indictments—like the indictments at other international criminal tribunals—still cover a broad range of allegations.

72. Moreover, the breadth of the charges and the lack of particulars in the indictments have opened the door to an expansion of the Prosecution's case during the trial. Evidence concerning allegations that may not have been originally intended by the indictments, but which could fall within the four corners of a broad interpretation of the indictment, may be admitted by the Chamber. This broadens the case even further.

73. Legally, the three trials also involve a complex range of charges. The crimes of using child soldiers and of forced marriage, for example, have not yet been the subject of final judgments by international tribunals. A considerable amount of extra effort must be devoted to preparing a background understanding of the elements of these crimes. All

three indictments charge all forms of individual criminal responsibility including joint criminal enterprise and superior responsibility.

74. Translation is another intrinsic feature of international courts that extends proceedings. Translation is already difficult at the other international criminal tribunals which deal with standard languages with a long history of translation, such as French, English, and BCS languages used at the ICTY. The situation is even more complex in Sierra Leone, where one can find some 28 local languages. The Special Court provides translation and interpretation between six main Sierra Leonean languages and English. None of these languages has been standardised. Interpretation of a witness's testimony slows down the pace of examination and cross-examination. If translation is necessary for the accused to understand the proceedings, such as in the CDF case, then every word said in the courtroom must be interpreted into his language. When an accused understands English, then only the witness's testimony requires interpretation. Arguments about the accuracy of the interpretation or discussion about the accuracy of a translated witness statement may also contribute to slowing down the proceedings.¹⁶

ii. The adversarial model

75. The transplantation of the adversarial system onto the international level has brought about many difficulties. For example, plea bargaining, which is a cornerstone of the adversarial system in most domestic jurisdictions, is rarely successful at the international level.¹⁷

76. The adversarial model's principle of orality also prolongs the proceedings. Proving an international crime requires an immense amount of evidence that must be presented through testimony of witnesses or the oral presentation of documentary or physical evidence. For example, to prove a crime against humanity, evidence must be adduced to establish beyond a reasonable doubt the existence of a widespread or systematic attack. This usually involves proving that other crimes occurred across a region or in a pattern and therefore goes beyond the limited acts of the accused. Likewise, in order to prove superior responsibility a prosecutor must bring extensive evidence first to establish a "crime base", consisting of the various crimes committed by the subordinates, and then to show that the accused is responsible for these crimes by linking the superior to the acts of

¹⁶ See, e.g., AFRC Transcript, 2 October 2006, pp. 58, 98–100 (Recurring issues pertaining to inaccurate translation illustrated in cross-examination of a witness who, when confronted with transcripts of his evidence-in-chief, consistently denies that the information is correct and blames the interpretation); AFRC Transcript, 2 October 2006, p 81; AFRC Transcript, 5 October 2006, p 54. See also, Special Court Monitoring Program Update #89, Week ending 6 October 2006: <http://socrates.berkeley.edu/~warcrime/documents/Report89.pdf>

¹⁷ Many factors may contribute to this situation, including: belief that the accused's actions were justified or necessary, and therefore not criminal, in the context of the war; ideological reasons; desire to avoid the stigma of international criminality; favourable conditions at a particular detention facility compared to the probable location of imprisonment; or cultural factors. See, e.g., N. Combs, 'Procuring Guilty Pleas for International Crimes: The Limited Influence of Sentence Discounts', 59 *Vand. L. Rev.* (January 2006) at 69 ff.; N. Combs, 'Copping a Plea to Genocide: The Plea Bargaining of International Crimes', 151 *Un. Pa. L. Rev.* (November 2002) at 1 ff.

the subordinates. The oral presentation of this volume of evidence protracts the proceedings.

77. The adversarial model also creates opportunities for an interested party to slow down the proceedings. The Judges tend to be consigned to the role of “referees”, with only limited ability to control the proceedings. This may prevent them from efficiently and expeditiously regulating the conduct of business.

78. In order to remove or attenuate the principal shortcomings of the adversarial model, the two ad hoc tribunals have gradually incorporated some essential elements of the inquisitorial model, which contains more flexible rules of evidence and can prove more efficient in many respects. Subject to some well-defined conditions, the inquisitorial model allows the presentation of written evidence in lieu of oral testimony. The practice of taking depositions or written statements prior to the proceedings may allow the parties to gather much of their evidence before the trial begins, or outside of courtroom time, and may thus expedite the trials. More generally, the inquisitorial system assigns a proactive role to Judges who may direct the parties to speed up proceedings, can make decisions reducing delays, and thereby conduct hearings in a more effective manner.

79. The Special Court’s unique hybrid nature, however, is tilted towards common law procedures. Moreover, the focus on Judges drawn from Sierra Leone and other nations of the Commonwealth has also shifted the procedure towards the adversarial model.¹⁸

iii. External factors

80. Certain significant or systemic delays have been caused by factors beyond the control of the Judges or the Court’s management. The location of the Special Court is an important attribute of its success, but it has also prolonged the length of the proceedings. Three aspects of the location deserve mention.

81. First, the Special Court is responsible for providing its own infrastructure. For example, the Special Court generates its own electricity and maintains its own satellite connection. Occasionally these systems break down and interfere with the functioning of the courtroom. The Court Management records reveal that, since the beginning of the trials, at least 22 scheduled trial days were affected by this type of technical disruption (See Annex D, page 3).

82. Second, serious illnesses such as malaria and typhoid are common in Sierra Leone and have a significant impact on the running of the courtroom. Court Management records indicate that at least 23 scheduled court days were delayed because of illness of witnesses, accused, or other critical participants in the proceedings. It is a reflection on their dedication that almost no trial time was lost because of illness of the Judges. (See Annex D, page 4)

¹⁸ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, signed on 16 January 2002, Article 2.

83. Finally, the fact that Freetown, as pointed out above, is a hardship, non-family duty station entitles all international staff, including Judges, to five additional leave days for every 90 days that they are in the country (ORB), and to home leave on a yearly basis. A number of observers have expressed the perception that the Judges are taking extended holidays. This is unsupported by courtroom data that clearly indicates that the Judges are within their allotted leave entitlements.

84. Furthermore, I cannot overlook the fact that in certain instances the Management Committee and the parties to the Agreement, the United Nations and the Government of Sierra Leone, have taken a long time in appointing relevant Court officials. These delays have had a considerable impact on the functioning of the Court, causing uncertainty and slowing down the efficient conduct of business. This applies for instance to the appointment of a new Registrar after Vincent Robin, the first Registrar, resigned. The same holds true for the appointment of Trial Chamber II, which significantly delayed the progress of the Court. Also the appointment of a new Prosecutor, after Desmond De Silva's resignation, took a long time and has caused disruption.

iv. Insufficient judicial management

85. The slowness of proceedings may also stem from deficiencies in courtroom management. Proactive management is all the more important in complex cases where the judicial resources as well as party resources are limited.

86. In the circumstances facing the Special Court, it falls to the Judges to endeavour to steer the case along the most direct possible course to its orderly and fair completion. A number of suggestions are made in this Report to increase strong judicial management.

87. Finally, in terms of courtroom management, it is important to consider the effect of the Trial Chamber's early scheduling decisions. For example, the decision not to join the RUF and AFRC accused may have had an effect on the duration of the proceedings. Likewise, the decision to hear the CDF and RUF cases on an alternating basis has contributed to the overall length of both cases. While it is beyond the scope of this Report to assess the merits of these decisions, it cannot be denied that they have affected the course of the trials at the Special Court.

C. Use of courtroom space and resources

88. A global assessment of the use of courtroom space and resources suggests that there is room for improvement. Since the inauguration of the Special Court building, there have been a number of instances when one of the two available courtrooms has been empty for a considerable period of time. During these periods, a number of staff members who are ordinarily engaged in supporting the courtroom, such as stenographers, courtroom officers, translators, courtroom security, and audio-visual technicians, must take on other duties or sit idle.

89. For example, Annex D page 1 shows that the biggest gap in courtroom usage was created by the AFRC decision on the defence motion for judgment of acquittal. Leaving

aside the merits and complexity of this decision, it left courtroom II empty for more than seven months. Similar gaps may have also occurred in Trial Chamber I, but these were readily filled with the second trial being heard simultaneously by that Chamber. Unfortunately, as a result of recent scheduling decisions, both courtrooms are now empty and the Judges have stated that they do not expect to begin trial again until April 2007 in Trial Chamber II and May 2007 in Trial Chamber I.

90. The efficient use of courtroom space and resources requires planning and communication. Specific recommendations to improve the efficient use of the courtroom are made in this Report.

V. PROPOSALS FOR AMELIORATING THE FUNCTIONING OF THE SPECIAL COURT

91. On 23 October 2006, prior to the 21–23 November 2006 8th Plenary meeting of the Judges, I submitted a number of suggestions for possible Rule amendments to the President for his consideration. I am grateful to President King for placing these suggestions before the Plenary, so as to enable all the Judges to give due consideration to my recommendations. The suggestions that I made can be found in Annex A to this Report, and the corresponding Rule changes have been copied as Annex B.

A. Ensuring judicial leadership and a more efficient central management

92. At present, pursuant to Rule 18 (B), the President of the Special Court “shall be elected for a non renewable term of one year or such shorter term as shall coincide with the duration of his term of office as a Judge.” He or she is under no obligation to reside in Sierra Leone, at the seat of the Special Court, Freetown. The President also sits on the “Council of Judges” with the Presiding Judges of the Trial Chambers, whom “the President shall consult on all major questions or matters relating to the functioning” of the Special Court.¹⁹ The Council of Judges “or its representatives” shall meet with the Registrar, the Prosecutor and the Principal Defender “in order to ensure the coordination of the activities of all organs of the Special Court.”²⁰

93. Until the November 2006 Plenary, the President was not required to live in Freetown or to work on a full-time basis for the Special Court. The Council of Judges has been a rather ineffective component of the institution and has failed to provide any checks and balances. It appears that there has been little coordination between the Council of Judges and the Registrar, Prosecutor, or Principal Defender. The Judges have thus been largely excluded from the management of the primary functions of the Special Court.

94. While the Rules provide that the Registrar is “under the authority of the President”,²¹ successive Presidents have been marginalized by their absence from the Special Court. To counteract this trend, I suggested a series of Rule changes for the consideration of the Plenary that were aimed at enhancing the role of the President and increasing coordination with the Registry and other bodies.

95. The first suggested change, which was adopted by the Plenary, makes it possible for a President to be re-elected for a second term of one year, so that he or she has sufficient time to pursue a judicial policy aimed at bolstering the activities of the Special Court. By the same token the President is now obligated to reside in Freetown so as to ensure constant coordination of the principal bodies making up the Special Court and a more efficient management of the Court. A full-time President can be more involved in the day-to-day activities of the Court and is available on the spot to help solve any unexpected problems. (See, Annexes A and B, Rule 18 (B))

¹⁹ Rules of Procedure and Evidence, Rule 23 (B).

²⁰ Rules of Procedure and Evidence, Rule 23 (C).

²¹ Rules of Procedure and Evidence, Rule 33 (A).

96. In addition, I suggested that it was advisable to spell out the extrajudicial functions of the President, who, besides discharging his or her judicial tasks as the Presiding Judge of the Appeals Chamber, also fulfils a number of diplomatic and managerial functions. Commensurate with these new responsibilities, the President should attend regular meetings with the Council of Judges and represent the Judges in monthly coordination meetings with other sections of the Court. I am pleased to report that some of these suggestions have been accepted by the Plenary Session, on 22 November 2006 (see Annexes A and B, Rule 19 (B)).

97. The President must also embody the Court in the public eye. As the judicial head of the institution, the President should, along with the Registrar and Prosecutor, represent the Court externally. This may include appropriate forms of external relations, such as visiting with key donor States, providing periodic briefings to the diplomatic community in Freetown, and other events that raise the profile of the Court within the donor community.

98. Furthermore, to take account of the new extrajudicial functions attributed to the President and to assist with the additional tasks, I would propose that a Special Assistant at the P3 level should be assigned to the President.²²

B. Enhancing the efficiency of the proceedings

i. Improving trial and appeal management

99. The current procedures of the Special Court could be significantly improved. The changes that I suggested to the Plenary were aimed at making the proceedings less cumbersome and time consuming. Given the unique features that distinguish international criminal proceedings from their domestic counterparts (see above, §§69–74), I have recommended incorporating some basic elements of the inquisitorial system into the adversarial model in order to improve efficiency.

100. Hence, my suggestions were aimed at:

- (a) Exercising some measure of control over the charging activity of the Prosecutor, so as to prompt the Prosecutor to limit the charges to those that he or she regards as essential (Annex A, Rule 73 *bis*);
- (b) Managing the pre-trial phase in such a way as to render it relatively short and conducive to a well structured and expeditious trial (Annex A, Rule 73 *quater*);
- (c) Speeding up the evaluation of evidence by admitting written evidence whenever appropriate (Annex A, Rules 92 *bis* and 92 *quater*);
- (d) Enabling an expedited and fair conduct of proceedings (Annex A, Rules 27, 65*bis*, 73, 90 *bis*, 100);

²² At present, the Registrar, the Deputy Registrar, and the Prosecutor each have a P3 Special Assistant.

(e) Rendering the forthcoming appellate proceedings as expeditious and efficient as possible (Annex A, Rules 114, 115, 120).

101. Some of the proposed changes were accepted by the November 2006 Plenary meeting of the Judges (See Annex B). Others were not accepted. I will nevertheless consider each of the above five heads below in some detail. I will also make additional suggestions, all designed to further the efficiency of the Special Court's procedure.

(a) Reducing the charges preferred by the prosecution

102. International Prosecutors tend to advance a wide gamut of charges, so as to make sure that at least some of them are upheld by the court. Some charges are made alternatively (for example, murder charged as a crime against humanity and, alternatively, as a war crime), others are advanced cumulatively (for instance, ordering war crimes under Article 6(1) of the Statute of the Special Court, as well as failure to prevent or punish the commission of those crimes pursuant Article 6(3)). Likewise, the Prosecutor may bring allegations concerning the commission of the same crime at numerous crime sites.

103. As all these charges must be proved in court and even similar charges may require different elements and corresponding evidence, the Prosecution's case may last many months. It is suggested that the Court could play a role of moderation by *calling upon* (not directing) the Prosecutor to reduce some of the charges in order to focus the case. An amendment to Rule 73 *bis* (Pre-Trial Conference) could prove useful for the *Taylor* case. This proposed amendment was adopted by Plenary.

(b) Managing the pre-trial phase

104. Effective pre-trial proceedings have been proven to shorten and streamline trial proceedings. However, the task of Pre-Trial Judge (as currently provided for in Rule 73 *bis* of the Special Court's RPE), is assigned to one of the three members of a Trial Chamber, who may be busy with other procedural matters, or with another trial. The burden on the Judge may be reduced by assigning some of the functions of a Pre-Trial Judge to a competent lawyer, even if he or she lacks judicial status.

105. I accordingly suggested to the Plenary to adopt a Rule on the tasks of a Pre-Trial Judge. Although this proposal was not accepted, I would recommend that the Judges dealing with the *Taylor* case give consideration to the functions suggested in this Rule. Many of these ideas could be applied by a Judge or the senior legal officer of the Chamber *even without a Rule change*. I also proposed that the Pre-trial Judge be assisted by a senior legal officer. While this amendment was not accepted, I note that the Judges of Trial Chamber II are already seeking assistance from the Deputy Registrar in managing some of the pre-trial meetings in the *Taylor* Case.

(c) Admitting written evidence

106. Oral examination of witnesses requires a significant amount of judicial time.

107. In order to reduce this burden, I suggested the addition of Rules 92 *ter* and *quater* which would allow Judges to forgo oral examination in appropriate circumstances, particularly when the evidence is duplicative or general in nature and does not affect the fairness of the proceedings.

108. The Plenary accepted the proposed addition of a modified version of Rule 92 *ter*, which will give the Judges more options to admit written evidence.

(d) Ensuring the expeditious and effective conduct of trial proceedings

109. The need to grant a proactive role to international judges has been suggested by many authorities as a means of speeding up proceedings while safeguarding fair trial principles and the search for truth. I therefore suggested a new Rule 90 *bis* which spells these powers out in more detail.

110. This suggestion was not accepted by the Plenary, but I consider that the Trial Chamber should nevertheless exercise its *inherent powers* to ensure expeditious proceedings to control the courtroom more actively. For example, the Trial Chamber is entitled to shorten excessively long testimonies, restrict the number of witnesses that are not crucial to the establishment of the guilt or innocence of the accused, or refuse to hear witnesses that are not likely to cast any light on the charges made by the prosecution.

111. In this vein, I would also commend the Judges of the Trial Chambers to review the current practices of the Judges of the ICTY, who have developed a proactive style of courtroom management.²³ Judges should not be strictly constrained by the common law style of courtroom management and should actively manage the Trial from beginning to end.

(e) Ensuring Expeditious and Fair Appellate Proceedings

112. The current Rules concerning appeals at the Special Court already ensure that appellate proceedings will be conducted with the necessary speed and efficiency, coupled with full respect for the rights of the appellant. Nevertheless, to eliminate opportunities for wasted time and to enhance the efficiency of appellate proceedings, I recommended the adoption of two minor Rule changes.

113. The Plenary accepted the idea behind my suggested amendment to Rule 114 (B). This Rule now explicitly allows the Appeals Chamber or the Pre-hearing Judge to limit the oral argument of the parties, if any, to some selected issues indicated by the Bench. To this effect, either the Appeals Chamber or the Pre-hearing Judge could direct the parties to confine themselves in their oral submissions to only some of the various issues raised in their written submissions. This would make it possible for the hearings to be shorter and more focused, and may prove particularly useful in cases where the parties raise a wide range of questions, some of which are not directly germane to the matter on

²³ See, e.g., *Prosecutor v. Orić*, Order concerning guidelines on evidence and the conduct of parties during trial proceedings, Case No. IT-03-68-T (ICTY Trial Chamber), 21 October 2004.

appeal. It bears noting that this practice is currently being adopted by the ICTY and ICTR Appeals Chambers, although it has not yet been laid down in any Rule.²⁴ A second small amendment, restricting the timing of motions seeking to adduce additional evidence on appeal, was also accepted by the Plenary.

(f) Exchanging experience with other international Judges

114. Judicial exchanges are an excellent opportunity to learn from the experiences of other Judges. Both Trial Chambers have spoken positively about the judicial exchanges with the ICTY and ICTR Judges which were arranged and sponsored by U.C. Berkeley War Crimes Studies Centre and the International Center for Transitional Justice. Given the complex and politically sensitive nature of the *Taylor* trial, and the fact that it will be conducted under the media's spotlight, I recommend that an additional judicial exchange be set up between the Judges of Trial Chamber II and Judges of the ICTY who are experienced in this type of trial.

115. A similar program of exchange would benefit the Appeals Chamber Judges, who will be facing their first judgment appeal in the near future. A meeting should be facilitated between some ICTY and ICTR Appeals Chamber Judges and the Appeals Chamber of the Special Court.

116. The International Center for Transitional Justice in New York has offered both to assist in arranging this programme of meetings and to contribute to its funding.

ii. Providing adequate legal resources to Chambers

117. Compared to the ad hoc international tribunals, the Chambers of the Special Court are dramatically understaffed. Each trial is supported by one P3 and one P2 legal officer. It is apparent that, until recently, staffing for Chambers has not been a priority at the Court. Legal officers were hired for Trial Chamber I only weeks before the trials began, more than a year after the Judges arrived in Freetown. In a perceived departure from the practice of the ad hoc tribunals, it was thought that the Judges should take a greater role in undertaking research for, and drafting their own decisions and that this result could be achieved by supplying fewer legal support staff. It has been reported to me that initial requests for additional staff were denied on this basis.

118. This approach overlooks the fact that drafting a judgment is a complex and time consuming exercise. The judicial role is assisted, not overcome, by effective legal support. An efficient and knowledgeable lawyer can provide invaluable support to a Judge by compiling and digesting the evidence, providing legal research, assisting with drafting tasks, and performing a myriad of other judgment related activities. Legal staff with experience in assisting in the drafting of judgments, or skilled lawyers who benefited from early consultation with experienced legal officers from the other tribunals, could have put in place a variety of systems that would have assisted the efficient working methods of Chambers. Fortunately, the legal officers serving in Chambers are of

²⁴ See, e.g. *Prosecutor v. Blagojević and Jokić*, Scheduling order for appeals hearing, Case no. IT-02-60-A (ICTY Appeals Chamber), 10 November 2006.

good quality and a number of them have shown remarkable dedication by remaining with the Court since the beginning of the trials.

119. Finally, in 2006 as the judgment process began in earnest, requests for additional staff were granted. It is now envisaged that each Trial Chamber will have a P4 and each trial will have a P3 and two or three P2's.

(a) Augmenting the Appeals Chamber's legal support

120. As the Special Court approaches the appeals phase of the proceedings, I consider that the Appeals Chamber legal staff should be strengthened. The Appeals Chamber's judgments will be the ultimate legal product of the Special Court for Sierra Leone. They will create the binding jurisprudence of the Court and constitute the final measure of the Court's legal success. In light of this heady responsibility and the short timelines envisaged for the appeals proceedings, I would recommend increasing the experience level of the Appeals Chamber's anticipated staff. Compared to the ICTY Appeals Chamber's complement of experienced senior lawyers, the Special Court will inevitably be supported by fewer and more junior staff.

121. The Registrar's proposals for additional Appeals Chamber staff have already been accepted, raising the staffing levels to one P4 senior legal officer, two P3 legal officers and three P2 associate legal officers. In my view, it would still be preferable to upgrade the planned three P2 legal officers so as to recruit experienced P3 legal officers.²⁵ Each Judge would then benefit from the advice, research, and drafting support of a lawyer endowed, it is to be hoped, with experience in assisting in the drafting of judgments. The five P3 legal officers would work under the scrutiny and direction of the senior legal officer.

(b) Increasing legal officers' competence to assist in the drafting of judgments

122. Only one of the seven legal officers currently in Chambers at the Special Court has significant drafting experience. This may affect the staff's ability to anticipate the necessary steps in judgment preparation and to accurately predict the resources and time involved in judgment drafting.

123. In order to support their efforts, I proposed a training session on judgment drafting for 21–25 November 2006. Two legal officers from the ICTY and ICTR, each possessing extensive drafting experience, were invited to provide practical training to the Chambers' staff at the Special Court. Thanks to the prompt cooperation of the Presidents of the ICTY and the ICTR—to whom I would like to express my personal gratitude—they have spent a week in Freetown. This training session received positive reviews from the Chambers participants. I would recommend that similar training be offered to Appeals Chamber legal staff well before the judgment drafting process begins.

²⁵ Since one of these three positions was a redeployed P3 post that was expected to be downgraded, this proposal would only require two P2 positions to be upgraded to P3.

124. It may also be possible to continue the practice of offering short term contracts to current or former Chambers staff from the ICTY and ICTR. These consultants might be able to provide intensive support to a drafting team at a crucial moment or to fill gaps in staffing.

(c) Recruiting experienced staff

125. The new staffing levels are reasonable if these posts are filled with top-flight candidates possessing sufficient experience. Ideally, a number of these posts should be filled with lawyers who are familiar with the jurisprudence of international criminal law, either through prior experience at the other international criminal courts or through detailed study. It is also recommended that, particularly at the higher levels, some of these new staff should have experience in undertaking research for and assisting in the drafting of judgments.

126. For a variety of reasons, and without casting any doubt on the high quality of the current legal officers, it has proven difficult to recruit qualified legal staff for Chambers. In addition to the variety of concerns about relocating to Freetown, interviews have suggested that the funding insecurity of the Court may be a disincentive for candidates who already have experience at the ad hoc tribunals and who may perceive that the posts at the Special Court are less secure.

127. Recruitment of new legal officers for Chambers should be done proactively, drawing on a wide variety of contacts. At present, the human resources department advertises the vacancy announcement on the Special Court website and emails it to human resources contacts at the ad hoc tribunals and the International Criminal Court (ICC). This method does not guarantee that the announcements come to the attention of a maximum number of potential applicants in the target pool.

128. A related concern about Chambers' staffing is that, so far, there has never been any Sierra Leonean or African legal officer. Efforts should be made to inform potentially qualified applicants of vacancy announcements, perhaps by contacting the various bar associations or other professional bodies directly. It has come to my attention that Chambers has recently recruited a number of qualified African legal officers to fill the newly created P2 positions.

129. The following measures might also be employed to increase the number and diversity of qualified applicants:

- For junior staff and future interns, it might be possible to increase the pool of candidates by contacting professors of relevant subjects at a broad range of universities, in and outside of Africa, so that they can bring the postings to the attention of their best students.
- The Special Court should contact a range of professionals at each of the organs (Registry, Chambers, Prosecution, defence) of the ad hoc tribunals and the ICC, rather than only emailing to the human resources sections.

- The vacancy announcements should be forwarded directly to selected former staff members or consultants who had positive experiences at the Special Court and who might be able to encourage others to apply.
- The vacancy announcements could also be made available to the International Bar Associations and other regional or common law bar associations.

(d) Improving working methods in Chambers

130. With only one or two relatively junior legal officers per case, the working methods of Chambers at the Special Court are significantly different than those of the ad hoc international tribunals. Notably, the Judges at the Special Court appear to work more independently of the legal staff than the Judges at the other international tribunals. This factor could contribute to explaining why certain decisions have taken significantly longer than would ordinarily be expected.

131. In the ad hoc international tribunals each Judge has at least one junior legal officer assigned directly to him or her. These junior officers are supported and coordinated by more senior legal staff. The close relationship between the Judge and the legal officer engenders trust and reliance. Judges who are able to rely on the research, drafting, computer, and editing skills of their legal officer may optimize their efficiency.

132. In contrast, the legal officers at the Special Court are not directly assigned to a particular Judge. They work on a team constituted by case and receive instructions from the Presiding Judge or the Judge in charge of drafting the majority opinion. Judges are thus required to do much of their own preparation, research, drafting, and editing. With only one secretary per Chamber, Judges may even need to do their own typing.

133. I would therefore suggest that the Trial Judges should consider whether assigning a legal officer to each Judge could assist with their remaining trials. This staffing level is already envisaged for the Appeals Chamber.

(e) Improving the resources available to Chambers

134. Given the limited resources currently assigned to Chambers, it is imperative that efforts be made to provide full administrative support to them. Chambers legal officers are frequently asked to assist other sections with administrative matters such as advising on court management questions, preparing visa applications for the Judges, or arranging support for their interns. Each of these tasks takes considerable time away from the primary task of these legal officers, which is to assist the Judges with preparing decisions and judgments.

135. Similarly, the Chambers do not have an independent budget line. Thus, any requests from Chambers with financial implications must be drawn from the budget of another section. Nevertheless, Chamber staff members have identified a number of pressing needs that remain unaddressed because other sections do not think that these purchases are “necessary.” For example, the work of Chambers could be assisted by a small reference library containing some good dictionaries, a thesaurus, and a few basic

legal texts. Likewise, it has been reported that reasonable requests for drafting support software (such as extra licences for Case Map and the purchase of an Endnote program to assist with footnoting in the judgments) have not received favourable consideration. Software that could simplify the judgment drafting process would ease the burden on the staff and help the Special Court to produce a better final product. These requests should be given serious consideration.

C. Improving the resources of the Defence

136. As noted above, the Defence Office, headed by a Principal Defender, is a unique feature of the Special Court and is intended to ensure full respect for the rights of the accused. In practice, however, the Defence Office—which is a subordinate office of the Registry and does not enjoy budgetary independence—is caught between the administration and the demands of the accused and defence counsel. As will be seen below, the Defence Office has not been able to fulfil its role as the guarantor of equality of arms. In short, it has not been in a position to provide sufficient remuneration, logistical resources, administrative assistance, or substantive legal support to the defence teams.

i. Providing adequate remuneration

137. The Principal Defender tries to ensure that each defendant has a team normally composed of at least a lead counsel, two co-counsel, and a legal assistant. Some teams have varied their composition with the agreement of the Defence Office to include a different configuration of these three roles (for example two co-lead counsel, or more legal assistants). These lawyers are aided by a Sierra Leonean investigator and, in some cases, a short-term international investigator. Ideally, the Principal Defender aims at including at least one Sierra Leonean lawyer and one international lawyer on each team, although some teams have placed more emphasis on local experience and others have preferred international experience. Most teams include one or two international counsel who are ordinarily resident abroad.

138. Defence counsel are not paid in the same way as other staff at the Court or even in the same way as independent contractors. Staff receive a monthly salary plus a daily living allowance and certain other benefits. Contractors within the Court receive a salary calculated on a daily rate plus the living allowance. In contrast, defence counsel enter into a legal services contract with the Special Court.

139. At the time that the service contracts were drawn up, it was thought that the trials would start and continue uninterrupted until their conclusion. Based on an estimated length of eight months, each defence team was allotted \$400,000 USD which could be used at a rate of \$25,000 USD per month or \$75,000 USD per three month period. This amount included expected travel and daily living allowance expenses.²⁶ The reality of the trials, however, is vastly different. Trials have not proceeded uninterrupted; Trial

²⁶ Note that the daily living allowance (DLA) provided by the Special Court is slightly less than the United Nations daily subsistence allowance (DSA).

Chamber I decided to hear two cases on an alternating basis and Trial Chamber II, once appointed, did not sit for a number of months between the close of the Prosecution case and the commencement of the defence case. International counsel have thus had to travel back and forth to their homes before and after each trial session, which usually lasts six to eight weeks. In light of this reality, the \$400,000 USD allocated to each team was quickly exhausted and the contracts were extended to allow for the continuation of the \$25,000 USD/month or \$75,000 USD/three month limits. Moreover, the structure of this funding has also tended to discourage international counsel from travelling to Freetown because the travel costs are deducted from the same pool of funds as their legal fees.

140. This resource problem will become even more dramatic in view of the forthcoming trial against Taylor, because the daily subsistence allowance to be paid to defence counsel will not be of 115 US dollars, as in Freetown, but will go up to 335 US dollars in The Hague. In addition, the travel expenses will augment considerably.

141. I would suggest that travel expenses and daily subsistence allowance should be separated from the package of remuneration provided for each team, so as to increase the money available for the legal fees of the defence and to remove the travel disincentive. It goes without saying that the travel expenses should continue to be submitted to the scrutiny of the Principal Defender, so as to prevent abuses.

ii. Increasing the availability of logistical resources

142. It has been repeatedly brought to my attention that defence teams are suffering from a lack of adequate support from the Court in terms of infrastructure and access to equipment and materials.

143. The office space and facilities provided to the defence are inadequate. Each defence team is housed in a single office the size of a single shipping container. There is room for two desks and the office is, in most cases, equipped with a single computer. Elsewhere in the Court, this size of room usually accommodates one or two people. The defence teams are comprised of approximately five people, sometimes with an additional investigator. The size of the room and the lack of computer facilities seriously hamper the defence and leave little space for files, transcripts, and storage.

144. I have also learned that the defence has access to only one or two vehicles. Given the number of teams, arrangements to use a Court vehicle must be made well in advance. This procedure stands in stark contrast to the Prosecution, which has many vehicles at its disposal and can undertake a mission to investigate an issue on short notice.

145. It appears that access to a photocopier is also an ongoing struggle for defence teams. The Defence Office has a photocopier, but it is locked in a room and the defence teams are not allowed unsupervised access and cannot use the copier after 5:30 p.m. when the attendant is off duty. The Principal Defender has responded that the photocopier has been misused by defence teams and that he is hiring a reproduction assistant to supervise photocopying for longer hours and on Saturdays. Allegations and explanations

concerning this practice abound, but this petty example illustrates the type of minor concerns that are interfering with the orderly preparation of the defence.

146. I would recommend a review of the office facilities and vehicles available to the defence. Every effort should be made to support the defence teams and assist them with the necessary logistics to prepare and present their cases.

iii. Reducing administrative obstacles

147. Although the members of the defence teams are not staff members of the Special Court or ordinary contractors, they appear to be subject to the same administrative regime applied to all other staff. For example, travel must be justified by the lead counsel to the Defence Office, which must approve the request. Then a travel request is raised by the Defence Office and it is sent to Personnel for signature. Once approved, the request goes to the Registrar for signature and is then sent back to the travel unit for implementation. This process is time consuming and frustrating for counsel who are not accustomed to these procedures and who are not always in Freetown to supervise the process. The Principal Defender has indicated that there is no other way to manage the movement of personnel and that this should not be an obstacle if the defence counsel would follow the required procedure and submit their travel requests at least 14 days in advance of their travel dates.

148. Similarly, Counsel have explained that they are spending an inordinate amount of time preparing advance work plans and detailed bills in the hope that these are less likely to be negatively assessed by the Defence Office in the fee review process. It has been reported to me that the Defence Office takes a strict view of any deviation from the work plan, even when justified. I would express the hope that the new taxing officer will be able to revise this procedure in order to streamline this process.

149. More generally, I would recommend that efforts be made to reduce the administrative burden on defence counsel, who are already working within stringent constraints.

iv. Upgrading the substantive legal role of the Defence Office

150. It has been reported to me that the Defence Office has not given significant legal support to the defence teams. When it has done so, the legal support has usually been provided at the explicit request of counsel. This “reactive” attitude has contributed to the perception of some defence teams that the Defence Office is essentially an administrative body. Notable examples of Defence Office initiative should nevertheless be emphasized, including the conclusion of an agreement for pro-bono legal expertise from a major U.S. law firm and provision of a German expert on international humanitarian law.

151. In order to mend the aforementioned impression, I would suggest that the Defence Office should proactively anticipate some of the common needs of defence teams related to the next steps in the proceedings. For example, the Defence Office could prepare a compilation of relevant decisions of the ICTY and ICTR on aggravating and mitigating factors in sentencing, in order to assist the defence teams. Likewise, the Defence Office

could prepare a memo on the standard of review on appeal and the standard for the admission of additional evidence on appeal, in order to prepare defence teams on these common issues. To avoid any concerns about memo style, competency of analysis, or interference in the defence strategy, these tools should consist of a concise compilation of the relevant authorities.

152. Another suggestion would be for the Defence Office to assist the RUF and Taylor teams by preparing neutral witness summaries from the transcripts of the hearings. Since these summaries would be prepared from the transcripts, there could be no question of interference in defence strategy or conflict of interest. The summaries could be given to the defence teams. If done well, the summaries could be of great assistance as a starting point for defence preparation. Factual summaries would also have the dual benefit of protecting the Defence Office in case of resignation of duty counsel or assigned counsel. With the summaries, the new staff or defence team member could get up to speed on the case in an efficient manner.

v. Enhancing the appellate expertise of the defence teams

153. Appellate law and procedure is a specialised area requiring particular experience and expertise. Trial counsel may not have experience in the legal technicalities of international appellate procedures. Moreover, since the Appeals Chamber is statutorily required to seek guidance from the decisions of the Appeals Chamber of ICTY and ICTR,²⁷ appeal proceedings before the Special Court will require additional knowledge of these bodies of jurisprudence. The Appeals Chamber's task will be greatly assisted if both the Prosecution and the defence make their arguments based on the relevant case law and formulate their submissions in light of the relevant standard of review.

154. It would thus seem advisable for defence counsel who have pleaded before Trial Chambers, to be assisted before the Appeals Chamber by highly specialized appellate legal counsel. One possible option would be for the relevant bodies of the Special Court to set up a roster of 25 legal counsel having (i) the requisite specialization in international criminal law or international humanitarian law, or at least in one of them, (ii) a minimum of five years of experience as legal counsel, attorneys-at law or barristers, as well as (iii) experience in pleading before international criminal courts (preference being accorded to those who have drafted submissions or pleaded before the Appeals Chambers of the ICTY and ICTR), and in addition (iv) fluency in English. At the request of a defence counsel, the Principal Defender could appoint one of the persons included in the roster for a period of not more than three months, to assist—at the expense of the Special Court if the appellant is indigent—the defence counsel in question.

155. It is therefore proposed that a “Roster of legal counsel for appellate proceedings” be established by the Principal Defender, based on recommendations by the President, the Prosecutor, and the Registrar of the ICTY and the ICTR. The Principal Defender should include in the Roster all those names (up to 25) that have mustered the greatest support of the aforementioned bodies of the ICTY and the ICTR. These appellate experts should be

²⁷ Statute of the Special Court, Article 20(3).

provided as an additional resource at the option of the defence team and should not detract from the resources otherwise available to the defence.

D. Maximizing courtroom resources

156. Earlier, I have identified courtroom usage as a potential area of improvement. Some unanticipated delays in all proceedings are unavoidable. It would nevertheless be beneficial for the functioning of the Special Court if efforts could be made to consider the overall efficiency of the Court in decision making, with a view to anticipating and alerting all interested sections about possible forthcoming breaks in the proceedings, and to adhere to the announced schedule.

i. Overall Court efficiency in decision making

157. As noted above, the Special Court aimed to be a more efficient model of international criminal justice than other international criminal tribunals. However, to attain efficiency, Trial Chambers should pay more attention to the overall effect of a decision on the efficient functioning of the Court.

158. The scheduling of the AFRC decision on motion for judgment of acquittal illustrates the importance of advance planning of key trial steps.²⁸ When Prosecution witness TF1-217 finished his testimony on 17 October 2005, the Prosecution was not in a position to conclude its case because it was waiting for a number of outstanding decisions from the Trial Chamber. As a result of these decisions, one witness was recalled and heard on 7 November 2005 and the Prosecution rested its case on 21 November 2005. From this date, the defence was allotted three weeks to file a motion seeking a judgment of acquittal. The Prosecution was allowed three weeks to respond to the motion and the defence had one further week to reply. According to this schedule, even though the case was essentially concluded on 17 October 2005, the filings for the motion were not complete until 31 January 2006. Part of this delay was caused by the intervening judicial recess. The decision on the motion was eventually rendered on 31 March 2006. The Trial Chamber and the parties then began to prepare the schedule for the defence cases, which started on 5 June 2006.²⁹ Aside from a few status conferences, the second courtroom was not in regular use from 17 October 2005 until 5 June 2006.

159. While the time taken to consider and draft the decision—31 January to 31 March 2006—is not extraordinary, the overall pause in the proceeding is much more significant.

160. In the future, both Trial Chambers should make every effort to anticipate these key steps and require the parties to be prepared to make submissions as quickly as possible. For example, the Trial Chambers could schedule the filing dates for significant motions well in advance, requiring the parties to file their motion, responses, and replies very shortly after the close of the case or other triggering events. The Trial Chamber

²⁸ AFRC: Decisions on Defence Motions for Judgment of Acquittal Pursuant to Rule 98, 31 March 2006.

²⁹ In the Status Conference of 4 April 2006, the Defence suggested that the case should reconvene in September 2006. *See*, AFRC Transcript, 4 April 2006, p. 6.

attempted to do this in the AFRC case, by issuing an advanced scheduling order on 30 September 2005. The written filings nevertheless took ten weeks. In future, these delays should be diminished by the oral Rule 98 procedure adopted by the Judges at the May 2006 Plenary.

158. Likewise, it would have been possible for the Trial Chamber to commence the pre-defence process without prejudice to the eventual outcome of their Decision. While the Chamber was drafting the Decision, the parties could have been working on preparing the pre-defence materials and getting ready for the presentation of the defence witnesses. The defence could have been requested to file all necessary documents immediately after the Decision was issued. Depending on the outcome of the Decision, the defence could have been granted an extension to adjust particular parts of their materials to respond to a reduced Prosecution case. The defence case could have started very shortly thereafter. This proactive practice could have significantly reduced the period between the delivery of the decision and the commencement of the case—from 31 March 2006 to 5 June 2006.

161. The Judges should therefore consider the overall functioning of the Court and use proactive trial management techniques to keep trial gaps to a minimum.

ii. Communication with the parties and the Registry

162. While it is unquestionably the prerogative of the Judges to determine the appropriate working schedule for the courtroom, it is also necessary to communicate the Court's forthcoming needs to the Court Management Section. This is particularly important in relation to significant trial events that might leave the Court empty for a period of time. Scheduling decisions have an important impact on the Completion Strategy, staffing decisions, and other aspects of long term planning involving the whole Court.

163. The decision of Trial Chamber I to pause the RUF trial while drafting the CDF judgment presents a recent example illustrating the importance of coordinated planning.³⁰ Notwithstanding the close of the Prosecution case in the RUF trial on 3 August 2006, the RUF defence case is not scheduled to start until 2 May 2007. Meanwhile, the CDF case closed on 27 October 2006. Courtroom 1, and the staff who ordinarily support this courtroom, will thus be virtually unused between 28 October 2006 and 2 May 2007.

164. It is respectfully submitted that the decision to pause the RUF trial during the bulk of the CDF drafting period was not the only option available to the Trial Chamber. Perhaps the Trial Chamber could have continued to hear the RUF case while drafting was progressing on the CDF judgment. Be that as it may, it is a fact that the Court Management Section did not anticipate the pause in the proceedings before Trial Chamber I and, instead, hired further courtroom support staff over the summer months.³¹ This lack of coordination is particularly regrettable since Trial Chamber II is also in a

³⁰ RUF: Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, 30 October 2006.

³¹ Court management hired 1 stenographer on a regular contract in August 2006, 1 stenographer on an SSA temporary contract in September 2006, and 1 scopist on an SSA contract in September 2006.

judgment preparation phase and these resources cannot be redeployed to support the other Chamber.

165. While the Registry must react and adapt to the Court's needs, lack of advance notice of a possible break in courtroom usage may result in over- or under-staffing and denies others the possible use of the courtroom facilities. It is thus imperative that a channel of communication be opened to advise the Registry, well in advance, of the possibility that a Chamber will not be using the courtroom over a considerable period of time. The Chamber would, of course, be free to determine its own schedule at the appropriate time, but the Registry would then be more prepared to deal with any contingency that might materialize.

166. It is suggested that a regular meeting of the Council of Judges would allow for this type of communication within Chambers. The President could discuss possible schedules with the Registrar and/or the parties on an informal basis in a regular coordination meeting.

iii. Enforcing the schedule

167. Concerns have been repeatedly raised about the lax scheduling at the Court, particularly in Trial Chamber I. I would suggest that the Trial Chambers should make every effort to comply with the schedule that they have imposed on the parties.

168. A review of recent transcripts reveals that Trial Chamber I hearings usually start late. The Presiding Judge announces that Court will stand adjourned until 9:30 a.m. the following morning, but this goal is only rarely met. Instead, Court commences between 9:45 and 10:00 am. Other breaks in the hearing are similarly extended (see Annex D, p.5). While the Judges may be deliberating or conducting other judicial work outside of the courtroom, this practice causes considerable loss of time for the parties and for the courtroom staff, who could devote their time to other matters in their offices instead of waiting in the courtroom for the Judges to arrive. The parties concerned have reported that they have repeatedly voiced their desire for a more accurate schedule.

169. In light of these concerns, I consider that a greater effort should be made to adhere to the Court's schedule. This would allow everyone involved in the courtroom to maximize the use of their time.

E. Enhancing good management

170. This Report focuses on the current management of the Registry and does not purport to delve into previous practices. The first Registrar, Robin Vincent, made an indelible contribution to the Court. He and his staff worked tirelessly, starting from scratch. When he left a few years later, a functioning international institution was in place.

171. The current Registrar, Lovemore Munlo, inherited many of the informal practices and procedures that had grown up with the Court. He has taken a series of measures

aimed at formalising many of them. He has also tried to introduce innovations drawn from his experience at the ICTR.

172. The current Registrar and his Deputy have, to a large extent, succeeded in reaching out to the Judges, encouraging them to take a greater role in managing the Court. The most notable example of this success is the recent participation of the Judges in the development of the Completion Strategy. According to reliable information provided to me by the Registrar, the Judges are pleased with his way of conducting business and promoting greater contacts with them.

173. In spite of these efforts, it is apparent that *within the Registry* the Registrar is experiencing some resistance to his more formal style of management. It has been reported to me that formal meetings have replaced informal exchanges of views and that information is being compartmentalised rather than shared. Senior managers complain that the Registrar is overriding decisions without providing sufficient explanation and failing to provide strategic vision or leadership. In my view, the core of the problem is that of ensuring better communication.

174. Given the conflicting views, I wish to emphasise that I have drawn upon documentary and oral information provided by a variety of reliable sources. I have constantly endeavoured to avoid being drawn into personality or loyalty disputes and have not been swayed by gossip or innuendo. My sole purpose is to make proposals for the improvement of the existing situation, based on credible information and reports as well as my own inquiries.

i. Fostering communication within the Registry

(a) Administrative Instructions may impede communication

175. Communication seems to be a serious obstacle to good management in the Registry of the Special Court. Recent Administrative Instructions from the Registrar have established two Registry Divisions (one is the Judicial and Legal Services Division, the other is the Administrative Support Services Division).³² It has been reported to me that the creation of these two distinct Divisions has *de facto* obstructed informal lines of communication between them. The Registrar takes a contrary view. In his communication to me of 29 November 2006 he writes that “Staff members across the divisions are quite free and are regularly encouraged to cohesively work to achieve the mandate of the Cour.”

176. On 9 August 2006, the Registrar issued an Administrative Instruction to inform all staff of the functioning and management of the Judicial and Legal Services Division, which includes the Court Management Section, the Witness and Victims Section, the Defence Office relating to Defence Lawyers Service Contracts and appeals, the Detention Facility, and Chambers Support. In this memorandum, the Registrar states that:

³² Judicial and Legal Services Division, Administrative Instruction SCSL/2006/049, 9 August 2006; Administrative Support Services Division, Administrative Instruction SCSL/2006/050, 14 August 2006.

Communication from any Section requesting assistance from or advising the Administrative Support Services or the Office of the Prosecutor and the Judges of all Trial Chambers, on routine Judicial and Legal Support matters, shall be sent through the Deputy Registrar.

177. This policy was intended by the Registrar to foster good communication within the Registry. It appears however that it is having the opposite effect, in that it has *de facto* established a “vertical” line of communication. A number of staff members have reported that they feel limited in speaking informally to each other in order to work out common problems and solutions, before going to senior management for approval. Often senior managers are not familiar with the technical details of equipment or certain specialised functions of staff members. A hypothetical example illustrates this point: staff with technical knowledge may be in a better position than senior management to sort out details of a request to purchase computerised stenography equipment or software for The Hague. I have been told that, in practice, many staff members continue to speak informally across division lines; however, they have indicated that they fear that they will be reprimanded for failing to follow the official policy.

178. I would suggest that the Registrar reconsider the strictness of this policy in order to promote more informal and “horizontal” consultation amongst the staff.

(b) Insufficient transparency may obstruct progress

179. The flow of necessary information is allegedly disrupted between the Registrar’s office and other sections of the Registry by a lack of transparency. It has been reported to me that much of the information flowing into the Court is not disseminated to the Section Chiefs or Judges, even when it might affect their work or long term planning.

180. For example, minutes of Management Committee meetings are thought to be confidential. In his communication of 29 November 2006 the Registrar informed me that between July and November 2006 minutes of those meetings were forwarded to the Deputy Registrar.³³ However, I was told that since late September 2006 these minutes are only sent to the Registrar; this information corresponds to the records that the Registrar has sent to me.³⁴

181. The Registrar agrees that he does not show the minutes to the President. He explains that, as the channel of communication for the Court, he must find a “better way” of communicating the frank discussions of the Management Committee to the Judges.

³³ He attached the e-mails “forwarding the Management Committee Minutes of 27 July 2006, 31 July 2006, 3 August 2006, 16 August 2006, 25 August 2006, 30 August 2006, 6 September 2006, 13 September 2006 and 8 [in fact 6] November 2006.”

³⁴ According to information provided to me, the minutes of 25 September 2006, 4 October 2006, 20 October 2006 and 20 November 2006 were only provided to the Registrar, at his request. The minutes of 6 November 2006 were sent to the Deputy Registrar because the Registrar was on leave and the Deputy was Officer in Charge.

182. I would recommend that notes or minutes of Management Committee meetings should be shared with at least the Deputy Registrar and the President, who is ultimately responsible for overseeing the work of the Registry pursuant to Rule 33(A). I am pleased to note that the Registrar has communicated to me that he would be prepared to widely circulate those minutes.³⁵

183. I have been informed of a related concern amongst the more senior managers: that they are making decisions and forming opinions without full appreciation of the facts. This concern has been raised, for example, in respect of the preparations for The Hague office, where section chiefs making budgeting or staffing decisions have not been fully apprised of basic information about the operation and are not copied on the periodic situation reports. Others have noted that the reports of fundraising trips and other matters which affect the livelihood of the Court are not distributed past the immediate office of the Registrar. Similarly, concerns about personnel decisions have been raised in a number of interviews. The withholding of information from interested parties, or differential treatment of staff members without explanation, contributes to gossip and discontent, which might be avoided by clear and transparent handling of the same issues.

184. The insufficient flow of information also permeates other aspects of the Court's functioning. For example, the Registrar holds a weekly Section Chief's meeting to update the different sections about the work of the Court. Often important practical information is conveyed in these meetings about security threats, water shortages, payroll problems, and the like. Although the Registrar has laudably asked Section Chiefs to share this information with staff and to convene weekly staff meetings in their own sections, it appears that some Chiefs do not disseminate this information.

185. The current Completion Strategy is an example of a delay in disseminating relevant information to all stakeholders. The document relating to Completion Strategy was originally sent to the Management Committee in July 2006, but was not distributed to Section Chiefs until October.³⁶ It would benefit managers and staff to learn of the salient details of the milestones as soon as possible, since it would promote better long-term planning and give a much-needed sense of better job security.

186. I would therefore recommend that the Registrar review his policy relating to the dissemination of information so as to increase transparency and to promote better management.

³⁵ Letter from Registrar Munlo, 29 November 2006 ("Should it be the view of the Management Committee that its minutes must be distributed to the President and Chambers, the Registry is ready to implement that decision.")

³⁶ In his communication to me the Registrar noted the following: "When the Completion Strategy paper was sent to the Management Committee, it was reported to all Chiefs of section. Later on when it was discovered that the Management Committee's approval of the Completion strategy document would take a long time to come, at the Chief of section meeting of 10 October 2006, I directed that the Completion strategy documents should be distributed to all Section Chiefs." *See*, Letter from Registrar Munlo, 29 November 2006.

(c) The need to promote more trust

187. According to some staff members, the current insufficiency in communication and transparency is creating an atmosphere of distrust within the Registry. Frustration amongst section chiefs and other managers is allegedly growing because of what is perceived as a policy of micro-management by the Registrar. A number of examples have been brought to my attention that suggest that this conclusion is not without foundation.

188. For example, in the Administrative Instruction setting up the Judicial and Legal Services Division it is emphasised that the Division operates under the Registrar's ultimate authority. The practical result of the separation of the Registry into two Divisions is that almost every significant decision must be made by the Registrar. The Deputy Registrar is only in charge of general coordination and operational decisions involving those sections falling under the Judicial and Legal Services Division (Court Management Section, Witness and Victims Section, the Defence Office, Detention Facility, and Chambers Support). It has been asserted by some staff members that most decisions also implicate sections falling within the Administrative Support Services Division (Budget, Finance, Personnel, Procurement, General Services, Communication and Information Technology, and the Clinic) or Security, which falls directly under the Registrar. Consequently, in practice decisions must always be taken at the highest level.

189. The delegation of authority issued by the Registrar when he goes on leave is another example of this concern, since even minor matters like travel requests require his approval. In the memorandum of 21 September 2006, the Registrar instructed that "Matters involving policy or otherwise requiring my specific approval including recruitment, extension of contracts and any movement of personnel, should be referred to me."³⁷

190. I would therefore suggest that efforts should be made to encourage managerial responsibility and promote an atmosphere of trust. Indisputably the Registrar is ultimately responsible for the running of the Court. Nevertheless it would be advisable for him to endeavour to more fully rely upon the expertise of the staff and promote their support. Arguably a less hierarchical and rigid conduct of business would prove beneficial.

ii. Combating staff turnover

191. Staff retention is a critical necessity for the Special Court and is vital to the successful achievement of the Completion Strategy milestones. In spite of excellent remuneration and a proactive personnel policy, international staff members continue to leave the Court. A number of factors contribute to this phenomenon, including: (i) Job insecurity; (ii) Living Conditions; and (iii) Lack of benefits.

192. The staff turnover problem facing the Court is most acute within the Registry. For a variety of reasons, many of the experienced senior staff in the Registry have now left the Court. New staff are being hired, some from within. A great deal of institutional

³⁷ Information Circular no. 024, Delegation of Authority, 21 September 2006.

knowledge has nevertheless been lost. I consider that efforts should be made to encourage staff retention.

193. The perception of job insecurity is one of the biggest disincentives to joining the Court and one of the strongest incentives for staff to leave the Court. It is well known that the Special Court has a limited mandate and that it will be winding down over the next few years. The Completion Strategy document on the Special Court's website indicates that the first two trials and appeals would be finished in mid-2006 and the third appeal would be completed in early to mid-2007.³⁸ These dates are grossly out of step with the current milestones. No effort has been made to communicate the accurate projections to the public, including prospective staff. Although the current Completion Strategy has been recently communicated to Section Chiefs, many staff remain unaware of the new milestones. Many staff members also fear that the financial insecurity of the Court could put an earlier stop to the institution. These perceptions prevail even in light of the fact that the Special Court will still be in scaled-down operation in the course of 2009.

194. In light of these concerns, it is recommended that the Registrar should give staff a more transparent picture of the plans for the Court. Personnel could provide further details about the length of employment prospects to individual staff members in order to aid them in making a rational decision about the timing of their departure. Hopefully more accurate information will prevent staff from leaving prematurely.

195. Admittedly it is difficult to counteract the attraction of more permanent employment opportunities. The Special Court provides one of the highest salary scales in the United Nations, particularly if the continuous provision of a daily living allowance is factored into the equation. However, the level of benefits is far below United Nations standards. Staff members of the Special Court are not able to contribute to the United Nations Joint Pension Fund. They receive no employer contribution for any private pension arrangements that they may make. Medical insurance is also the responsibility of the staff member. No benefits for family members, such as education grants, are provided. Thus, particularly for those employees who support a family, the overall remuneration package is smaller than what they could secure in other international organisations.

196. Given the challenging living conditions in Freetown, it is not surprising that the turnover rate is quite high. International staff members grow weary of the lack of electricity and water, the distance from their families, the constant battle against disease, the security risks, and the myriad of other difficulties that they encounter on a daily basis.

(a) Implementing the Personnel Policy

197. In order to retain staff for the purposes of the Completion Strategy, Registrar Munlo announced a special Personnel Policy on 22 March 2006. Many details of this policy appear sound. However, a number of staff members have raised concerns about its

³⁸ Special Court for Sierra Leone Completion Strategy (18 May 2005), Annexed to Identical letters dated 26 May 2005 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN Doc A/59/816-S/2005/350.

practical implementation. For example, according to the policy the Court will make an increased effort to fill vacancies through internal promotions including suitably qualified national staff. All posts, whether critical or not, will be filled externally only when a suitably qualified internal candidate cannot be found.³⁹ However, it appears that in at least some cases the practical implementation of this policy has not advantaged internal candidates. This can have a demoralising effect within the Court and may increase staff departure rates. Questions have also been raised about the exact scope and mandate of the Advisory Committee on Personnel Questions (ACPQ), which provides recommendations to the Registrar on the application of the staff retention policy.

198. I would therefore suggest that the Registrar should review the Personnel Policy to determine whether it is having the desired effect on staff retention and consider whether any improvements could be made in implementing the policy. The exact role of the ACPQ should be clarified.

(b) Offering training incentives

199. Increased provision for staff training opportunities might present another opportunity to encourage staff to stay on board longer. In this regard, particular attention should be paid to local staff members who could benefit from professional training within and outside of the Court.

200. Positive examples of in-house and external training already exist in certain sections of the Court. Court Management, for example, obtained European Union funding to train ten new female interpreters and provides in-house training in management, communication, and judicial information management. A Sierra Leonean staff member in the Court's library took part in an international course in The Hague. The Prosecution has provided training to Sierra Leonean police officers working with the Office of the Prosecutor, including courses on witness management and protection and major case management. In addition, a Canadian funded program conducted through the Investigations Section trained 50 police officers from across Sierra Leone in Major Case Management and 50 Sierra Leone Police witness officers in Witness Management and Protection.

201. External training opportunities could be offered as a benefit to encourage staff commitment and skills development. Internationally accredited professional training may be financially out of reach for many staff members on nationally-recruited contracts. The Court could share the costs of certain exams as a benefit to certain staff members in exchange for their renewed commitment to remain at the Special Court. The Court would benefit from their increased knowledge in the short term, while maintaining their contribution to the Court. In the long term the staff members would be better placed to secure good employment when they leave the Court.

202. As a practical example of this suggestion, I have learned that staff turnover is a serious problem in the Communications and Information Technology Section (CITS).

³⁹ SCSL Completion Strategy-Personnel Policy, 22 March 2006, para. 37.

Many of the staff members in that section have strong technological expertise, but lack the professional qualifications that would make them competitive in an international context. Professional exams in this field are not expensive, but may be beyond the means of many national staff members. I would suggest that an educational incentive programme should be initiated to keep these and other essential Sierra Leonean staff on board by giving them the means to secure their future through education. A matching programme, for example, could be established whereby each local staff member could access up to \$200 USD for educational purposes for every six months he or she remains with the Court.⁴⁰

203. Internal training for all staff would also increase morale and develop future career opportunities. Drawing on the internal expertise of the staff as well as visitors, it would be relatively easy to organise continuing legal education activities for all lawyers within the Court. Likewise, staff exchange training programs would also provide an opportunity for contact between local and international staff members. Ideas for this type of training could include classes in memo writing, English or Krio language skills, Sierra Leonean culture and society classes, etc.

204. Training opportunities, both internal and external, should be developed and supported.

iii. Preventing discrimination and abuse

205. The Special Court is a multicultural working environment that employs people from around the globe. Of the approximately 300 posts, some 178 are earmarked for Sierra Leonean nationals. In addition, 55 National Prison Service guards assist with the Prison, and 40 security officers from the Sierra Leonean Police Service provide close protection to Court principals and assist with other aspects of security. The 120 Mongolian peacekeepers who protect the premises of the Special Court are another part of the Court family, but are rarely mentioned.

206. When Ambassador Kanu visited the Special Court in March 2006, he reported a series of concerns about the treatment of national staff and their relationship with staff members from other countries.⁴¹ The complaints ranged in seriousness, but painted a picture of discontent amongst some Sierra Leonean staff members. Many of the complaints related to disparities between local and international staff in benefits and remuneration. Others raised concerns about lack of respect and cultural sensitivity, resulting in allegations of discrimination. The Registrar responded to the Management Committee regarding these concerns.⁴² Where possible, he has addressed some of the concerns and has conducted investigations into certain allegations of racial discrimination.

⁴⁰ For every \$1 that the staff member contributes to the professional training or examination, the Court would match the contribution up to a maximum of, say, \$200.

⁴¹ See Letter from Ambassador Kanu to the Chair of the Management Committee, 10 April 2006.

⁴² Letter from Registrar Munlo to Chairman of the Management Committee, 4 May 2006; Letter from Registrar Munlo to Chairman of the Management Committee, 19 July 2006.

207. At least two other allegations of discrimination on grounds of sexual orientation and gender have come to my attention. The former allegation was raised with the Registrar by the person concerned. I note, with concern, that the person accused of discriminatory behaviour has not yet been notified of any investigation or other form of resolution relating to this matter.

208. In the same vein, I have received repeated reports concerning senior management, including the Registrar and Judges, treating staff members with disrespect. Examples include degrading and discourteous comments, patently unreasonable demands, threats of termination, and shouting. I consider it necessary to state what should be obvious: all staff members, whether of Sierra Leonean or international origin, are entitled to be treated respectfully.

209. In light of these serious concerns, I would consider that a mandatory training course on non-discrimination and cultural sensitivity could benefit all staff members of the Special Court. The most senior managers should be offered a management training course, either in Sierra Leone or elsewhere, arranged by the United Nations. I understand that similar training is offered by the United Nations to senior managers at the ICTY and ICTR. Materials from this course, or a program modelled on it, should be made available to managers throughout the Special Court. The Registrar should share with all staff a clear policy or administrative instruction on the expectations of respectful treatment.

210. In addition, the Registrar should establish and communicate to all staff a clear procedure to deal with complaints. This procedure must protect both the complainant and the accused during the process. Given the close working environment of the Special Court, it is essential that allegations of discrimination or other abusive behaviour be brought to light and dealt with in an efficient and transparent manner.

F. Improving conditions of detention of indictees

211. I consider that I have a moral duty to raise an issue which, although strictly speaking not related to better management or increased efficiency, deserves to be discussed because it relates to the human rights of detainees.

212. The nine indictees currently detained are being held in individual cells that are spacious and in many respects meet the requirements set by international standards on detention. In addition, indictees have space available outside their cells to exercise in the open air and engage in sporting activities for up to 13 hours per day. Furthermore, the medical facilities of the Detention Unit are fully satisfactory; the medical unit is staffed by a doctor and three nurses.

213. Nevertheless, there is one issue on which the builders of the detention facilities should be faulted: no cell contains toilet facilities. Consequently, when locked up overnight detainees are obliged to meet their needs of nature in a bucket that is then emptied by them the next morning (so-called “slopping out”). This condition will continue to apply to all detainees for at least the next year, until the completion of their

trials or appeals. For the RUF accused, this situation will apply for a longer period of time.

214. I consider this state of affairs to be humiliating and out of step with international standards. Admittedly Rule 12 of the United Nations Standard Minimum Rules for the Treatment of Prisoners is rather loose, as it provides that “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.” It stands to reason that this Rule is intended to set a minimum treatment for *national* prisons and therefore takes into account the poor resources of some countries where hygienic conditions are still extremely backward. When the Rule is applied to an *international* detention facility built under the aegis of the United Nations, one should interpret it in such a way as to bring it in line with the most advanced standards.

215. The above proposition seems to me all the more compelling if one considers two things. First, for two of the detainees who are handicapped by illnesses or wounds, the aforementioned condition may cause serious inconveniences. Second, as soon as the Special Court closes down, the detention facility will hopefully be passed on to the Sierra Leonean authorities (see *Legacy*, below). If improvements are made along the lines suggested, the Detention Unit would set an example of decency and possibly have a positive effect on local conditions.

216. I suggest that the Registrar direct that a lavatory, however rudimentary (a flush toilet and a washbasin) be installed in each cell. This should not be too expensive nor cause serious practical problems in the Detention Unit, since the detainees could be moved to empty cells in the other wing during construction of the toilets.

VI. PROBLEMS RELATING TO THE TAYLOR TRIAL IN THE HAGUE

217. The decision to move the Charles Taylor trial from Freetown to The Hague has had serious repercussions for the future of the Special Court. The transfer of the trial deprives the Special Court of one of its main features: its location in the territory where the crimes were perpetrated. It also creates a complicated—and expensive—logistical situation, requiring the establishment of a second Special Court office in The Hague, the redeployment of staff, the relocation of the Trial Chamber, the transfer of witnesses, and the establishment of an enhanced Special Court presence in Liberia. The Taylor Trial will thus be the most significant challenge to confront the Special Court.

218. The tentative start date for the Taylor Trial has been set for 2 April 2007, although the Judges have emphasized that this date is “fluid” and may be reassessed if good cause is shown.⁴³ The trial itself is projected to last between 12 and 18 months, with judgment thereafter. The current Prosecution witness list contains 133 core factual witnesses plus 14 to 19 expert witnesses. The parties hope to reduce the number of witnesses through agreement on certain facts, most likely pertaining to the crime base. It is also hoped that some of the crime base witnesses will be able to give evidence by way of written statements pursuant to Rule 92 *bis*, which would further reduce the number of oral witnesses heard by the Court.

219. Preparation for the Taylor trial is well advanced. Staffing is being organized and facilities are being secured. Nevertheless, it is possible to envisage a number of potential concerns that could be avoided with better communication and careful planning.

A. Strategic and operational plans should be worked out

220. The creation of a satellite office of the Special Court will test the communication and planning skills of the Registry. Thus far, progress has been impressive, but not without areas of concern.

221. Initial planning for The Hague began in spring of 2006. Planning appears to have taken place from the bottom up, rather than from the top down. One senior staff member prepared an early draft Concept of Operations, which received no discussion, comment, or revision by senior management. Instead of developing a clear vision of the operations, through consultation, and then seeking input from the sections about the minimum staffing requirements to meet it, section chiefs were asked to submit their budgetary and staffing requirements before they were given a clear indication of the common view of the office. At the time when these estimates were prepared it was unclear whether the parameters of the case were those set in the Concept of Operations paper—which stated that the trial would take 12 months commencing in January 2007—or whether the figures should be based on the approximately 180 witnesses proposed by the Prosecution, which

⁴³ The Prosecution originally asked for a February 2007 start date. The defence asked for July and then extended their request to September.

would require much longer proceedings.⁴⁴ No clear direction was provided by senior management.

222. Some progress has been made since Taylor's transfer to The Hague and plans have started to become more concrete. It is apparent, however, that the Special Court operation in The Hague has grown from a satellite office—intended to service the minimum needs of the trial in conjunction with the ICC and with substantial support from Freetown—into a miniature Special Court based in Europe. To date, there is still a sense of confusion amongst some Registry sections about their perceived role in The Hague.

223. Leadership is necessary to guide the various sections in the right direction. It is all the more vital since it requires coordination between staff already in The Hague and the Freetown base. Currently, the Registrar, Deputy Registrar, and Chief of Administration meet on a weekly basis to discuss a variety of issues, including matters relating to The Hague. It would be worth considering whether lower level meetings might also serve a constructive purpose. A working group could be established within the Registry to set clear parameters and milestones for the operation of the Special Court in The Hague.

224. Communication is another crucial ingredient in the success of this trial. Two areas have been identified that could be improved. First, the new communication structure within the Registry, discussed above, is impeding the ability of staff to communicate on an informal level or to coordinate and discuss possible solutions to problems. These administrative boundaries are frustrating the establishment of the new office by disrupting the flow of information and the discussion of possible remedies. Staff members are becoming increasingly irritated with this management approach and feel that it is impeding their ability to do their work efficiently. Again, I would recommend that this communication policy be reviewed and reconsidered.

225. It is also imperative for the Registry to open direct lines of communication with the ICC. The details of division of labour must be worked out in advance in order to avoid delays in the trial. While staff of both institutions can be expected to perform at the highest levels of professionalism, it is nevertheless important to provide clarity about their respective roles. Some sections appear to be well advanced in their planning and coordination with the ICC and relevant authorities, while others, such as the Security Section, commenced negotiations only in November 2006. A number of issues ranging from minor technical matters to conceptual problems with financial implications remain to be resolved. Practical questions about the use of ICC facilities and space also linger. It is unclear, for example, whether SCSL Prosecution and defence will have any access to private rooms within the ICC to store their files and to consult during short breaks in the proceedings. These and a myriad of other small details should be hammered out and tested in advance of the trial.

226. The SCSL and the ICC should make some crucial decisions about the nature of the cost recovery system envisaged in the Memorandum of Understanding of 13 April

⁴⁴ Transcript of Status Conference, 21 July 2006, p. 11. ("In a fully litigated case we would anticipate that there could be as many as 180 witnesses.")

2006. For example, it has not been determined whether additional staff will be employed by the ICC to service SCSL needs or whether the SCSL will be charged for certain ICC support services on an hourly rate.

227. It is also important for the administration to become fully aware of and take into account the effect that the Taylor trial is having on morale in Freetown. In many instances, entire sections are applying for equivalent posts in The Hague. In filling these vacancies, the desirability of promoting qualified Sierra Leonean staff should be taken into account.

B. An Alternate Judge should be appointed

228. The Taylor trial will be of central importance to the success of the Special Court. Given that it will start long after the other cases and will thus extend the life of the Special Court, it is very important for it to run smoothly and not falter.

229. For this reason, I believe that an alternate Judge should be appointed who could sit through each stage of the trial and step in to replace a Judge if, for any reason, the Judge cannot continue sitting.⁴⁵ While this would entail additional expenditure, it is undesirable to gamble on the continuity of such an important case so late in the life of the Court.

230. The appointment of an alternate Judge might present an important opportunity to train a distinguished African jurist for future international judicial opportunities. The alternate Judge, while acting as a member of the Trial Chamber, could also actively assist with the drafting and preparation of the judgment. I would strongly recommend that the Management Committee, in selecting a Judge for this position, look closely at senior African lawyers with experience at the ICTY or ICTR and an excellent track record.

C. Prosecution concerns should be addressed

231. Prosecution preparation has been efficient in spite of the delay in appointing the Prosecutor and the Senior Trial Attorney for the *Taylor* trial. In light of the 2 April 2007 tentative start date, every effort should be made to finalize the *Taylor* team as soon as possible. It is anticipated that the Prosecution team will consist of one Senior Trial Attorney, two P4 Trial Attorneys, two P3 Trial Attorneys, one P2 Case Manager and one G6 Administrative Assistant. Some of the more junior members of the team have already been identified and are already preparing the case,⁴⁶ but the Senior Trial Attorney post and one P4 post remain vacant.

⁴⁵ See Statute, Art. 12 (4) (If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting). *See also*, Agreement, Art. 2.

⁴⁶ Transcript of Status Conference, 22 September 2006, pp. 3–4.

232. It is imperative that the final Prosecution team be established well in advance of trial. Ideally, they should be relocated to The Hague in sufficient time to settle into the new offices and to find accommodation before the trial begins. The current plan to send them to The Hague only two months before the start of trial may be insufficient and should be reviewed.

233. Interviews have also suggested that the Prosecution budget for Taylor is very tight. The Prosecution, like the defence, should be allowed a certain degree of flexibility to accommodate unexpected expenses.

234. Based on a number of interviews, it is my assessment that, although the Prosecution will certainly be ready to start on the tentative start date of 2 April 2007, the case may be better prepared and presented if the timeline were less strict and the trial proceedings started a bit later. A delay of a few more months would, on one view, be unfortunate; however, much of this delay could perhaps be recouped by the benefits of a smoother trial process.

D. Defence issues should be resolved

235. The defence team is currently composed as follows: Karim Khan, lead counsel, Roger Sahota, co-counsel and two legal assistants (a third assistant is acting pro-bono). At a recent status conference, Counsel stated that he is also receiving legal advice from three English counsel, but has since indicated that they have not committed to working on the case.⁴⁷

236. The defence has argued vigorously that the 2 April 2007 tentative start date is unreasonable in light of the volume of materials disclosed, the size of the case, and the delays in appointing a full defence team including investigators. The defence originally requested a July start date, and then revised this to a September start date in light of the complications arising out of the transfer of the trial and the amount of disclosure.

237. One of the most significant problems for the defence is investigations, which are more complicated in the *Taylor* case because of the Liberian dimension. The defence team has hired an investigator for Liberia, but only interviewed candidates for a Sierra Leonean investigator in mid-November. Defence counsel has also requested the services of a full time international investigator to supervise the Liberia and Sierra Leonean investigators and to ensure the quality, impartiality, and integrity of their work. Thus far, the defence has only been granted permission to hire one international investigator on a six-month contract without any provision for renewal (the experience in the other trials suggests that renewal is unlikely). In light of the Prosecution's complement of ten international investigators, at least a few of whom are certainly assisting with Taylor case preparation, this request should be given serious consideration.

⁴⁷ Transcript of Status Conference, 22 September 2006, p. 4.

E. Potential problems with witness movement

238. The movement of witnesses to and from The Hague will be one of the most challenging aspects of The Hague operations. It appears that the logistical arrangements are already well advanced. The Chief of WVU has travelled twice to The Hague to liaise with his counterparts at the ICC and to secure adequate facilities for witness accommodation. Witnesses will first be assembled in Freetown (or Monrovia), where they will undergo medical checks and complete visa preparations. Accompanied by a protection officer, they will be transported in groups of five to The Hague. The plan is to have 10 witnesses in The Hague at any given time. As the fifth witness finishes testifying, a group of five will be rotated home and five new witnesses will be flown to The Hague.

239. Two additional logistical concerns have arisen in recent months and efforts are ongoing to find a reasonable solution. First, there is a concern about witness accommodation. Currently it is planned to house witnesses together in safe-houses in Freetown and in one facility in The Hague. This raises concerns about witnesses talking to each other about the case, even in spite of cautions to the contrary. The witness protection unit will not have sufficient staff to ensure that this does not happen. Second, the Prosecution has indicated that they would like to send an additional family member or support person to accompany each witness. Thus far, the budget, staffing, visa, logistics, and accommodation plans have not taken this request into account. Continuing attention should be devoted to finding a reasonable solution to these problems.

F. Expanding outreach from The Hague to Liberia

240. In asserting that the trial of Charles Taylor in Freetown would pose a security threat to the sub-region, the United Nations Security Council requested the “Special Court, with the assistance of the Secretary-General and relevant States, to make the trial proceedings accessible to the people of the sub-region, including through video link.”⁴⁸ In the Order Changing Venue of Proceedings, the President of the Special Court reiterated the importance of ensuring that the Taylor proceedings be made available to the public, local media, and victims and witnesses.⁴⁹

241. Efforts are ongoing to ensure that the proceedings are available within Sierra Leone. Thus far, however, little advance has been made in Liberia. To date, the Outreach programme has relied on Liberian civil society representatives to spread the word about the trial. It would also be desirable for Special Court officials to attend outreach events in Liberia in order to raise the profile of the Court.

242. Another Outreach concern is the movement of trial observers to The Hague. They have planned to send four civil society representatives to monitor the trial. Thus far, there has been little effort to facilitate visas for this purpose.

⁴⁸ United Nations Security Council Resolution 1688, 16 June 2006, para. 6.

⁴⁹ *Prosecutor v. Taylor*, Order Changing Venue of Proceedings, June 2006.

VII. COMPLETION STRATEGY

A. Milestones of the remaining years

243. The problems of securing adequate funding have been exacerbated by the Special Court's failure to make accurate predictions of the timeline for completing the proceedings.

244. It seems clear that the judicial activity of the Special Court will unfold as follows:

Trial Chamber I		
Case	Next Step	Conclusion
CDF case	<ul style="list-style-type: none"> • closing arguments heard 28–29 November 2006 	<ul style="list-style-type: none"> • judgment and sentence (if any) expected in May 2007
RUF case	<ul style="list-style-type: none"> • Defence case scheduled to begin 2 May 2007 	<ul style="list-style-type: none"> • Defence case expected to conclude around December 2007. Judgment and sentence (if any) expected by June 2008
Trial Chamber II		
Case	Next Step	Conclusion
ARFC case	<ul style="list-style-type: none"> • closing arguments heard 7–8 December 2006 	<ul style="list-style-type: none"> • judgment and sentence (if any) expected in May/June 2007
Taylor case	<ul style="list-style-type: none"> • Trial scheduled to begin 2 April 2007. Possibility that it might begin later (i.e. June–September 2007) 	<ul style="list-style-type: none"> • Trial expected to last 12–18 months. • Defence case predicted for April–September 2008, • Judgment and sentence (if any) expected October 2008–March 2009
Appeals Chamber		
Case	Anticipated Appeal Timeline	
CDF case	<ul style="list-style-type: none"> • If heard first, then expected appeals period from June–November 2007. • Depending on coordination with AFRC case, the CDF appeals judgment could be delivered between November 2007 and May 2008. 	
AFRC case	<ul style="list-style-type: none"> • If heard first, then expected appeals period from June–November 2007. • Depending on coordination with CDF case, the AFRC appeals judgment could be delivered between November 2007 and May 2008. 	
RUF case	<ul style="list-style-type: none"> • Approximately appeals period from July–December 2008 	
Taylor case	<ul style="list-style-type: none"> • Approximately appeals period from April–September 2009 	

245. It is apparent from the above that the sequence of the various sets of proceedings is very tight and allows for little leeway. It is crucial for the three Chambers to stick strictly to the above plan.

B. What should be done

246. The Court must be given all the support necessary to meet the Completion Strategy milestones. The efforts of every section of the Court should be concentrated on meeting or beating these goals. In order to do this, the Judges must aim to maximise their efficiency inside and outside of the courtroom. Suggestions for improving efficiency are detailed elsewhere in this Report.

247. To meet these goals, it is also necessary to stop the cycle of fundraising, so that all members of the Court can concentrate their efforts on improving the Court's functioning.

248. Finally, the Completion Strategy must be implemented in a way that supports and enhances legacy.

i. Securing adequate funding

249. The current practice of an international Court begging for money from donor countries, exhausting its resources, and coming back again for another handout should be stopped. This practice undermines the authority of the Court, decreases efficiency, and wastes resources. The Court devotes inordinate time and energy to fundraising. In addition, because of its location in one of the poorest countries in the world, the Special Court is placed in competition with so many other worthy causes that could benefit the people of Sierra Leone.

250. The problems of securing adequate funding have been exacerbated by the Special Court's failure to make accurate predictions of the timeline for completing the proceedings. I have suggested elsewhere in this Report that it is crucial for lines of communication to be opened—or, if they already exist, to be strengthened—between the President, Chambers, and Registrar in order to avoid such pitfalls in the future.

251. Having arrested Taylor and moved his trial to The Hague, the Special Court is now in a position to prepare a reasonably accurate and tight budget for the final three years of operation. I suggest that this budget should be submitted to the Management Committee by 15 March 2007. Every effort should be made to plan for downsizing of staff in relation to the various milestones of the Completion Strategy. The necessity of retaining senior management positions should also be re-evaluated as the number of staff decreases in accordance with the Completion Strategy. This budget must provide detailed *explanations* and *justifications* of the various planning steps.

252. Ideally, the Management Committee should review this budget and adopt it in a timely fashion. This would not only dispel the uncertainty that has so far shrouded the actions of the Special Court, but would also set the Court's activities on a firm and secure foundation, thereby contributing to a more effective planning of the phasing-out period.

253. The Agreement establishing the Special Court provides that funding is to be secured by the United Nations Secretary-General with the assistance of the Management

Committee.⁵⁰ Once the budget is in place, the Management Committee should develop a firm and secure plan for funding the Court. Donor countries should be asked to commit their funds over a three year plan. If voluntary contributions turn out to be insufficient, pursuant to Article 6 of the Agreement “the Secretary-General and the Security Council shall explore alternate means of financing the Special Court.”⁵¹

254. The authorities of the Special Court should firmly commit themselves to meeting the milestones of the Completion Strategy. They should undertake to submit to the Management Committee, every six months, starting on 16 July 2007, both (i) an update on the implementation of the Completion Strategy, and (ii) a detailed account of the expenses incurred over the last six months as well as those envisaged in the next six months.

ii. Planning for Appeals

255. The Agreement setting up the Special Court envisages that the “Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed.”⁵² Now that the first hearings have closed, the President should begin consultations to determine the exact date when the Judges should take “permanent office.” The Appeals Chamber Judges must be given sufficient advance notice as to when they are expected to begin their work. The President, again with appropriate consultation, should also address the Judges’ concerns as to whether, when drafting their decisions, they are expected to live in Freetown and work on a full-time basis there, or whether they may be deemed to be in “permanent office” while working on a full-time basis in their countries of residence (an option that I would consider less favourable, for it would again involve lack of daily contact amongst the Judges). The Registry and the Management Committee should be kept informed of the Appeals Chamber’s planning and expectations.

256. An alternate Judge should be appointed for the Appeals Chamber as soon as possible. In its decision of 13 March 2004, the Appeals Chamber disqualified Justice Robertson, one of the five Appeals Chamber Judges, from sitting on any interlocutory or judgment appeals in the RUF case because of statements he made in one of his books

⁵⁰ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Articles 6, 7.

⁵¹ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone. (Article 6: The expenses of the Special Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Court’s operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court.)

⁵² Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Article 19(4).

which might raise a reasonable apprehension of bias.⁵³ Since Justice Robertson's disqualification, the Appeals Chamber has been deciding RUF interlocutory appeals with a bench of three or four Judges.⁵⁴

257. The immediate appointment of an alternate Appeals Chamber Judge would permit the Appeals Chamber to convene a full panel for RUF interlocutory appeals and for any eventual appeal against judgment in that case.

258. The appointment of such alternate Appeals Chamber Judge would also prove useful with regard to any appeals in the *Taylor* case. Before Taylor was taken into custody, counsel filed a preliminary motion on his behalf claiming immunity. After the oral hearing of this motion by the Appeals Chamber, but before the decision was issued, defence counsel filed another motion seeking Justice Robertson's recusal because of statements he had made in his book describing Charles Taylor as "Liberia's vicious warlord" and claiming that he was the "sponsor" of the RUF.⁵⁵ On 25 May 2004 Justice Robertson voluntarily withdrew from a preliminary motion in the *Taylor* case and stated that in future, should Taylor come before the Court, he would not sit on any appeal. I gather that this self-recusal still stands. Justice Robertson does not appear to have ever participated in any Appeals Chamber decision concerning the *Taylor* case. Instead, the Presiding Judge has always assigned a bench of three or four.⁵⁶

259. Recently Charles Taylor has purported to waive any objection as to Justice Robertson's participation in his case.⁵⁷ The suggested consequence of the waiver is that a party can consent to a Judge sitting on a case, even if this Judge has already recused himself or herself, or even if there could be a reasonable apprehension of bias.⁵⁸ Should

⁵³RUF: Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004.

⁵⁴ See, e.g., RUF: Sesay-Decision on Appeal Against Refusal of Bail, 14 December 2004 (Justices Ayoola, Fernando and King); RUF: Gbao-Decision on Appeal Against Decision on Withdrawal of Counsel, 23 November 2004 (Justices Ayoola, Fernando, King, Winter).

⁵⁵ Geoffrey Robertson, *Crimes Against Humanity—The Struggle for Global Justice* (The New Press, 2002), p. 466.

⁵⁶ See, e.g., *Prosecutor v. Taylor*, Decision on Immunity from Jurisdiction, 31 May 2004 (Justices Winter, Ayoola, King, Fernando); Decision on Urgent Defence Motion Against Change of Venue, 29 May 2006 (Justices King, Ayoola, Winter).

⁵⁷ *Prosecutor v. Taylor*, Defence Filing on Composition of Appeals Chamber Pursuant to Trial Chamber's Order Dated 3 May 2006, 9 May 2006.

⁵⁸ The question of judicial impartiality is even more important for international tribunals than for national courts, since international tribunals have greater visibility and constitute self-contained systems lacking the numerous "external" safeguards that assist national courts. In the specific case of the Special Court, the Statute and the Rules require that trials and appeals must be "fair" (Article 17(2)). Rule 26 *bis* provides that "The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses." While there is a "presumption of impartiality which attaches to a Judge" (*Prosecutor v. Taylor*, Defence Filing on Composition of Appeals Chamber Pursuant to Trial Chamber's Order Dated 03 May 2006, 9 May 2006), it is incumbent on any Judge to withdraw from a particular case if he or she believes that his or her impartiality might be in question or be perceived as doubtful, regardless of what the parties may do, or may agree upon (see ICTY Appeals Chamber, *Prosecutor v. Furundžija*, Judgment, 21 July 2000, §175). If the relevant judge fails to do so, the issue of impartiality may have to be decided by the

any problem arise in future in *Taylor*, it will be for the Appeals Chamber to settle the matter, after duly taking into account the arguments of the parties and any decision of Justice Robertson on his participation or non-participation in the *Taylor* case.

260. In any event, the above observations make it clear that it is all the more important to appoint an alternate Judge as quickly as possible so as to ensure that five Appeals Judges can be available for every appeal. The appointment of an alternate Judge for appeals proceedings may not necessarily have the same financial implications as for an alternate trial Judge, who must in principle sit through the entire case. Since most of the judicial work on an appeal is done on the basis of the briefs of the parties and a short oral hearing, it would be relatively simple for an alternate Judge to join a case if and when needed and be remunerated only for the days of actual employment.

iii. Setting up the residual mechanism

261. Some aspects of the Court's mandate will live beyond the Completion Strategy and arrangements must begin immediately to anticipate these future functions of the Court. For example, decisions must be taken on the appropriate mechanism for archiving the documents of the Court and the evidence of the Prosecutor. All sections of the Court, particularly Court Management and the Prosecution, should be involved in planning for the creation of an archive. Likewise, it is important that agreements be made with countries willing to accept to imprison any convicted defendants. At present, only two such agreements are in place, which may be insufficient depending on the number of accused who are eventually imprisoned.

262. Before the Special Court completes its mandate, it should also establish a residual mechanism to deal with matters that may arise concerning conditions of imprisonment of convicted persons, requests for review, requests for access to confidential materials and other matters. Planning for this residual mechanism should begin as soon as possible.

263. The Special Court will be the first of the international criminal tribunals to wind up its operations. As the United Nations begins to create archiving and residual mechanisms for the ad hoc tribunals, it should also include the Special Court in its planning and ensure that these mechanisms are in place prior to the completion of the Special Court's mandate. I would recommend the Registrar to cooperate with the other international criminal tribunals and the United Nations to see if a common solution to some of these problems could be found.

Bench, again regardless of any initiative of the parties. Whenever there is a minimum allegation or doubt or fear that a Judge may not be impartial on account of his or her present or past conduct or utterances, or, in other terms, "there is an unacceptable appearance of bias" (as the ICTY Appeals Chamber put it in *Furundžija*, at § 189), the Bench may resolve to consider the matter *proprio motu*, in light of the relevant international rules—in this case Article 13(1) of the Court's Statute ("The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source") and Rule 15(A) of the Rules of Procedure and Evidence ("A Judge may not sit at trial or appeal in any case in which his impartiality might reasonably be doubted on any substantial ground").

iv. Laying the foundations for a legacy

(a) Downsizing staff in a reasonable way

264. Downsizing of staff should be carefully planned and implemented. While some sections of the Court have started to plan for the Completion Strategy milestones, other sections have not yet begun. This advanced planning should commence as soon as possible across the Court.

265. Downsizing is necessary to gradually wind down the Court. Downsizing must take into account not only the need to retain the staff indispensable to the discharge of the essential functions of the Court, but also the need to keep Sierra Leonean staff as long as possible. The commitment to retaining Sierra Leonean staff will improve the legacy effect and reduce costs. The longer the Sierra Leonean staff work with the Special Court, the better they will be trained in court management and other ancillary functions. Moreover, I have been advised that the cost of a P3 international staff member is roughly equivalent to that of 22 local posts at the GSL7 to GSL 4 level. While local professional level staff receive the same salary as their international counterparts, they do not receive the daily living allowance of \$115 USD per day or other benefits such as home leave. Hence, the gradual downsizing of international staff while maintaining local staff may also be in the interest of cost-effective running of the Special Court.

266. I would also suggest that an effort should be made to promote those Sierra Leonean staff members that have proved to be competent professionals. At present the nationals of Sierra Leone working for the Court in professional positions include a P4 (Chief of the Outreach Programme), a P3 (Head of Language Section), three P2s (2 duty counsel and 1 court officer), as well as a P3 investigator and P1, P4 and P5 lawyers in the OTP. Since the Court's inception Sierra Leonean professionals have held a variety of positions in the Prosecution, from P1 to P5. If possible, and subject to the condition that positions become available, the upgrading of these posts would have a welcome effect on legacy. For instance, were the position of Deputy Prosecutor to become vacant at any stage, I believe that a competent Sierra Leonean lawyer should be considered for such position.

(b) Training local staff

267. Also, it is important to intensify the training of the local staff before the Court is dismantled. On the basis of interviews with a number of local staff members, it would appear that, having had the opportunity to work in an interesting international setting and also to benefit from a better salary, they do not intend to go back to their prior local jobs. Rather, they aspire either to join international organizations or to find better positions in Sierra Leone. To avoid future frustrations, it would be advisable to provide some further training to this staff, so as to put them in a better condition to compete for better jobs.

268. To this effect, international staff members should transfer some of their skills to their Sierra Leonean colleagues. At present, courses in résumé writing and in conducting recruitment interviews are already being given by the Personnel Section. These courses

should be supported and expanded to areas such as (i) effective English communication skills, including memo writing and other office techniques; (ii) literacy skills; and (iii) upgrading professional skills. For instance, one could envisage, for police officers currently providing close security protection, a training course in modern techniques of close protection; for secretaries, one could envisage courses on human resources management, and so on. It bears stressing that this training would cost nothing to the Court. Indeed, it could be provided by international staff members within their office hours. The training would no doubt be gratifying and the international staff members would feel that they are fulfilling an important educational task; in addition it would give them experience in training and would enhance their interaction with Sierra Leoneans.

269. Another possibility would be to model more sections along the lines of the Personnel Section. This section is doing an excellent job in providing on-the-job skills training to their staff. Each international staff member is paired with a Sierra Leonean. Their desks are pushed together and they share the same workload. Not only does this partnership approach provide full coverage of a broad workload and allow for uninterrupted service while one of the pair is out of the office; it has also created a rewarding learning activity for both local and international staff.

(c) Extending the Outreach Program

270. A commitment to legacy also requires an intensification of the Outreach Programme, the crown jewel of the Special Court. Ms. Binta Mansaray, Chief of Outreach, is a very competent and dedicated Sierra Leonean. She has done an excellent job in communicating the importance of the Special Court to the Sierra Leonean public. The positive effects of Outreach could, nevertheless, be enhanced by increasing the focus on the Sierra Leonean legal professions.⁵⁹ Thus, meetings and workshops, to be held with lawyers, judges and prosecutors from Sierra Leone, should be directed at illustrating the functioning of the Special Court, its judicial output, its “code of criminal procedure” (the Rules of Procedure and Evidence), and the principles of fair trial on which it is based. Perhaps the best way to inform the legal professions about the Court’s developments would reside in holding periodical briefings on the Court’s activities.⁶⁰

271. In addition, fortnightly lectures should be given—either in one of the courtrooms or in the so-called temporary courthouse—to members of the Sierra Leonean legal profession such as magistrates, judges, or members of the Bar Association who are interested in international matters. Such lectures could be delivered by the many staff members who specialize in international law, international humanitarian law, or international criminal law. I believe that it would be a pity if the Sierra Leonean legal community failed to take advantage of the competence of the many international law specialists who are working for the Special Court. They could enjoy a wide audience, composed primarily of Sierra Leonean lawyers, but also of other persons working for the Special Court. The topics could include such issues as the notion of fair trial, the rights of

⁵⁹ I have learned that the Outreach Programme has focused, among other things, on training between 350 and 400 Sierra Leonean “customary law personnel,” i.e. staff working for local courts in Sierra Leone.

⁶⁰ I have been told that so far such briefings have only been held for the Sierra Leonean Attorney-General.

suspects and accused, the prohibition of rape under international criminal law, the Geneva Conventions and Protocols, the differences between national and international criminal courts, and so on. The Special Court could also partner with the Fourah Bay College (Freetown) Law School to provide a course on international criminal law to students. In this way, the local legal profession could benefit from the international experts who are currently in the country.

272. It must be emphasized that the first stage of legacy planning regarding the use of the courtrooms—training of Sierra Leonean lawyers, meetings and discussions with Sierra Leonean judges, outreach activities, moot courts, and so on—is seriously behind schedule. After the close of the AFRC case, the Special Court has little use for Courtroom II, which will only be used sparingly for AFRC matters, or for appeals. Thus, legacy activities could begin to be held in this courtroom immediately.

(d) Improving the Court’s website

273. Finally, the Special Court website should be improved. At present, decisions of the Court are very difficult to locate on the website, particularly for those unfamiliar with the names of the defendants or the acronyms of the cases. The decisions are filed in PDF format, which is unsearchable and difficult to print or email. Text-searchable versions of the decisions and all other basic documents must be made available to the public in order to increase the Court’s visibility. Efforts should be made to partner with Lexis-Nexis or Westlaw to ensure that the documents of the Court are available to academics and lawyers in other countries.

274. A technical review of the website should be undertaken to ensure that the documents are accurately filed and that all of the links to documents are functioning. In preparing this Report I regularly encountered errors on the site.

275. I would also suggest that the most recent Completion Strategy milestones be displayed on the website, so that potential new staff members are not discouraged into thinking that the Court will be imminently closing, as suggested by the Completion Strategy document of 18 May 2005 which is on the site.

VIII. THE SPECIAL COURT'S LEGACY

276. The establishment of mixed tribunals sitting in the territory where the crimes over which they have to adjudicate have been perpetrated, makes sense only if (i) during their operation the tribunals have a direct bearing on the local population, thereby gradually contributing to catharsis, reconciliation and peace, and (ii) after their termination they continue to have an enduring impact on the national institutions and the life of the population. This is the question of a tribunal's legacy: tribunals must leave something useful behind.

277. The issue of legacy should be tackled as soon as possible, because it is inextricably intertwined with the Completion Strategy. Measures must be put in place forthwith so as to make it possible for the Special Court to have a robust and effective legacy when it closes down.

278. It is realistic to think that the Court's legacy may operate in the following areas: (a) use of the Special Court infrastructures; (b) trials by Sierra Leonean courts of international crimes committed by middle-level alleged perpetrators; (c) impact on the Sierra Leonean legal profession; and (d) training and redeployment of Sierra Leonean personnel that have worked for the Court.

279. At this stage, I do not think that it is realistic to expect that the Court's legacy will directly: (a) ensure greater respect for the rule of law in Sierra Leone; (b) promote or inspire substantive law reforms; (c) improve the conditions of service and remuneration of judges in Sierra Leone; or (d) alleviate corruption allegedly existing in the judiciary. The Court may contribute to these goals, but they will only materialise as an indirect effect, in the long run, and thanks to other concomitant factors.

A. Use of the Court's physical infrastructures

280. One of the numerous merits of the Special Court has been the installation and functioning of modern judicial infrastructures, consisting of 200 offices (for the Prosecution, defence counsel, and the Registry) in 18 containerised office blocks, including chambers for the Judges, a state-of-the-art courthouse with two courtrooms, a witness safe-house, a security building, a detention facility, a cafeteria, and a power generation plant with a fuel storage area. All these facilities are hosted in a well protected compound situated on 11.5 acres. Indispensable equipment (for example electrical generators and computer systems) has also been put in place.

281. It has been reported to me that the Government of Sierra Leone will not be able to afford the expenses needed for the maintenance and regular refurbishing of the existing infrastructures, which have been estimated at approximately 400,000 USD per year. According to other reports, the Sierra Leonean authorities are envisaging the possibility of using the courtrooms to host the Sierra Leonean Supreme Court, whereas the detention facility might be converted into a shopping centre. If, as I believe, the latter option is eventually not chosen, it would seem appropriate to use the physical infrastructures to set

up a multi-use international foundation. The Government of Sierra Leone could partner with other African Governments, international foundations, the European Union, and others, to create a governing body for the facility. The Foundation could use the funds with which it would be provided to maintain the compound and host meetings, conferences, workshops, training sessions, not only for West-Africans but also and more generally for persons concerned in international justice or in related international matters. A variety of uses could be envisaged, including hosting:

- (i) The Law School of the Fourah Bay College, Freetown;
- (ii) An Academy of International Criminal Justice, organizing a one-year Master in International Criminal Law open to African graduates as well as graduates from other continents;
- (iii) If possible, the African Court on Human and Peoples' Rights.⁶¹

B. Handing over the Court's legal materials to Sierra Leonean courts

282. The Special Court should pass its entire jurisprudence on to national courts in Sierra Leone. This legacy would not consist only of the decisions and judgments delivered by the Court but also of the general approach to trials taken by the Court including the notion of fair trial by independent and impartial judges. The whole ethos of the Court should be bequeathed to Sierra Leonean courts, so as to ensure that they are motivated by full respect for the highest standards of justice.

283. This heritage could be made available to Sierra Leonean courts in various ways:

- (i) By handing all the legal materials of the Special Court (decisions, judgments, briefs of the parties, rules and regulations of the Court, etc.) to a court library in Sierra Leone, for example that of the High Court;
- (ii) By ensuring that the Sierra Leonean judges, prosecutors, and other members of the legal professions who have been exposed to the working methods and output of the Special Court live up to the standards used by the Special Court (see below §286). This task could be authoritatively discharged by the Sierra Leonean Judges currently sitting on the Special Court, who might be asked to monitor any judicial development in this area;
- (iii) By ensuring a wide media coverage of trials, in particular by the independent local radios that should be set up under the BBC project on "Radio for Justice in Sierra Leone" promoted by the BBC World Service Trust;

⁶¹ At present the Court is located in Arusha, Tanzania. However, under Article 25 of the 1998 Protocol to the African Charter on Human and Peoples Rights, the seat of the Court "shall be determined by the Assembly [of Heads of State and Government of the AU] from among States parties to this Protocol" and in addition the Court "may convene in the territory of any member State of the OAU [now AU] when the majority of the Court considers it desirable, and with the prior consent of the State concerned").

- (iv) By ensuring that any judicial decision or judgment by national courts are duly brought to the attention of the international community at large through the use of modern technology, for example via a website.

C. Supporting trials of mid-level defendants

284. Contrary to what has been claimed by various commentators, in my opinion Sierra Leonean courts are not barred by Article IX (3) of the Lomé Agreement of 1999 from trying lesser defendants who allegedly committed war crimes and other offences against international humanitarian law (see Annex E). As there is no legislation in Sierra Leone concerning international crimes, courts could try persons accused of offences committed during the war such as treason (a statutory offence), murder (a common law offence), wounding and causing grievous bodily harm (a statutory offence), rape (both a common law and statutory offence), larceny (a statutory crime), kidnapping (a common law crime), malicious damage to property (a statutory offence), or arson.

285. Hence, the Court's Prosecutor should hand over to the Sierra Leonean Director of Public Prosecution *copies* of all the evidence he may have collected against middle-level defendants or against the so-called notorious criminals who may have committed crimes between March 1991 and December 2000, or at least between 8 July 1999 and December 2000.

D. Reaching out to the Sierra Leonean legal profession

286. Many of the Sierra Leonean legal staff who have worked for the Special Court will continue to practice their profession in Sierra Leone, as prosecutors, judges, or lawyers. It is to be hoped that they will contribute to their local system by introducing some of the knowledge and skills that they acquired at the Court. Former staff members will return with a legacy of enhanced knowledge of international law, comparative law, and human rights standards. They will also return to their careers having worked in an environment that respects the principles of fair trial, promotes gender respect, and prohibits corruption. The same principles and standards should also positively influence the wider legal profession in Sierra Leone. This goal could be supported within the framework of the Completion Strategy if the Outreach Programme extended to the legal profession (see above, §§270–272).

E. Redeploying Local Staff

287. In addition to lawyers and other professional staff, the Special Court has relied upon many other local staff members: police officers, soldiers, other security personnel, as well as secretaries and other clerical staff. Once the Court has been dismantled, it will be difficult for all of them to resume their previous jobs, if they had one, or to find other employment in Freetown. Many Sierra Leoneans who talked with me, expressed their reluctance to go back to their previous jobs in Sierra Leone, chiefly because they would earn less than at present and because they believe that their former position would be less

interesting and motivating than the current one. They have all articulated the keen desire to continue working for international organizations.

288. It is crucial for the Special Court to provide more training to Sierra Leonean staff. By acquiring new skills, these staff will be better prepared to compete for international posts or to contribute to Sierra Leone, for example by taking up positions in the public service after the Court closes down. If the training suggested above (§§267–269) is implemented, Sierra Leone will inherit better qualified personnel. Former Special Court staff members will constitute an important asset for the country.

IX. SUMMING UP OF CONCLUSIONS

289. In spite of its merits and achievements, the Special Court has been the object of some criticism, chiefly on account of the slowness of its trial proceedings and the relatively costly nature of its functioning.

A. Merits of the Special Court that should be enhanced

290. I have discussed above the principal shortcomings plaguing the Court, and will briefly summarize them below. It would however be injudicious to neglect the Court's significant achievements. .

291. The Court has operated in a very difficult milieu, overcoming countless hurdles. It is dispensing fair justice in manner visible to the local population. Its impact on the Sierra Leonean civil society is a fact of enormous importance, the significance of which is not matched by any other international criminal tribunal. An excellent Outreach Programme was set up from the beginning and is being successfully implemented. A ground-breaking Defence Office has been established which, in spite of some setbacks and failings, has a lot of potential. Satisfactory facilities were built hosting, among other things, two state-of-the-art courtrooms. Some notable judicial decisions have been delivered on such important legal issues as amnesty, immunity of heads of State from prosecution, child soldiers, jurisdiction, and the power of the Court to subpoena Heads of State. Generally speaking, the judges and the staff have proved to be dedicated. They are also aware of the historic mission of the Court.

292. All these merits should be enhanced and fully brought to fruition in the final stage of the Court's functioning.

B. Major shortcomings

i. *"Shoestring justice"*⁶²

293. Let us now move to the Court's weaknesses, as set out above in some detail (see §§36–57). Whether or not the criticisms raised against the Court's flaws are well-founded, it would be unfair to put all the blame for such flaws on the Court itself. Rather, much of the responsibility lies with *structural defects* of the Court. The Court was conceived as a new type of judicial body, designed to avoid the pitfalls of two ad hoc international criminal tribunals and therefore to dispense justice expeditiously, in a cost-effective manner and with a direct impact on the population amongst which crimes had been perpetrated. The intent was laudable but the funding was flawed. The Court's finances were premised on voluntary contributions that have proven to be parsimonious,

⁶² This expression has been first used by A. McDonald, *Sierra Leone's Shoestring Special Court*, 84 *International Review of the Red Cross* (2002), 121, pp. 138–142, and by J. Cockayne, *The Fraying Shoestring: Rethinking Hybrid war Crimes Tribunals*, 28 *Fordham International Law Journal* (2005) p. 616 ff.

uncertain, and precarious. Donor States have been late in providing monetary contributions. The Management Committee has not clarified from the outset whether the fund-raising tasks were to be discharged by the Committee or by the Court's Registrar. This basic insecurity coupled with the declared intent to operate on a very tight budget has impeded financial planning and affected every aspect of the Special Court's operations.

294. In order to save money the Court began with a single Trial Chamber. The delay in establishing a second Trial Chamber was, in part, responsible for Trial Chamber I's decision to start two cases at the same time. Had two Trial Chambers been set up right away, the handling of the various cases would have been no doubt more rapid and efficient. Similarly, had the necessary number of legal officers been immediately assigned to the Chambers, the Chambers would have been able to work more efficiently.

295. The uncertainty surrounding funding has also negatively affected staffing. The policy of recruiting "just in time" has interfered with preparation and has left many sections understaffed. Many good professionals, particularly those having experience with international criminal tribunals, have not been attracted to the Court because of funding concerns. By the same token, retention of staff has proved difficult.

296. In sum, the Special Court has ended up suffering from the same two shortcomings that its founders intended to avoid by establishing a court markedly different from the ad hoc tribunals: excessive length of proceedings and costly nature of the institution. The Court's ambitious predictions about the length of trials and the winding up of the Court have turned out to be unrealistic.⁶³

ii. Lack of a strong judicial leadership from the outset

297. The need for strong judicial leadership in international criminal tribunals has been emphasized above (see §§47–51, 92–98). Such leadership has been absent in the Special Court. The Court would have fared much better from the outset had the Management Committee allocated the necessary funds, soon after the establishment of the Court, to provide a salary to at least the Court's President so that he or she could reside in Freetown, work on a full-time basis, and thereby ensure a firm leadership and good coordination and communication within Chambers and with other sections of the Court.

iii. Insufficient reliance on the existing "know-how"

298. Another central flaw resulted from the initial failure to draw as much as possible upon existing know-how from the international criminal tribunals (see §§ 54–57). It is not clear whether the intent was to disregard the experience of the two existing tribunals in the hope to break new ground or whether reliance on experienced staff was rendered

⁶³ See, e.g., the 2005 Completion Strategy (UN doc. A/59/816 and S/2005/350). In this document, finalized on 18 May 2005, the RUF trial was estimated to come to completion "by the end of 2006" (§ 31), whereas now it is predicted to end by June 2008; as for the CDF and AFRC trials, it was estimated that they "could be completed at the trial chamber stage around the end of 2005 or early 2006" (§ 30), whereas it is now estimated that both the CDF and the AFRC trials will finish in May 2007.

difficult by lack of funding or lack of interest on the part of nominating States or candidates. It is a fact that the wealth of experience and professionalism available was to a large extent ignored: most principals of the Court (Judges, the first Prosecutor and the first Registrar), while conversant with domestic criminal procedures, had no or very little familiarity with or exposure to *international* criminal proceedings. Consequently, each section of the Special Court had to go through a fairly long learning process that perhaps could have been avoided.

iv. Other failings

299. The problems set out so far have beset the Special Court from the beginning. Other shortcomings have also materialized from the daily operation of the Court and may be chiefly attributed to the manner in which the Court has been managed. These weaknesses include: (i) lack of communication amongst the various organs of the Court; (ii) insufficient communication within the Registry; (iii) insufficient sensitivity of the Judges to the exigencies of court management; (iv) inadequate provision of resources to the defence.

X. RECOMMENDATIONS

If the aforementioned flaws are quickly remedied, the Special Court will no doubt proceed with alacrity in its operations and dispense fair and expeditious justice. I would therefore like to make the following recommendations.

I. SECURING A FINANCIAL FOUNDATION FOR THE COURT'S REMAINING YEARS

1. By 15 March 2007, the Registrar, in close consultation with all sections, should prepare a tight and rigorous budget covering the period up to the conclusion of the Court in December 2009 (see above, §251)
2. The Management Committee should adopt the final three-year budget in a timely manner (see above, §252)
3. The Secretary-General and the Management Committee should secure the commitment for the necessary funds (see above, §253)
4. By 16 July 2007, then by 17 December 2007 and subsequently twice a year the Registrar, after closely consulting with the other organs of the Court, should submit to the Management Committee a detailed report on how the various deadlines have been met in implementing the Completion Strategy, as well as a detailed account of the expenses incurred and those envisaged (see above, §254)

II. ENHANCING JUDICIAL LEADERSHIP

1. The President should reside in Freetown, work full-time and be eligible for a second term (see above, §95)
2. The President should hold monthly or more frequent meetings with both the Council of Judges and the other principals of the Court (see above, §96)
3. A P3 Special Assistant to the President should be appointed to assist with these enhanced managerial and administrative duties (see above, §98)

III. MAXIMIZING THE EFFICIENCY OF THE PROCEEDINGS

1. Better communication and coordination between the President, the Chambers, and the Registry should be established (see above, §166)
2. Efforts should be made to adhere to the Court's schedule (see above, §169)

3. In deciding on the scheduling of important trial events, attention should be directed to the overall effect of the schedule on the efficient functioning of the Court (see above, §161)
4. Proactive trial management techniques should be adopted (see above, §§160–161)
5. Trial Chamber II and the Appeals Chamber should engage in judicial exchanges with experienced ICTY and ICTR Judges (see above, §§114–115)
6. The legal support staff available to the Trial and Appeals Judges should be increased and a junior legal officer should be assigned to work directly with each Judge (see above, §§121, 133)

IV. BOLSTERING THE DEFENCE

1. The Defence Office should provide substantive legal assistance to the defence teams (see above, §151)
2. The Defence Office and the Registrar should work together to reduce the administrative obstacles to an effective defence (see above, §149)
3. Every effort should be made to assist the defence teams with the necessary logistics to prepare and present their cases (see above, §146).
4. Travel and daily subsistence allowance expenses should be separated from the remuneration limits available to the defence (see above, §141)
5. A roster of experienced appellate counsel should be established and made available on short contracts to assist defence teams with appeals (see above, §155)

V. ENHANCING GOOD MANAGEMENT

1. The Registrar should revise the administrative procedures so as to ensure effective communication within the Registry (see above, §178)
2. The Registrar should enhance the capacity of senior management by sharing Management Committee minutes and other important information with the President and the Deputy Registrar (see above, §186)
3. The Registrar should provide better information on downsizing, review the implementation of the Personnel Policy as well as increase training opportunities (see above, §§198, 202–204)
4. The Registrar should make provision for a mandatory training course on non-discrimination and cultural sensitivity and set up a clear complaints mechanism (see above, §§209–210)

5. The Registrar should issue an administrative instruction to all staff members of the Special Court on respectful treatment of staff. Management training should be provided (see above, §209)
6. Toilets should be installed in each occupied cell of the Detention Facility (see above, §216)

VI. PREPARING THE TAYLOR CASE EFFICIENTLY

1. A working group should be established within the Registry to set clear parameters and milestones for the operation of the Special Court in The Hague (see above, §223)
2. The Registry should open direct lines of communication with the ICC to work out practical details (see above, §226)
3. In hiring staff for The Hague, preference should be given to Special Court staff, particularly Sierra Leonean staff. The administration should take into account the effect that the Taylor trial is having on morale in Freetown (see above, §227)
4. As soon as the new Prosecutor takes office, a final Taylor team should be swiftly established (see above, §232)
5. The UN Secretary-General, in agreement with the Government of Sierra Leone, should as soon as possible appoint an alternate Judge sitting on Trial Chamber II (see above, §229–230)
6. Taylor's request for a international investigator working full time for the duration of the case should be given full consideration in light of the principle of equality of arms (see above, §237)
7. Every effort should be made to facilitate the movement of witnesses to The Hague (see above, §239)
8. Trial proceedings in The Hague should be made accessible through media and outreach in Sierra Leone and the sub-region (see above, §241)
9. Outreach should be expanded to Liberia (see above, §242)

VII. WORKING OUT A WATERTIGHT COMPLETION STRATEGY

1. The UN Secretary-General and the Government of Sierra Leone should appoint a Sierra Leonean Judge to sit on the Appeals Chamber on any RUF appeal as well as (if the Appeals Chamber so decides) on any *Taylor* appeal (see above, §256).
2. Sierra Leonean staff should be retained as long as possible and should be the last to be downsized (see above, §§265–266).

3. Training of Sierra Leonean staff should be intensified (see above, §§287–288).
4. Outreach should target Sierra Leonean legal professionals and include arranging a regular lecture series on international law subjects (see above, §286).

VIII. FORGING AN ENDURING LEGACY

1. Before the Special Court closes down, an International Foundation should be set up by the Government of Sierra Leone and partners to maintain the compound and to administer a multi-use educational, conference, and legal facility (see above, §§280–281).
2. The legal materials of the Court should be handed over to Sierra Leonean courts (see above, §§282–283)
3. Copies of evidence collected by the Special Court’s Prosecution should be handed over to Sierra Leone’s Director of Public Prosecution to facilitate trials of alleged mid-level perpetrators and the so-called notorious criminals (see above, §§284–285).

LIST OF ANNEXES

- ANNEX A** Amendments to the Rules of Procedure and Evidence suggested by the Independent Expert to the 8th Plenary Session of the Special Court
- ANNEX B** Amendments adopted by the 8th Plenary Session taking up suggestions made by the Independent Expert
- ANNEX C** Comments on the Independent Expert Draft Report by the Judges of Trial Chamber I, Special Court for Sierra Leone
- ANNEX D** Statistics on efficient use of courtroom space judicial productivity
- ANNEX E** Note on the power of Sierra Leonean courts to try middle-level offenders or so-called notorious criminals who allegedly committed criminal offences during the armed conflict
- ANNEX F** List of persons interviewed by the Independent Expert
- ANNEX G** List of recommendations made by the Independent Expert having financial implications

ANNEX A

**SUGGESTIONS FOR CONSIDERATION BY THE
PLENARY OF POSSIBLE AMENDMENTS TO THE
RULES OF PROCEDURE AND EVIDENCE OF THE
SPECIAL COURT**

Submitted 23 October 2006

Antonio Cassese, Independent Expert

Overview and Main Purposes of the Suggested Amendments

1. Pursuant to my mandate to “recommend changes that might be made to the procedures, working methods and practice of the Court with a view to enhancing its efficiency”, I attach a series of Rule amendment proposals for your consideration. These proposals are focused on three main objective:

- Strengthening the role of the President and other judicial officials;
- Streamlining pre-trial case management and trial proceedings; and
- Enhancing post-trial efficiency.

2. My proposals for changes in some provisions of the Rules of Procedure and Evidence are premised on the notion that the Special Court is a **unique judicial body**, which has tremendous importance on account of its manifold novelties (it is made up of Sierra Leonean and international Judges; applies both Sierra Leonean law and international law, and—what is even more significant—is headquartered in the very territory where crimes were allegedly perpetrated). The Special Court can and must **set a precedent** in the history of international criminal justice. For such precedent to display all its effects and become a turning point in international criminal justice, it is however necessary that the Special Court be free of the various shortcomings that tend to beset international criminal tribunals, chiefly the excessive length of proceedings and their cumbersome nature.

3. My proposed changes are therefore aimed at enhancing the role of the Judges in the proceedings and in the functioning of the Special Court and more generally at expediting those proceedings. If these changes are accepted, the Judges will have a more important presence within and outside the Special Court and will be in a better position to actively ensure that the cases can proceed towards judgement fairly and effectively.

4. I would be very grateful if, in the spirit of collegiality, you would consider the merits of these proposals to determine if they could contribute to the efficient disposition of the cases before you.

I. Strengthening the role of the President and other judicial officials

5. The rapid turnover of key judicial officers impedes their ability to implement longer term objectives and creates an external appearance of instability of leadership. Given the recent changes in the Special Court's Registrar, Prosecutor, and Principal Defender, it is even more vital to maintain continuity in Chambers. I am therefore proposing modifications to Rules 18, 19, and 27 to create a more stable leadership. In conjunction with this objective, I am also suggesting changes to Rules 19 and 23 to strengthen the role of the President by requiring him or her to work in Freetown on a full-time basis and by setting up a monthly meeting of a committee to facilitate coordination among the Court's various organs.

6. At present, pursuant to Rule 18 (B), the President of the Special Court "shall be elected for a non renewable term of one year or such shorter term as shall coincide with the duration of his term of office as a Judge". He or she is under no obligation to reside at the seat of the Special Court in Freetown. The frequent absence of the President has impeded the ability of the Chambers to exercise firm and efficient management of the primary functions of the Special Court. It would therefore seem appropriate to propose both the enhancement of the role of the President and the creation of a coordination committee, so as to ensure a more continuing, forceful, and effective judicial management of the Special Court.

7. To this effect it would be necessary first of all to make it possible for a President to be re-elected for a second term of one year, so that he or she may be in a position to dispose of sufficient time to pursue a judicial policy aimed at bolstering the activities of the Special Court. By the same token, the President should be obligated to reside and work full-time in Freetown so as to be always available on the spot for the solution of any unexpected problem and to hold regular coordination meetings with the other organs of

the Court to ensure efficient proceedings. These suggestions are reflected in the proposed changes to Rules 19 and 23.

8. Similarly, the Vice-President's term should also be extended to a renewable period of one year, in order to allow the Vice-President to build up the expertise and relationships necessary to fulfil his or her mandate and to project institutional stability. I am thus suggesting a modification to Rule 20.

9. Finally, I would strongly encourage you to consider whether the practice of rotating presiding judges of the Trial Chamber II should be continued in the Taylor case. In order to ensure utmost consistency, it would be preferable to have the same presiding judge for the whole duration of that case. A change of presiding judge in the middle of the case could have a negative affect of the perception of fairness. Thus, I am suggesting a change to Rule 27.

II. Streamlining pre-trial case management and trial proceedings

10. It is well known that there are inherent reasons, common to all international criminal courts, for the cumbersome nature and slowness of international criminal trials. Experience has shown, however, that in order to increase efficiency the judges must seize more control over the proceedings than in a domestic court trying ordinary crimes. The inherent nature of the crimes (normally of a collective nature or involving a multitude of individuals), the fact that they have been allegedly perpetrated in exceptionally dramatic circumstances (a civil war), the geographic and temporal breadth of the charges, often involving thousands of victims and an infinite number of potential witnesses, require Judges to depart from models normally accepted in domestic criminal trials. International crimes demand a firm judicial presence designed, among other things, to insist that the parties focus on the core of their cases and do not present repetitive, tangential, or collateral evidence.

11. The changes I am suggesting to Rules *65bis*, *73*, *73bis*, *73 quarter*, *92ter*, *92quater*, *90bis*, and 100 are aimed at speeding up trial proceedings by giving the Judges more power to control the proceedings before and during the trial. **Of course, most of these**

changes, if accepted, would not affect the trials already underway but only the new trial (against Taylor) that is due to commence in 2007.

12. The first set of proposals concerns the pre-trial phase of proceedings. I would suggest to increase the power of the Trial Chamber to ensure a short pre-trial phase that is conducive to a well structured and expeditious trial and that does not interfere with the bench's other commitments to other cases. To do this, I am proposing rule changes that would allow the Trial Chamber to delegate its pre-trial management by permitting a single judge to hold status conferences and by providing that a senior legal officer could take on some of the coordination and facilitation functions. I would also propose that the Chamber should exercise some measure of control over the charging activity of the Prosecutor, so as to prompt the Prosecutor to limit the charges to those that the Prosecutor regards as essential. These changes are reflected in my proposals to Rules 65*bis*, 73*bis*, and 73 *quarter*.

13. I am also suggesting changes aimed at increasing the efficiency of the trial proceedings. The modification of Rule 73 would allow for oral motions and decisions, whenever the bench considers it appropriate. The adoption of proposed new Rules 92*ter* and 92*quater* would speed up the evaluation of evidence by allowing the Trial Chamber to admit written evidence whenever appropriate. I am also suggesting enhancing the Trial Chamber's power to control the courtroom by adding Rule 90*bis*.

14. Finally, I have noted the protracted sentencing procedure employed at the Special Court. This practice adds a minimum of 34 additional filing days before the trial proceedings are completed. While I would not go so far as to propose adopting the systems of the ICTR and ICTY, which have combined the merits and sentencing issues into a single judgement, I would urge you to consider an arguably more efficient option by markedly shortening the duration of the sentencing procedure.

III. Enhancing post-trial efficiency

15. As the Special Court approaches the appeals phase, it is also important to consider rule changes that could enhance the efficiency of appeals and review proceedings.

Although the appeals deadlines are already significantly shorter than those of the ad hoc tribunals, I am nevertheless proposing changes to Rule 114 and 115 that could further enhance efficiency. I am also suggesting a significant modification to Rule 120 that would limit the scope of review proceedings.

16. The proposed modification to Rule 114 would empower the Appeals Chamber to limit oral argument on appeal to selected issues. To this effect, either the Appeals Chamber or the Pre-hearing Judge could direct the parties to confine themselves in their oral submissions to only some of the various issues raised in their written submissions. This would make it possible for the hearings to be shorter and more focused. The Special Court could also avoid the procedural problems associated with the late production of additional evidence on appeal by modifying Rule 115 to bring forward the filing deadline.

17. Finally, I am concerned that Rule 120 allows both the Prosecution and convicted persons to file requests for review without any time restrictions. While this may be necessary for the convicted person to address an alleged miscarriage of justice, it would undermine the finality of the judgements if the Prosecution were to use this Rule to file requests for review long after the accused has been convicted or acquitted. While I cannot suggest eliminating the Prosecution's right to file requests for review altogether because it is provided for in Article 21 of the Statute, it would be preferable to impose a deadline on Prosecution requests for review.

RULES OF THE RULES OF PROCEDURE AND EVIDENCE

TO WHICH AMENDMENTS ARE BEING PROPOSED

Rule 18: Election of the President 8
Rule 19: Functions of the President 9
Rule 20: The Vice-Presidency 10
Rule 23: The Council of Judges 11
Rule 27: The Trial Chambers 12
Rule 65bis: Status Conferences 13
Rule 73: Motions 14
Rule 73 bis: Pre-Trial Conference 15
Rule 73 quater: Pre-Trial Judge 17
Rule 90 bis: Powers of the Trial Chamber 19
**Rule 92 ter: Admission of Written Statements and Transcripts
in Lieu of Oral Testimony 20**
**Rule 92 quater: Other Admission of Written Statements and
Transcripts 22**
Rule 100: Sentencing Procedure 23
Rule 114: Date of Hearing 24
Rule 115: Additional Evidence 25
Rule 120: Request for Review 27

Rule 18: Election of the President

- (A) The Presiding Judge of the Appeals Chamber shall be the President of the Special Court.
- (B) The Presiding Judge of the Appeals Chamber shall be elected for a ~~non-renewable~~ term of one year or such shorter term as shall coincide with the duration of his term of office as a Judge. **He or she may be re-elected only once, for one year. The President shall reside in Freetown, the seat of the Special Court, and shall work on a full-time basis.**
- (C) If the President ceases to be a member of the Special Court or resigns his office before the expiration of his term, the Judges of the Appeals Chamber shall elect from among their number a successor for the remainder of the term.
- (D) The Presiding Judge of the Appeals Chamber shall be elected by a majority of the votes of the Judges appointed to the Appeals Chamber.
- (E) This Rule shall be deemed to have entered into force on the 7th of March 2003.

Reasons:

This proposal encompasses two major changes to the Presidency. First, it allows for re-election of the President. This modification would enable the Judges to re-elect a President, thereby increasing continuity and countering the concern about rapid turnover in the Special Court's leadership. The second modification would require the President to live and work in Freetown on a full-time basis. This would increase judicial leadership within the Court and would permit the incumbent to participate in a broader range of administrative and other official functions that are crucial to the Special Court's mandate.

Rule 19: Functions of the President

- (A) The President shall preside at all plenary meetings of the Special Court, coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Agreement, the Statute and the Rules.
- (B) The President may after appropriate consultation issue Practice Directions, consistent with the Agreement, the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Special Court.
- (C) The President, in addition to the discharge of his or her judicial functions, shall be responsible for the proper administration of justice. In particular, in coordination with the Registrar, the Prosecutor, and the Principal Defender, the President shall take all appropriate measures aimed at furthering the conduct of fair, impartial and expeditious trials and appeals.**

Reasons:

This proposal would make explicit the President’s administrative role in ensuring the efficient functioning of the Special Court. The amendment would bring the description of the President’s duties into line with Rule 33 (A), which provides that the Registrar, “under the authority of the President” “is responsible for the administration and servicing of the Special Court”. This amendment is part of a package of suggested reforms to the Presidency.

Rule 20: The Vice-Presidency

~~The Vice-Presidency shall rotate in order of precedence amongst the other members of the Appeals Chamber commencing on 7 March 2003.~~

The Vice-President shall be elected for a term of one year, or such shorter term as shall coincide with the duration of his term of office as a Judge. The Vice-President may be re-elected only once.

Reasons:

This proposal would allow the Vice-President to build up the necessary expertise and relationships to effectively discharge his or her duties and would thereby enhance efficient and consistent judicial leadership.

Rule 23: The Council of Judges

- (A) There shall be a Council of Judges which shall be composed of the President and the Presiding Judges of the Trial Chambers.
- (B) The President shall consult the Council of Judges on all major questions or matters relating to the functioning of the Special Court.
- (C) ~~In order to ensure the coordination of the activities of all organs of the Special Court, the Council of Judges, or its representative, shall meet with the Registrar, the Prosecutor and the Principal Defender, or their representatives.~~ **The President shall chair a monthly coordination meeting with the Registrar, the Prosecutor, the Principal Defender, and any other officials invited by the President, in order to ensure coordination between these bodies and the efficient functioning of the Court. Such meetings may also be held any time a request for an additional meeting is made by one of the participants.**
- (D) In exercising his or her functions of coordination and promotion of effective functioning, the President shall not unduly interfere with the independence of each of the other bodies. The President shall communicate any requests of the Council of Judges to the members of the coordination meeting and shall report back to the Council of Judges on the coordination meetings.**
- (E)** The President shall consult the Council of Judges with respect to the functions set forth in Rule 19 and 33, and particularly all the Registry activities relating to the administrative support provided to the Chambers.

Reasons:

This proposal would enhance the ability of the Council of Judges to coordinate with the other bodies of the Special Court by establishing a monthly meeting between the President and the other principals of the Court. The proposal is intended to formalise a procedure through which (a) the concerns of the three Chambers can be conveyed to the responsible bodies within the Special Court and (b) a channel of communication is established through which information can be made available to the Judges.

Rule 27: The Trial Chambers

- (A) ~~The Presiding Judge of each Trial Chamber shall be elected for a renewable term of one year.~~ **The Presiding Judge of each Trial Chamber shall be elected for the duration of a case.**
- (B) The Presiding Judge shall coordinate the work of the Chamber and liaise with the Registrar on matters affecting the Trial Chamber and will exercise such other functions as may be conferred on him by the Agreement, the Statute, and the Rules.
- (C) The Presiding Judge may issue, after appropriate consultations, Practice Directions in relation to the Trial Chamber.
- (D) The provisions of Rule 17 will apply in the event of the Presiding Judge being unable to carry out his functions.

Reasons:

Different Judges have different styles of managing the courtroom. Since the Taylor trial is anticipated to last approximately 18 months, it would be preferable to have a single Presiding Judge for that case. A change of Presiding Judge around the time of the commencement of the Defence case could affect the appearance of fairness. A single Presiding Judge for the whole duration of this relatively short case would enhance consistency and predictability for the parties and the perception of even-handedness.

Rule 65bis: Status Conferences

A status conference may be convened by the Designated Judge, ~~or by the Trial Chamber~~ **or a Judge designated from among its members**. The status conference shall:

- (i) organize exchanges between the parties so as to ensure expeditious trial proceedings;
- (ii) review the status of his case and to allow the accused the opportunity to raise issues in relation thereto.

Reasons:

As currently drafted, Rule 65 *bis* does not explicitly provide for a Status Conference before a single Judge of the Trial Chamber. This amendment would bring the Rule into line with the current practice in the Taylor case of convening a status conference before a single Judge.

Rule 73: Motions

- (A) Subject to Rule 72, either party may move before the Designated Judge or a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. **Such motions may be written or oral, at the discretion of the Judge or Chamber.** The Designated Judge or the Trial Chamber, or a Judge designated by the Trial Chamber from among its members, shall rule on such motions **in either a written or oral decision, at the discretion of the Judge or Chamber.** ~~based solely on the written submissions of the parties, unless it is decided to hear the parties in open Court.~~
- (B) Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.
- (C) Whenever the Trial Chamber and the Appeals Chamber of the Court are seized of the same Motion raising the same or similar issue or issues, the Trial Chamber shall stay proceedings on the said Motion before it until a final determination of the said Motion by the Appeals Chamber.
- (D) Irrespective of any sanctions which may be imposed under Rule 46 (A), when a Chamber finds that a motion is frivolous or is an abuse of process, the Registrar shall withhold payment of all or part of the fees associated with the production of that motion and/ or costs thereof.

Reasons:

This proposed amendment is aimed at encouraging the oral hearing and disposition of motions, particularly while cases are being actively heard by the Trial Chamber. Sometimes too much judicial time may be invested in writing reasoned decisions on relatively minor matters of procedure and evidence. This amendment would empower the Trial Chamber to decide which issues warrant a written argument or decision and which can be effectively disposed of in open court.

Rule 73 bis: Pre-Trial Conference

- (A) The Trial Chamber or a Judge designated from among its members shall hold a Pre Trial Conference prior to the commencement of the trial.
- (B) Prior to the Pre-Trial Conference the Trial Chamber or a Judge designated from among its members may order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following:
 - (i) A pre-trial brief addressing the factual and legal issues;
 - (ii) Admissions by the parties and a statement of other matters not in dispute;
 - (iii) A statement of contested matters of fact and law;
 - (iv) A list of witnesses the Prosecutor intends to call with:
 - (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment on which each witness will testify;
and
 - (d) The estimated length of time required for each witness;
 - (v) A list of exhibits the Prosecutor intends to offer stating, where possible, whether or not the defence has any objection as to authenticity.

The Trial Chamber or the said Judge may order the Prosecutor to provide the Trial Chamber with copies of written statements of each witness whom the Prosecutor intends to call to testify.
- (C) The Trial Chamber or a Judge designated from among its members may order the Prosecutor to shorten the examination-in-chief of some witnesses.
- (D) The Trial Chamber or a Judge designated from among its members may order the Prosecutor to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.
- (E) After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.
- (F) Prior to the Pre-Trial Conference, the Trial Chamber or a Judge designated from among its members may order the defence to file a statement of admitted facts

and law and a pre-trial brief addressing the factual and legal issues, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial.

(G) In the interest of a fair and expeditious trial, the Trial Chamber, after hearing the parties, may invite the Prosecutor to reduce the number of counts charged in the indictment. Furthermore, the Trial Chamber may determine a number of sites or incidents comprised in one or more of the charges made by the Prosecutor, which may reasonably be held to be representative of the crimes charged.

Reasons:

The practice of alternate and cumulative charging of crimes and modes of responsibility places a burden on the efficiency of proceedings. This proposed Rule amendment would allow the Trial Chamber to play a role of moderation by asking the Prosecutor to reduce the scope of some of the charges. A similar amendment, recently adopted by the ICTY, has been perceived to have a positive effect on the ability of the judges to control the proceedings.

Rule 73 *quater*: Pre-Trial Judge

- (A) The Presiding Judge of the Trial Chamber shall, no later than seven days after the initial appearance of the accused, designate from among its members a Judge responsible for the pre-trial proceedings (hereinafter "pre-trial Judge").**
- (B) The pre-trial Judge shall, under the authority and supervision of the Trial Chamber seised of the case, coordinate communication between the parties during the pre-trial phase. The pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial.**
- (C) (i) The pre-trial Judge may be assisted in the performance of his or her duties by a Senior Legal Officer assigned to Chambers.**
- (ii) The pre-trial Judge shall establish a work plan indicating, in general terms, the obligations that the parties are required to meet pursuant to this Rule and the dates by which these obligations must be fulfilled.**
- (iii) Acting under the supervision of the pre-trial Judge, the Senior Legal Officer shall oversee the implementation of the work plan and shall keep the pre-trial Judge informed of the progress of the discussions between and with the parties and, in particular, of any potential difficulty. He or she shall present the pre-trial Judge with reports as appropriate and shall communicate to the parties, without delay, any observations and decisions made by the pre-trial Judge.**
- (iv) The pre-trial Judge shall order the parties to meet to discuss issues related to the preparation of the case, in particular, so that the Prosecutor can meet his or her obligations pursuant to paragraphs 73 *bis* (B) of the Rules and for the defence to meet its obligations pursuant to Rule 73 *ter* (B).**
- (v) Such meetings are held *inter partes* or, at his or her request, with the Senior Legal Officer and one or more of the parties. The Senior Legal Officer ensures that the obligations set out in the Rules referred to in the previous paragraph, and, at the appropriate time, that the other relevant obligations of the parties are satisfied in accordance with the work plan set by the pre-trial Judge.**
- (vi) The presence of the accused is not necessary for meetings convened by the Senior Legal Officer.**
- (vii) The Senior Legal Officer may be assisted by a representative of the Registry in the performance of his or her duties pursuant to this Rule and may require a transcript to be made.**

Reasons:

The efficacious conduct of pre-trial proceedings has proved in many cases to be of great importance to the shortening and streamlining of trial proceedings. This Rule spells out a number of tasks that the Pre-trial Judge or his or her delegate may fulfill to ensure that the case is fully and thoroughly prepared in time for trial.

However, the tasks of Pre-Trial Judge (as currently provided for in Rule *73bis*), are assigned to one of the three members of a Trial Chamber, who may be busy with other procedural matters, or with another trial. Since the role of a Pre-Trial Judge encompasses functions that may be discharged by a competent lawyer even if he or she lacks judicial status, it is proposed to provide that a Pre-trial Judge be assisted by a senior legal officer.

Rule 90 bis: Powers of the Trial Chamber

- (A) Where the principles of fair and expeditious trial so require, a Trial Chamber may decide to shorten the examination or cross-examination of a witness, whenever it does not go to proof of the acts and conduct of the accused as charged in the indictment, is unnecessarily repetitive of other evidence, is abusive, or is otherwise not in the interests of justice.**
- (B) Where necessary for the ascertainment of truth, a Trial Chamber may order either party to produce additional evidence or may proprio motu summon witnesses.**

Reasons:

This proposed change would grant the Trial Chambers a more pro-active role, which has been identified by many authorities as a means of speeding up proceedings while at the same time safeguarding full respect for fair trial principles and the search for truth. The proposal would enhance the Judges' ability to expedite trial proceedings by shortening unnecessarily long examinations of witnesses. It also more explicitly provides for the power of the judges to call evidence.

Rule 92 ter: Admission of Written Statements and Transcripts in Lieu of Oral Testimony

- (A) A Trial Chamber may dispense with the attendance of a witness in person, and instead admit, in whole or in part, the evidence of a witness in the form of a written statement or a transcript of evidence, which was given by a witness in proceedings before the Tribunal, in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.**
- (i) Factors in favour of admitting evidence in the form of a written statement or transcript include but are not limited to circumstances in which the evidence in question:**
- (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;**
 - (b) relates to relevant historical, political or military background;**
 - (c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;**
 - (d) concerns the impact of crimes upon victims.**
- (ii) Factors against admitting evidence in the form of a written statement or transcript include but are not limited to whether:**
- (a) there is an overriding public interest in the evidence in question being presented orally;**
 - (b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or**
 - (c) there are any other factors which make it appropriate for the witness to attend in person.**
- (B) If the Trial Chamber decides to dispense with the attendance of a witness, a written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and**
- (i) the declaration is witnessed by:**
- (a) a person authorised to witness such a declaration in accordance with the law and procedure of a State;**

(b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

(ii) the person witnessing the declaration verifies in writing:

(a) that the person making the statement is the person identified in the said statement;

(b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;

(c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and

(d) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

(C) The Trial Chamber shall decide, after hearing the parties, whether to require the witness to appear in person. If the Trial Chamber so determines, it may nevertheless decide to admit the witness' statement in lieu of the examination-in-chief and to permit cross-examination pursuant to Rule 92 *quater*.

Reasons:

Oral examination of witnesses requires a significant amount of judicial time. This rule change would allow Judges to forgo such oral examination in appropriate circumstances, particularly when the evidence is duplicative or general in nature. As proposed, the Rule gives the judges broad discretion to admit written statements when this does not affect the fairness of the proceedings. However, the Rule allows Judges to decide, in appropriate cases, to hear the witness in person. In this case, the Bench may choose either (i) to hear the examination-in-chief and cross-examination or (ii) to admit the statement in lieu of examination-in-chief and to allow cross-examination pursuant to Rule 92 *quater*. This flexible system gives the Judges better control over the proceedings.

Rule 92 quarter: Other Admission of Written Statements and Transcripts

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

(i) the witness is present in court;

(ii) the witness is available for cross-examination and any questioning by the Judges; and

(iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

Reasons:

92 *quarter* is another Rule designed to allow written statements to be used where it can promote efficiency and does not affect the fairness of the proceedings. When the witness is present in court, it may be useful to admit a written statement of his or her evidence instead of hearing the evidence orally. After accepting his or her statement as the examination-in-chief, the witness would then be available for cross-examination and questioning by the bench.

Rule 100: Sentencing Procedure

- (A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 7 days after such conviction or guilty plea. The defendant shall thereafter, but no more than 10 days after the Prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
- (B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing.
- (C) The sentence **shall** ~~may~~ be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(B).

Reasons:

This proposal is intended to streamline the sentencing phase of the proceedings. The parties have ample time to prepare their sentencing submissions after closing arguments while the judgement is being written. Once the judgement is delivered the Prosecution will have a week to finalise submissions to address the specifics of the judgement. The Defence will have a total of 17 days from the judgement and 10 days from the Prosecution's filing to make necessary strategic decisions and to finalise their submissions. Although this amendment places a burden on the parties to prepare their sentencing submissions in advance, even before they know if there has been a conviction, it serves to promote judicial economy by allowing the trial judges to finish their work on the case as soon as possible after the judgement.

Rule 114: Date of Hearing

- (A) After the expiration of the time-limits for filing the submissions provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing in open court, unless it decides to rule on such appeals based solely on the submissions of the parties.
- (B) Where the Appeals Chamber decides that the appeal will be heard in open court, the Appeals Chamber or the Pre-Hearing Judge may request the parties, for the purpose of efficient and fair handling of the appeal, to confine their oral submissions to a set of issues indicated to them in writing.**
- (C)** The Registrar shall notify the parties accordingly

Reasons:

This proposed amendment makes explicit the Appeals Chamber's power to limit the scope of oral argument to those areas which require additional presentation and discussion. An explicit rule to this effect could prove particularly useful in those cases where the parties raise a wide range of questions, some of them not directly germane to the matter on appeal.

Rule 115: Additional Evidence

- (A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. The motion shall also set out in full the reasons and supporting evidence on which the party relies to establish that the proposed additional evidence was not available to it at trial. The motion shall be served on the other party and filed with the Registrar **not later than the deadline for filing the submissions in reply** ~~not less than 15 days before the date of the hearing of the appeal~~. Rebuttal material may be presented by any party affected by the motion.
- (B) Where the Appeals Chamber finds that such additional evidence was not available at trial and is relevant and credible, it will determine if it could have been a decisive factor in reaching the decision at trial. Where it could have been such a factor, the Appeals Chamber may authorise the presentation of such additional evidence and consider the additional evidence and any rebuttal material together with that already on the record to arrive at a final judgement in accordance with Rule 118.
- (C) The Appeals Chamber may decide the motion prior to the appeal, or at the time of the hearing on appeal. It may decide the motion with or without an oral hearing.

Reasons:

As currently drafted, the deadline for filing a motion for additional evidence is measured forward from the date of the hearing. It is likely that a motion filed 15 days before the hearing may require an adjournment of the hearing to give the Appeals Chamber time to consider the motion and to give the parties time to adjust their appeals arguments to deal with the new material, if admitted. Then, once the hearing is rescheduled, another motion could be filed, leading to further delay. This gives significant power to the parties to delay the proceedings.

This proposed amendment is based on the premise that additional evidence should only be exceptionally admitted on appeal. If evidence comes to light during the briefing period, then the parties are expected to present it immediately for consideration by the Appeals Chamber. This creates certainty and promotes an efficient appeals process. Immediately following the expiration of the time limit for filing the submissions in reply, the Appeals Chamber could then set a firm date for the hearing pursuant to Rule 114. If

important additional evidence comes to light after the expiry of this deadline, then the Appeals Chamber may grant a request for extension of time pursuant to Rule 116 upon a showing of good cause.

Rule 120: Request for Review

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or, **within six months after the final judgement has been pronounced**, the Prosecutor may submit an application for a review of the judgement.

Reasons:

As currently drafted this rule undermines the principle of finality and encourages the parties to file additional motions after the close of the case. The geographic and temporal scope of the crime base means that it will always be possible to find additional facts that were not before the Trial Chamber. While it is important to maintain a possible avenue for a convicted person to address an alleged miscarriage of justice based on incomplete facts, there is no need to keep this open-ended possibility for the Prosecution. While Article 21 of the Statute permits the Prosecution to file requests for review, the Rules could place a reasonable time-limit on such motions. As a point of comparison, the corresponding ICTY rule allows the Prosecution to file a request for review within one year from the final judgement.

ANNEX B

**AMENDMENTS ADOPTED BY THE 8TH PLENARY SESSION TAKING UP
SUGGESTIONS MADE BY THE INDEPENDENT EXPERT**

Rule	Subject	Accepted?
Rule 18:	Election of the President	YES
Rule 19:	Functions of the President	YES
Rule 20:	The Vice-Presidency	YES
Rule 23:	The Council of Judges	NO
Rule 27:	The Trial Chambers	NO
Rule 65 <i>bis</i> :	Status Conferences	YES
Rule 73:	Motions	NO
Rule 73 <i>bis</i> :	Pre-Trial Conference	YES
Rule 73 <i>quater</i> :	Pre-Trial Judge	NO
Rule 90 <i>bis</i> :	Powers of the Trial Chamber	NO
Rule 92 <i>ter</i> :	Admission of Written Statements and Transcripts in Lieu of Oral Testimony	NO
Rule 92 <i>quater</i> :	Other Admission of Written Statements and Transcripts	YES
Rule 100:	Sentencing Procedure	YES
Rule 114:	Date of Hearing	YES
Rule 115:	Additional Evidence	YES
Rule 120:	Request for Review	YES

Note that some of the suggestions of the Independent Expert were modified or improved by the Plenary.

Rule 18: Election of the President (amended 14 March 2004 and 21 November 2006)

- (A) The Presiding Judge of the Appeals Chamber shall be the President of the Special Court.
- (B) The Presiding Judge of the Appeals Chamber shall be elected for a term of one year or such shorter term as shall coincide with the duration of his term of office as a Judge. He or she may be re-elected. The President shall reside in Freetown, the seat of the Special Court, and shall work on a full-time basis, and be remunerated accordingly.
- (C) If the President ceases to be a member of the Special Court or resigns his office before the expiration of his term, the Judges of the Appeals Chamber shall elect from among their number a successor for the remainder of the term.
- (D) The Presiding Judge of the Appeals Chamber shall be elected by a majority of the votes of the Judges appointed to the Appeals Chamber.

Rule 19: Functions of the President (amended 7 March 2003 and 21 November 2006)

- (A) The President shall preside at all plenary meetings of the Special Court, co-ordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Agreement, the Statute and the Rules.
- (B) The President may after appropriate consultation issue Practice Directions, consistent with the Agreement, the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Special Court.
- (C) The President shall, in addition to the discharge of his or her judicial functions, be responsible for the proper administration of justice. In particular, in coordination with the Registrar, the Prosecutor, and the Principal Defender, the President shall take all appropriate measures aimed at furthering the conduct of fair, impartial and expeditious trials and appeals.

Rule 20: The Vice-Presidency (amended 7 March 2003 and 21 November 2006)

The Vice-President shall be elected from amongst the Appeals Chamber Judges for a term of one year, or such shorter term as shall coincide with the duration of his term of office as a Judge. The Vice-President may be re-elected.

Rule 65bis: Status Conferences (amended 1 August 2003 and 21 November 2006)

A status conference may be convened by the Designated Judge, the Trial Chamber or a Judge designated from among its members. The status conference shall:

- (i) organize exchanges between the parties so as to ensure expeditious trial proceedings;
- (ii) review the status of his case and to allow the accused the opportunity to raise issues in relation thereto.

Rule 73 bis: Pre-Trial Conference (amended 29 May 2004, 13 May 2006 and 24 November 2006)

- (A) The Trial Chamber or a Judge designated from among its members shall hold a Pre-Trial Conference prior to the commencement of the trial.
- (B) Prior to the Pre-Trial Conference the Trial Chamber or a Judge designated from among its members may order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following:
- (i) A pre-trial brief addressing the factual and legal issues;
 - (ii) Admissions by the parties and a statement of other matters not in dispute;
 - (iii) A statement of contested matters of fact and law;
 - (iv) A list of witnesses the Prosecutor intends to call with:
 - (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment on which each witness will testify; and
 - (d) The estimated length of time required for each witness;
 - (v) A list of exhibits the Prosecutor intends to offer stating, where possible, whether or not the defence has any objection as to authenticity.

The Trial Chamber or the said Judge may order the Prosecutor to provide the Trial Chamber with copies of written statements of each witness whom the Prosecutor intends to call to testify.

- (C) The Trial Chamber or a Judge designated from among its members may order the Prosecutor to shorten the examination-in-chief of some witnesses.
- (D) The Trial Chamber or a Judge designated from among its members may order the Prosecutor to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.
- (E) After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.
- (F) Prior to the Pre-Trial Conference, the Trial Chamber or a Judge designated from among its members may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial.
- (G) In the interest of a fair and expeditious trial, the Trial Chamber, after hearing the parties, may at any time invite the Prosecutor to reduce the number of counts charged in the indictment. Furthermore, the Trial Chamber may determine a number of sites or incidents comprised in one or more of the charges made by the Prosecutor, which may reasonably be held to be representative of the crimes charged.

Rule 92ter: Other Admission of Written Statements and Transcripts (amended 21 November 2006)

With the agreement of the parties, a Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

Rule 100: Sentencing Procedure *(amended 29 May 2004 and 22 November 2006)*

- (A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 7 days after such conviction or guilty plea. The defendant shall thereafter, but no more than 7 days after the Prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
- (B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing.
- (C) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(B).

Rule 114: Date of Hearing *(amended 7 March 2003 and 22 November 2006)*

- (A) The date of any hearing shall be set as provided for by Rule 109(B)(ii)(b).
- (B) Where the Appeals Chamber decides that there will be a hearing, the Appeals Chamber or the Pre-Hearing Judge may request the parties to limit their oral submissions to an issue or issues indicated to them in writing.
- (C) The Registrar shall notify the parties accordingly.

Rule 115: Additional Evidence *(amended 13 May 2006 and 22 November 2006)*

- (A) A party may apply by motion to the Pre-Hearing Judge to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. The motion shall also set out in full the reasons and supporting evidence on which the party relies to establish that the proposed additional evidence was not available to it at trial. The motion shall be served on the other party and filed with the Registrar not later than the deadline for filing the submissions in reply. Rebuttal material may be presented by any party affected by the motion.
- (B) Where the Pre-Hearing Judge finds that such additional evidence was not available at trial and is relevant and credible, he will determine if it could have been a decisive factor in reaching the decision at trial. Where it could have been such a factor, the Pre-Hearing Judge may authorise the presentation of such additional evidence and any rebuttal material.
- (C) The Appeals Chamber may review the Pre-Hearing Judge's decision with or without an oral hearing.

Rule 120: Request for Review *(amended 7 March 2003 and 22 November 2006)*

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or, within twelve months after the appeal judgement has been pronounced, the Prosecutor may submit an application for a review of the judgement.

ANNEX C

COMMENTS ON THE INDEPENDENT EXPERT DRAFT REPORT BY THE JUDGES OF TRIAL CHAMBER I, SPECIAL COURT FOR SIERRA LEONE

1. GENERAL COMMENTS

1. Set out in the succeeding paragraphs herein are the Considered Comments of the Honourable Justices of Trial Chamber I to the Draft Report of Antonio Cassese, Independent Expert commissioned by the Management Committee of the Special Court for Sierra Leone to examine the functioning of the Court and make recommendations for promoting its efficiency.
2. After a thorough review of the Draft Report, it is our opinion that the portion of the Mandate of the Independent Expert relating to judicial productivity and related aspects was a veiled attempt by the Management Committee to exercise control over the judicial functions of the Court, contrary to Article 13(1) of the Statute of the Court, thereby interfering with the independence of the judges in the performance of their judicial functions, a value which is now universally acknowledged and recognized as the pivot around which the adjudicating process, criminal or civil, nationally and internationally revolves. Furthermore, this exercise by the Management Committee, through their Independent Expert is in clear violation of Article 7 of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, which states in part:

"...to establish a Management Committee...[to] provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States."
3. The more we try to understand the main conceptual, philosophical and practical purport of the Report as a product of the mandate of the Independent Expert, the

more we are convinced that, in essence, it is tantamount to a flagrant disregard of the doctrine of *sub judice*, fully entrenched in the tradition of the law, whether common law or civil law. We deem it an affront for anyone to purport to comment, analyse or evaluate the judicial process in our Court in relation to the ongoing trials. It is certainly in contravention of the letter and spirit of Article 13(1) of the Statute of the Court which clearly guarantees to every judge of the Special Court, immunity from scrutiny or evaluation of the performance of his or her judicial functions, and freedom not to "accept or seek instructions from any Government or any other source" in respect thereof. It is surprising that the impropriety of such a course of action would not be obvious to enlightened minds.

4. It is our considered view that the execution of his Mandate by the Independent Expert as evidenced by the Draft Report does, in respect of certain salient and relevant matters touching and concerning the performance of the judicial functions, amount to a complete lack of respect for and sensitivity to, the doctrine of judicial independence. There is a world of difference between the rhetoric of judicial independence and the reality of judicial independence. This is the only reasonable conclusion that any impartial and objective observer familiar with the judicial process, regardless of which tradition of the law he or she belongs to, can come to after reading the Draft Report. It is clearly denunciatory of the judicial performance of the judges.

II. SPECIFIC COMMENTS

(A) PART IV

5. The general view that the Draft Report is an attack on the doctrine of judicial independence is corroborated and reinforced by the purported analysis in Part IV of the Draft Report. The initiative taken by the Independent Expert, purportedly pursuant to his mandate, to make pronouncements under the rubric "Assessment of judicial output and productivity" constitutes a misapprehension on his part, contrary to the spirit of Article 13(1) of the Statute, that he can properly and

legitimately investigate or evaluate the “output or productivity” of the Judges. This violation of the letter and spirit of Article 13(1) is in no way ameliorated or palliated by the finding, to wit,

“Unsurprisingly, the overall figures demonstrate that the Judges are working hard.”

We know we are indeed even if we were not so rightly flattered and even if our detractors are not that honest to admit this and give us the credit. In familiar legal vocabulary, the Independent Expert has no *locus standi* in making such a judgement. Besides, it is a flawed judgement based on what appear to be exclusively quantitative criteria, rumours and misinformation by disingenuous and ill-informed and ill-intentioned informants rather than on qualitative and objective factors.

6. It is our considered view that Part IV is repugnant and inconsistent with the letter and spirit of Article 13(1) of the Statute of the Court. A mandate to make such assessment clearly disregards the clear distinction envisaged by the Statute between the policy-formulation and implementing role, on the one hand of the Management Committee on all non-judicial aspects of the operation of the Court, and the judicial role, on the other hand, of the Judges, the latter being the exclusive custodians of how best to perform their complex and highly specialized judicial functions. We, accordingly, are not in accord with Part IV of the Draft, there being no such statutory authority in the Management Committee to authorise such an evaluation.

(B) PART IV (i)(ii)

7. The Draft Report at paragraph 135 misconceives completely the rationale behind adjourning the RUF trial to May 2007. As the record clearly demonstrates, the adjournment was granted upon a request by the Defence Counsel for the preparation of their case. It is curious that a misconception based on rumours on

this vital matter should have carried such weight with the seasoned judicial mind of the Independent Expert and without any verification from the Judges or at least, the records.

8. The Independent Expert's observation that the Court has failed to draw from the experiences of the other Tribunals, is flawed at least in two major respects. First, it is an invitation to the Judges to blindly follow the model of our Sister Tribunals. Second, the observation distorts the evidence. It is abundantly clear from our decisions that sometimes this Chamber relies and rightly so, on the jurisprudence of those tribunals.
9. It is also facile and simplistic to suggest that it is a drawback to effective trial management or the efficiency or expeditiousness of courtroom performance that Judges take long breaks. The reality is that most of the breaks taken by the Judges of this Chamber in the CDF and RUF trials are dictated by the imperative of having to deliberate on complex procedural or substantive legal issues arising during the adjudication of the cases. To suggest that Judges should rush through such deliberations is both naïve and reflective of a mindset to the judicial process which undermines rather than enhances it.

(C) PART III (B)(vi)

10. It also defies logic to suggest that the Special Court, designed as a model to avoid the pitfalls and shortcomings of the two previous international criminal tribunals, should have placed reliance upon "their wealth of experience and professionalism" when the widespread perception was that those alleged pitfalls and shortcomings of the ICTY and ICTR were of a nature as those that constitute the core of the criticisms of the Special Court by the Independent Expert.

(D) PART IX

11. We also completely reject all portions of the Draft Report which advocate a proactive judicial philosophy in an adversarial adjudicating setting. We are not functioning as Judges in an inquisitorial system of justice. That is not our mandate.
12. As regards the observation at paragraph 242 of the Draft Report that the Court has been the subject of much criticisms allegedly because, *inter alia*, of "the poor legal quality of some of its decisions", our response is that it is common knowledge that "justice is not a cloistered mistress" and that from the inception of the adversarial system of justice, nationally and internationally, decisions of Courts of law have always been subjected to criticisms by all and sundry: the enlightened, the informed, the unenlightened and the uninformed alike. One notable source of such criticism is the world of academia. We are aware of similar academic criticisms of the decisions of the ICTY and ICTR during the judicial tenure of the Independent Expert at the ICTY. However, this phenomenon has never deflected judges from their assigned roles, to wit, to dispense justice impartially, independently and dispassionately. We remain resolutely committed to that ideal.

(E) PART III (para 37 p. 9)

The Experiences of Judges, the Prosecutor, the Registrar and Deputy Registrar and Staff of the Special Court.

13. The Independent Expert affirms that the failure of the Court is attributable to the fact that 'persons selected for the Special Court started from the scratch, without being able to rely on the wealth of experience accumulated by the 2 Tribunals or to learn from the failings in which they admittedly entangled themselves.
14. We say here that the Judges and Staff who were appointed in ICTY and in ICTR did not have the experience of having served in the Nuremberg or Tokyo Tribunals. They started off like we are doing, in all modesty, with courage and in a very appreciable manner, with our own knowledge and experience in Criminal

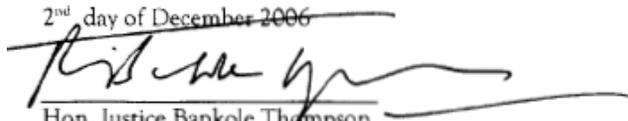
Law, Public International Law and International Humanitarian Law, the criteria on which were recruited. We do not consider this criticism either appropriate or justified in the circumstances that existed when this Court was being organized. Furthermore, attempts in the initial stages to meet with the Judges of other Tribunals were frustrated by local Management on the grounds of lack of financial resources and that this Court was different from other Tribunals. It became possible only later in the process with the assistance of the University of Berkeley.

(F) PART III (para 22 p. 9)

Illness of Judges

15. It is rightly observed by the Independent Expert that the environment here is hostile and illness infested. If this observation is made to suggest that the proceedings are protracted because of the constant illness of Judges, we are pleased to mention that for all the years that we have been in office, no proceedings in Trial Chamber I have been cancelled because of the illness, absence, indisposition or inability of any of the 3 Judges to sit. We have at all times, respected our daily Court Calendar and have been in Court everyday without any absences for the past 3 years and 8 months that we have been in residence. We would appreciate if the Independent Expert's Report can reflect this indisputable fact for the attention of the Management Committee.

2nd day of December 2006



Hon. Justice Bankole Thompson
On behalf of the Judges of Trial Chamber I.

Copy to: Mr. Hugh Adsett, Chair of the Management Committee

ANNEX D

STATISTICS ON EFFICIENT USE OF COURTROOM SPACE AND JUDICIAL PRODUCTIVITY MONTHLY COURTROOM SUMMARY

MONTH	TRIAL CHAMBER I		TRIAL CHAMBER II
	CDF trial days	RUF trial days	AFRC trial days
October 2006	8	3	19
September 2006	5	0	20
August 2006	0	2	4
July 2006	0	21	19
June 2006	5	9	17
May 2006	20	0	0
April 2006	0	4	0
March 2006	0	22	0
February 2006	17	0	0
January 2006	7	0	0
December 2005	0	6	0
November 2005	0	20	3
October 2005	1	0	11
September 2005	0	0	13
August 2005	0	3	0
July 2005	0	18	19
June 2005	10	0	14
May 2005 ¹	4	6	13
April 2005	0	16	16
March 2005	11	0	6
February 2005	13	4	
January 2005	0	14	
December 2004	5	0	
November 2004	20	0	
October 2004	0	20	
September 2004	17	0	
August 2004	0	0	
July 2004	0	18	
June 2004	11		

Note: These figures were based initially on the monthly summaries sent to the Management Committee, but were amended in light of the Master Courtroom Logs provided by Court Management. Minor discrepancies may remain.

¹ Contempt proceedings were also held in Courtroom I before Justice Boutet (4 days, average of 2.62 per day).

AVERAGE SITTING HOURS PER SESSION

CDF-TRIAL CHAMBER I

Session	Dates	Number of days	Average hours in court
1	3 June 2004–23 June 2004	11	2.45
2	8 September–1 October 2004	17	4.64
3	2 November–7 December 2004	25	4.27
4	9 February–17 March 2005	24	3.99
5	26 May–24 June 2005	14	2.95
6	17 January–24 February 2006	24	4.11
7	3 may–16 June 2006	25	3.21
8	13 September–20 October 2006	12	3.09
	TOTAL²	154	3.68

RUF-TRIAL CHAMBER I

Session	Dates	Number of days	Average hours in court
1	5 July–30 July 2004	18	3.13
2	4 October–29 October 2004	20	4.03
3	10 January–4 February 2005	18	4.41
4	5 April–13 May 2005	22	4.51
5	4 July–5 August 2005	21	4.62
6	31 October–9 December 2005	26	4.34
7	2 March–7 April 2006	26	3.94
8	20 June–2 August 2006	32	4.18
	TOTAL¹	186	4.14

Trial Chamber I totals: CDF and RUF combined	340	3.93
---	------------	-------------

AFRC-TRIAL CHAMBER II

Session	Dates	Number of days	Average hours in court
1	7 March–18 March 2005	6	3.07
2	5 April–9 July 2005	62	3.8
3	13 September–21 November 2005	28	3.36
4	5 June–4 August 2006	40	3.7
5	4 September–27 October 2006	38	3.94
	TOTAL	174	3.71

² Total figures include a few days of trial held outside of the sessions (i.e. for hearings on motions or delivery of decisions).

EXAMPLES OF TECHNICAL PROBLEMS CAUSING DELAY IN THE PROCEEDINGS

DATE	Hours in Court	Proposed Hours	Total Time Lost	Reasons for unavoidable delays or for Court not sitting.
Trial Chamber I				
06/03/2004	3:04	5:30	2:26	Problems with the Sound Equipment
06/04/2004	0:00	5:30	5:30	Adjourned from yesterday to 08/06/2004
06/07/2004	0:00	5:30	5:30	Adjourned from 3/6/04 to 8/6/04
11/04/2004	4:30	5:30	1:00	Power supply to Court was interrupted.
11/16/2004	4:46	5:30	0:44	Problems with the voice distortion Equipment
07/12/2004	4:20	5:30	1:10	Smell of burning in Court enquiries made as to cause.
12/08/2004	4:50	5:30	0:40	Witness required frequent breaks. Also a problem with microphone
12/09/2004	5:40	5:30	0:10	Voice distortion equipment not working.
26/10/2004	0:56	5:30	4:34	Power failure and witness required comfort break.
27/10/2004	1:11	3:15	2:04	Power failure all AM. Court sat PM when not scheduled.
28/10/2004	4:24	5:30	1:06	Power failure meant Court could not sit.
18/1/2005	5:23	6:00	0:37	Voice distortion equipment needed setting up, Bench Confer.
21/1/2005	5:51	6:00	0:09	Headphones for Monitors not working.
29/7/2005	5:14	6:30	1:16	Problems with AV equipment. + Witness comfort break.
11/08/2005	5:22	6:30	1:08	AV Problem
12/01/2005	5:13	6:00	0:47	AV Problem
12/02/2005	4:17	6:00	1:43	Power failure 57 mins, Witness unwell 25 mins
02/14/2005	5:18	6:00	0:42	Witness breaks and Interpreters equipment required attention.
02/8/2006	3:08	3:15	0:07	Problem with AV equipment delayed start after break.
06/01/2006	3:40	6:00	2:20	Counsel consultation with client & technical problems (server down)
27/03/2006	4:18	6:00	1:42	AV problem, waiting for arrival of Principal Defender, early adjournment due to Counsel feeling unwell
26/06/2006	5:16	6:00	0:44	AV problem delays start of Court. Witness comfort break. Change of witness from closed to open session and addition of screen
24/06/2006	4:53	6:00	1:07	Problems with Interpretation
28/07/2006	4:41	6:00	1:19	AV problems, Virus in Server meant no recording could take place.
Trial Chamber II				
10/06/2005	4:34	5:00	0:26	Video Link being set up.
07/17/2006	4:32	5:00	0:28	AV problems, witness finished evidence early but no time to call another.
07/19/2006	4:31	5:00	0:29	Counsel needed to contact accused who did not attend, Voice Distortion implementation
07/28/2006	4:24	5:00	0:36	AV problems, Virus in Server meant no recording could take place.
09/04/2006	4:40	5:00	0:20	adjourned for protective curtain to receive attention
10/11/2006	2:49	3:15	0:26	Interpreting equipment problem
10/16/2006	4:41	5:00	0:19	Adjourned for AV problem to be fixed

EXAMPLES OF ILLNESS CAUSING DELAY IN THE PROCEEDINGS

DATE	Hours in Court	Proposed Hours	Total Time Lost	Reasons for unavoidable delays or for Court not sitting
Trial Chamber I				
09/13/2006	0:00	3:15	3:15	No sitting due to illness of 2nd Accused
09/14/2006	0:00	6:00	6:00	No sitting due to illness of 2nd Accused
09/15/2006	0:41	6:00	5:19	Short sitting for 1st Accused to close case then adjourned due to continuing illness of 2nd Accused
09/18/2006	0:33	6:00	5:27	Court adjourns due to continuing illness of 2nd Accused
09/19/2006	0:00	6:00	6:00	Court adjourned due to continuing illness of 2nd Accused
09/20/2006	0:00	3:15	3:15	Court adjourned due to continuing illness of 2nd Accused
09/21/2006	0:00	6:00	6:00	Court adjourned due to continuing illness of 2nd Accused
09/25/2006	0:00	6:00	6:00	Court adjourned due to continuing illness of 2nd Accused
09/26/2006	0:00	6:00	6:00	Court adjourned due to continuing illness of 2nd Accused
09/27/2006	3:16	3:15	0:01	
09/28/2006	4:23	6:00	1:37	Exhibit required, transcript needed checking and early adjournment as Judge Thompson unwell
09/28/2006	0:00	6:00	6:00	No sitting today as Judge Thompson Unwell.
26/07/2004	0:15	5:30	5:15	Mr Sesay was ill and unable to attend. Delay in start for enquiries as to his health.
15/10/2004	0:29	5:30	5:01	Witness ill unable to attend Court.
21/07/2005	4:30	6:30	2:00	Witness unwell
22/07/2005	3:49	6:30	2:41	Witness unwell
11/11/2005	3:38	6:30	2:52	Breaks and early adjournment due to unwell witness.
12/11/2005	4:17	6:00	1:43	Power failure 57 mins, Witness unwell 25 mins
03/03/2006	3:03	6:00	2:57	AV problems
27/03/2006	4:18	6:00	1:42	AV problem, waiting for arrival of Principal Defender, early adjournment due to Counsel feeling unwell
29/06/2006	4:18	6:00	1:42	Enquiries to interpose witness due to ill health of Accused Sesay
Trial Chamber I				
05/18/2005	1:47	3:15	1:28	Witness Unwell
05/19/2005	2:26	5:45	3:19	Witness Unwell
05/23/2005	5:10	5:45	0:35	Witness Unwell
05/24/2005	4:40	5:45	1:05	Witness Unwell
07/08/2005	2:25	5:45	3:20	Witness unwell and no New witness available when that witness finished.
06/05/2006	3:10	5:00	1:50	Witness unwell
06/08/2006	4:12	5:00	0:48	Detainees late arriving at court and witness feeling unwell
06/09/2006	0:04	5:00	4:56	Witness (1st Accused) unable to testify due to ill health
06/16/2006	3:12	5:00	1:48	Witness unwell. No sitting PM.
06/30/2006	2:02	5:00	2:58	Witness unwell

SUMMARY OF JUDICIAL TARDINESS FROM 5 JULY TO 2 AUGUST 2006

The following chart, prepared from the transcripts, shows that the Judges of Trial Chamber I frequently entered court after scheduled time. In total, over this month-long trial session, the Judges started court 867 minutes (14 hours 27 minutes) after their scheduled court time. This averages approximately 41 minutes per day. While the Judges are working on other matters outside of the courtroom, other staff spend this time waiting in the courtroom for the judges to arrive.

Date	Number of minutes Judges delayed in arriving in court
5 July 2006	25 minutes morning, adjourned at noon
6 July 2006	45 minutes, 18 minutes after lunch
7 July 2006	20 minutes morning, 15 minutes after lunch, 5 minutes after afternoon,
10 July 2006	25 minutes morning, 23 minutes after lunch,
11 July 2006	16 minutes morning, 13 minutes after lunch
12 July 2006	15 minutes morning, adjourned at noon
13 July 2006	26 minutes morning, 15 minutes lunch
14 July 2006	20 minutes morning, 15 minutes lunch, 18 minutes afternoon
17 July 2006	25 minutes morning, 20 minutes lunch
18 July 2006	20 minutes morning, 17 minutes after tea, 20 minutes lunch, 6 minutes afternoon
19 July 2006	20 minutes morning, 7 minutes tea, adjourned at noon
20 July 2006	20 minutes morning, 23 minutes tea break, 15 minutes lunch
21 July 2006	20 minutes morning, 20 minutes lunch, adjourned at 3:44
24 July 2006	25 minutes delay in starting the proceedings on July 24 and 13 minutes after the lunch break
25 July 2006	20 minutes late, 10 minutes after extraordinary/tea break, 10 minutes after lunch
26 July 2006	punctual at nine, adjourned at noon
27 July 2006	20 minutes morning, 6 minutes after tea, 15 minutes after lunch
28 July 2006	15 minutes morning, 20 minutes after lunch, 6 minutes afternoon
31 July 2006	20 minutes morning, 10 minutes tea, 15 minutes lunch,
1 August 2006	minutes morning (scheduled for 9), 11 minutes tea, 20 minutes lunch, 9 minutes afternoon
2 August 2006	23 minutes morning (scheduled for 9), 17 minutes tea, 15 minutes lunch

2006 MOTIONS PRACTICE

Trial Chamber I: CDF Motions Practice

Name and date of Decision	Time taken to prepare decision measured from end of filings
Decision on Fofana Request for full Review of Prosecution Evidence to Identify Rule 68 Material for Disclosure, 6 November 2006	5 days
Decision on Fofana Request to Admit Evidence Pursuant to Rule 92 bis, 9 October 2006	7 days
Decision on Kondewa Application for Leave to call one additional witness, 3 October 2006	1 day
Decision on Kondewa Application for Leave to call additional witness, 20 September 2006	14 days (from deadline of reply)
Decision on Norman Request to Admit Documents in Lieu of the Testimony of Abdul-One Mohammed Pursuant to Rules 89(C) and 92 bis, 15 September 2006	1 day
Decision on First Accused's Motion for Leave to add Two Exhibits to the Exhibit List, 31 July 2006	7 days
Decision on Application by First Accused for Leave to Appeal Against the Decision on their Motion for Extension of Time to Submit Documents pursuant to Rule 92 bis, 17 July 2006	7 days
Decision on Fofana Application to call Additional Witnesses, 17 July 2006	5 days
Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman PHD, 7 July 2006	4 days (from deadline for reply)
Decision on Motions by the First and Second Accused for leave to Appeal the Chamber's Decision on Their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone, 28 June 2006	2 days
Decision on Fofana Motion for Extension of Time pursuant to Rule 7 bis, 27 June 2006	1 day
Decision on Application by Court Appointed Counsel for the Second Accused for Right of Audience for Mr. Ianuzzi, 27 June 2006	27 days
Decision on Joint Defence Motion Regarding the Propriety of Contacting Defence Witnesses, 20 June 2006	1 month and 4 days
Decision on Application by the Second Accused Pursuant to Sub Rule 66(A)(iii), 14 June 2006	4 months and 14 days
Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena <i>ad Testificandum</i> to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2006	4 months and 14 days
Decision on the Third and Second Accused's Request for Leave to Raise Evidentiary Objections, 8 June 2006	2 months and 28 days (from reply deadline)
Decision on Urgent Fofana Request for Leave to Appeal the 7 December 2005 Decision of Trial Chamber I, 8 June 2006	5 months 24 days
Decision on the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility, 6 April 2006	1 month and 22 days
Decision on the First Accused's urgent Motion for Leave to File additional Witness and Exhibit Lists, 6 April 2006	1 day
Decision on Prosecution Request for Order to Defence Pursuant to Rule 73 ter(B) to disclose Written Witness Statements, 21 February 2006	2 months and 12 days

Decision on joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgement of Acquittal pursuant to Rule 98, 3 February 2006	2 months and 25 days
Decision on Prosecution Application for Leave to Appeal <i>Proprio Motu</i> Finding in Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, 24 January 2006	2 months and 20 days

Trial Chamber I: RUF Motions Practice

Name and date of Decision	Time taken to prepare decision measured from end of filings
Decision on Sesay Defence Motion for Immediate Protective Measures for Witnesses and victims and for Non-Public Disclosure, 30 November 2006	3 months and 27 days
Decision on Defence Application for Review of the Registrar's Decision on the Sesay Defence "Exceptional Circumstances" Motion, 15 November 2006	6 months and 12 days
Decision on Defence Application for Leave to Appeal the Decision on Motion for Clarification and for a Ruling that the Defence has been Denied Cross-Examination Opportunities, 10 November 2006	2 months and 4 days (from reply deadline)
Decision on Defence Motion for Clarification and for a Ruling that the Defence has been Denied Cross-Examination Opportunities, 3 August 2006	17 days
Decision on Prosecution Motion to admit into Evidence a Document Referred to in Cross Examination, 2 August 2006	6 days
Decision on Prosecution notice pursuant to Rule 92bis to admit information into evidence, 2 August 2006	1 month and 28 days
Decision on Prosecution motion for leave to amend the indictment, 1 August 2006	4 months and 25 days
Decision on Defence motion to request the Trial Chamber to rule that the Prosecution moulding of evidence is impermissible, 1 August 2006	2 months and 14 days
Decision on Prosecution motion for judicial notice on significant days of the Islamic calendar, 31 July 2006	28 days
Decision on Sesay Defence motion to direct the Prosecution to investigate the matter of false testimony by Witness TF1-366, 25 July 2006	6 months
Decision on Prosecution notice under Rule 92bis and 89 to admit the statement of TF1-150, 20 July 2006	1 month and 8 days
Decision on Defence motion for an order directing the Prosecution to effect reasonably consistent disclosure, 18 May 2006	5 months
Decision on Prosecution request for leave to call additional witness TF1-371 and for order for protective measures, 6 April 2006	10 days
Decision on the Principal Defender's motion for a review of the Registrar's decision to install surveillance cameras in the detention facility, 6 April 2006	1 month and 23 days
Decision on Prosecution request for leave to call an additional witness and notice to admit witness' solemn declaration pursuant to Rules 73bis (E) and 92bis, 5 April 2006	1 month and 16 days (from response deadline)
Decision on application by counsel for the Third Accused to withdraw from the case, 5 April 2006	8 days
Decision on Defence motion requesting the exclusion of evidence arising from the supplemental statements of Witnesses TF1-168, TF1-165 and TF1-041, 20 March 2006	19 days
Decision on the Defence motion for the exclusion of evidence arising from the supplemental statements of Witnesses TF1-113, TF1-108, TF1-330, TF1-041	5 days

and TF1-288, 27 February 2006	
Decision on the Defence motion for the exclusion of certain portions of supplemental statements of Witness TF1-117, 27 February 2006	1 month
Decision on the Prosecution confidential notice under 92bis to admit the transcript of testimony of TF1-081, 21 February 2006	1 month and 12 days

Trial Chamber II: AFRC Motions Practice

Name and date of Decision	Time taken to prepare decision measured from end of filings
Decision on urgent Prosecution motion for relief to file a final brief not exceeding 500 pages, 28 November 2006	Same day
Decision on confidential motion to vary protective measures, 15 November 2006	26 days
Decision on confidential motion to call evidence in rebuttal, 14 November 2006	20 days
Decision on Defence motion to set aside and/or reconsider Trial Chamber's "Decision on urgent Prosecution motion for immediate protective measures for witnesses and for non-public disclosure" dated 15 September 2006, 5 October 2006	12 days
Decision on confidential Prosecution motion to reopen the Prosecution case to present an additional Prosecution witness, 28 September 2006	1 month and 7 days
Decision on Prosecution motion for relief in respect of violations of Trial Chamber's decision of 9 May 2006, 14 September 2006	17 days
Decision on joint Defence application for protective measures for Defence witnesses appearing from 4 September 2006 onwards, 13 September 2006	8 days
Decision on Prosecution motion for relief in respect of violations of Rule 67, 26 July 2006	12 days
Decision on urgent joint Defence application for a Status Conference pursuant to Rule 54 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone and consequential orders, 26 July 2006	1 day
Decision on urgent Prosecution motion on witness call order, 25 May 2006	3 days
Decision on joint Defence motion for protective measures for Witness DBK-088, 19 May 2006	Same day
Decision on confidential joint Defence motion as to inability to provide details of certain witnesses on 10 May 2006 and anticipation of <i>subpoenas ad testificandum</i> , 17 May 2006	1 day
Decision on Prosecution motion to bring forward the next scheduled status conference, 8 May 2006	3 days
Decision on joint Defence request for leave to appeal from decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98 of 31 March 2006, 4 May 2006	3 days
Decisions on Defence Motions for Judgment of Acquittal Pursuant to Rule 98, 31 March 2006	2 months
Decision on urgent Defence request under Rule 54 with respect to filing of motion for acquittal, 19 January 2006	1 month

Appeals Chamber Interlocutory Appeals Practice

Name and date of Decision	Time taken to prepare decision measured from end of filings
CDF: Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006	1 month and 25 days
CDF: Decision on Prosecution Appeal Against Confidential Decision on Defence Application Concerning Witness TF2-218, 26 May 2006	5 months and 19 days
AFRC: Decision on Prosecution appeal against decision on oral application for Witness TF1-150 to testify without being compelled to answer questions on grounds of confidentiality, 6 May 2006	4 months and 10 days
Taylor: Decision on Urgent Defence Motion against Change of Venue, 29 May 2006	1 month

LENGTH OF CASE COMPARISON WITH ICTY AND ICTR MULTI-ACCUSED TRIALS

Trial	Trial Started	Trial Ended	Trial Judgement	Trial Duration
Kunarac, Kovač, Vuković ³	20 March 2000	22 November 2000	22 February 2001	11 months
Limaj, Bala, & Musliu ⁴	15 November 2004	1 September 2005	30 November 2005	1 year
Ntakirutimana, Ntakirutimana ⁵	18 September 2001	22 August 2002	21 February 2003	1 year 5 months
Kupreškić & 5 others ⁶	17 August 1998	10 November 1999	14 January 2000	1 year 5 months
Delalić & 3 others ⁷	10 March 1997	15 October 1998	16 November 1998	1 year 8 months
Blagojević & Jokić ⁸	14 May 2003	1 October 2004	17 January 2005	1 year 8 months
Kvočka and 4 others ⁹	28 February 2000 ¹⁰	19 July 2001	2 November 2001	1 year 9 months
Kayishema & Ruzindana ¹¹	11 April 1997	17 November 1998	21 May 1999	2 years 1 month
Simić, Tadić & Zarić ¹²	10 September 2001	4 July 2003	17 October 2003	2 years 1 month
AFRC	7 March 2005	December 2006	mid-2007	+/- 2 years 3 months
Naletilić & Martinović ¹³	10 September 2001	31 October 2002	31 March 2003	2 years 6 months
Kordić & Čerkez ¹⁴	12 April 1999	15 December 2000	26 February 2001	2 years 10 months
CDF	3 June 2004	December 2006	mid-2007	+/- 3 years
Nahimana, Barayagwiza & Ngeze ¹⁵	23 October 2000	22 August 2003	3 December 2003	3 years 1 month
Hadžihasanović & Kubura ¹⁶	2 December 2003	15 July 2005	15 March 2006	3 years 3 months
Ntagerura, Bagambiki & Imanishimwe ¹⁷	18 September 2000	15 August 2003	25 February 2004	3 years 5 months
RUF	5 July 2004	+/- end 2007	+/- Mid-2008	+/- 4 years
Butare ¹⁸ (6 accused)	12 June 2001	Not complete	Not complete	>5 years

³ Kunarac et al, Judgement, Para. 928 (58 trial days, 63 witnesses, 162 exhibits).

⁴ Limaj et al., Judgement, para. 763 (93 witnesses, 304 exhibits).

⁵ Para. 26 (43 witnesses, 149 exhibits, Trial Chamber hearing 2 other trials).

⁶ Kupreskic et al., Judgement, para. 29 (111 days; 159 witnesses).

⁷ Delalic et al, Judgement, para. 33 (Over 1,500 exhibits; more than 16,000 pages of transcripts).

⁸ Blagojevic and Jokic, Judgement, paras. 905, 903, 898 (176 witnesses, 1030 exhibits).

⁹ Para. 768, 796, 798 (113 trial days, twin-tracked with Krstic, 139 witnesses; 489 exhibits).

¹⁰ Trial Restarted 3 May 2000 after arrest of Prcac.

¹¹ Paras 23-24 (79 witnesses, 404 exhibits).

¹² *Simic et al.*, Judgement, para. 1139–1140 (234 trial days; 625 exhibits; 135 witnesses).

¹³ Judgement, Annex II, para. 5 (146 witnesses, 2751 exhibits, 16,876 pages of transcripts).

¹⁴ *Kordic and Cerkez*, Judgement, para. 3 (241 witnesses; 4665 exhibits).

¹⁵ Paras 50, 97 (93 witnesses, 238 trial days, Trial Chamber hearing other cases).

¹⁶ Hadzihasanovic and Kabura, para. 2125 (172 witnesses, 2949 exhibits).

¹⁷ Paras. 19-24 (171 trial days, 124 witnesses, case twin-tracked with Semanza).

¹⁸ Currently on Trial day 466.

ANNEX E

NOTE ON THE AUTHORITY OF SIERRA LEONEAN COURTS TO HOLD TRIALS ON CRIMINAL OFFENCES ALLEGEDLY PERPETRATED BY LOW AND MIDDLE-LEVEL OFFENDERS, IN PARTICULAR SO-CALLED NOTORIOUS CRIMINALS, DURING THE ARMED CONFLICT

1. In its decision of 13 March 2004 (*Decision on Challenge to Jurisdiction: Lomé Accord Amnesty*), the Special Court's Appeals Chamber left open the question of the effect "the amnesty granted in the Lomé Agreement may have on a prosecution for such crimes as are contained in Articles 2 to 4 in the national courts of Sierra Leone" (§ 88). It stressed however that "The understanding of Sierra Leone from the statement made [by President Kabbah] on the inauguration of the Truth Commission was that the amnesty affected only prosecutions before national courts" (§ 85).

2. It is submitted that the Lomé Agreement, which provided for amnesty for the crimes committed between by members of all the armed groups that had participated in the armed conflict, was terminated as a result of repeated and blatant breaches by the RUF. Between 12 June 2000 and May 2001 President Kabbah, on behalf of the Sierra Leonean Government, made various statements declaring that, on account of the repeated violations of the Agreement by the RUF, Sierra Leone did no longer consider the Agreement as valid and binding.¹⁹ More specifically, the Government of Sierra Leone held the view that the provisions of the Agreement other than those which had already been implemented or were being implemented (such as the provisions setting up various joint bodies or commissions, or the provision establishing a Truth and Reconciliation Commission) were no longer in force. Under Article 60(1) of the 1969 Vienna Convention on the Law of Treaties,²⁰ which codifies or has turned into customary international law and is also applicable to treaties made by States with insurgents, the Lomé Agreement was thus terminated. This conclusion, as stated above, does not apply to the provisions of the Agreement that had already been implemented or were being implemented through the establishment of joint commissions. These provisions were considered by the Sierra Leonean Government as "worthy of survival", as it were, and were therefore not contested. Consequently it may be presumed that the parties implicitly agreed that such provisions would remain in force. The termination of part of an international agreement under the conditions set out in Article 60(1) of the Vienna

¹⁹ See letter of President Kabbah to the President of the UN Security Council, in UN doc.S/2000/786, as well as the statement of President Kabbah before the Parliament of Sierra Leone, made on 16 June 2000 (www.sierra-leone.org/kabbah061600.html). See also his statements of 15 February 2001 (www.sierra-leone.org/kabbah021501.html), of 5 April 2001 (www.sierra-leone.org/kabbah040501.html) and of 8 May 2001 (www.sierra-leone.org/kabbah050801.html).

²⁰ "A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part."

Convention and the corresponding rules of customary international law, is not a novelty in international relations.

3. As the Agreement was thus void, the resulting Lomé Peace Agreement (Ratification) Act 1999, passed on 22 July 1999, forfeited its binding value. This is so because the Act was inextricably linked to the Agreement and indeed conditional upon its existence. Hence, with the death of the international treaty, the Sierra Leonean legislation, destined to implement the treaty, became inoperative.

4. It does not seem that the statement made by President Kabbah on 5 August 2003 before the Truth and Reconciliation Commission was meant to articulate the notion that the Sierra Leonean courts remained barred by the amnesty passed in the Lomé Agreement from trying offences committed in the said period by members of the RUF, the AFRC or the CDF. If the relevant part of the statement by President Kabbah is read in its entirety, it becomes apparent that he intended only to clarify the reasons why the Government had thought necessary to provide for the amnesty in 1999 but was subsequently compelled to revise its position when it became clear that the RUF was blatantly taking advantage of the amnesty clause, with the consequence that Kabbah had to consider the Agreement as dead.

5. Here is the relevant paragraph of Kabbah's statement:

“To the average Sierra Leonean, the terms of the Lomé Agreement were like a bitter pill they were asked to swallow. It was like the case of the perpetrators being richly rewarded whilst the poor victims received nothing at all and were further required in the name of reconciliation to forgive and forget. Had it not been for the events of May 8, 2000 the members of the AFRC/RUF would most likely still be enjoying the benefits of the provisions of the Lomé Peace Agreement. But unfortunately, the temptation arose within the ranks of the AFRC/RUF to continuously breach the terms of the Agreement. In the process, they articulated one of the weaknesses inherent in the Agreement which was that in the absence of any provision vis-à-vis accountability and particularly because of the blanket amnesty the attitude of the rank and file of the members of the AFRC/RUF was that they could continue to commit further atrocities without being held to account. We had resisted the persuasion of the international community for the exclusion of war crimes, crimes against humanity and against international humanitarian law from the applicability of the amnesty provision in the Lomé Agreement. We did this deliberately. We realized that limiting the operation of the amnesty provisions would give a justification to the AFRC/RUF for refusing to sign that Agreement and for the resumption of hostilities in the country. Thus, we put beyond the ability and outside the jurisdiction of our domestic courts power over the prosecution of crimes committed before the signing of the Lomé Agreement since the amnesty granted amount to a constitutional bar to any form of prosecution in our domestic courts in respect of the offences amnestied. Further, there was no provision in the Agreement that was to act as a deterrent against the resumption of hostilities on the part of the

AFRC/RUF. This led to numerous occasions of violent acts by individual members of AFRC/RUF particularly in the provinces - all in the belief that those acts would go unpunished. Thus, the threat of the AFRC/RUF resuming hostilities was always hanging like the sword of Damocles over the heads of Sierra Leoneans.” (§ 35)

6. It is apparent from this passage as well as from other passages in President Kabbah’s speech,²¹ that he only intended to explain the background of the amnesty clause at the time of the drafting and signing of the Agreement. In no way did he intend to set out the *current legal position* of the Government of Sierra Leone.

7. It follows that the amnesty clause included in the Agreement, which had subsequently become part of Sierra Leonean legislation by virtue of the Lomé Peace Agreement (Ratification) Act 1999, was and is no longer valid and binding in Sierra Leonean legislation since the Agreement terminated (May 2001). Sierra Leonean courts are therefore authorized to bring to trial, under Sierra Leonean law, persons responsible for crimes committed during the armed conflict (March 1991- December 2000).

8. It would however seem that prosecutors, lawyers and courts in Sierra Leone tend to take the view that the amnesty clause still applies, in spite of the termination of the Agreement. Probably this view, which is logically and legally ill-founded, has political underpinnings: the intent to avoid reopening wounds and to promote reconciliation.

9. If this view is upheld, it seems that Sierra Leonean courts may nevertheless try those crimes committed between the conclusion of the Agreement (7 July 1999) and December 2000, which are connected with the armed conflict. Such crimes are clearly not covered by the amnesty clause.

10. Since there is no legislation in Sierra Leone on international crimes, courts could try persons accused of offences committed during the civil war, pursuant to national penal legislation. Thus, persons suspected of the following offences could be brought before Sierra Leonean courts, if such offences evince a link with the armed conflict: treason (a statutory offence), murder (a common law offence), wounding and causing grievous bodily harm (a statutory offence), rape (both a common law and statutory offence), larceny (a statutory crime), kidnapping (a common law crime), malicious damage to property (a statutory offence), arson (“a very serious offence in Sierra Leone”²²). Also, criminal proceedings could be instituted to try offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31) and offences relating to the wanton destruction of property under the Malicious Damage Act, 1861.

²¹ See for instance §§ 37-38.

²² B. Thompson, *The Criminal Law of Sierra Leone*, University Press of America, 1999, p. 149. The Independent Expert has largely drawn upon on this important book, for the drafting of this section.

REGISTRAR'S COMMENTS AND OBSERVATIONS ON JUDGE CASSESE FINAL REPORT

Justice Cassese who had been engaged by the Office of Legal Affairs of the United Nations on behalf of the Management Committee of the Special Court for Sierra Leone to make a report on the operations of the Special Court for Sierra Leone made his draft report on 24 November 2006. He distributed it to some senior officials of the Court, the Management Committee of the Special Court and others. In the Report he made several negative observations relating to the management of the Registry. Such observations were made without first discussing them with me as the Registrar of the Court although I was available at the time the report was being made. I was invited to make my comments or observations on the draft report which was already widely distributed. I made my comments on the draft report on 29 November 2006. In the comments I lamented the fact that the Judge had made comments that directly related to my work and distributed it without first affording me an opportunity to comment on his assertions relating to the running of the Registry. I explained to him the correct position and provided him with official court documents which contradicted most of the assertions that were in his report and I asked Judge Cassese to reflect these and my observations in his final report.

On 24 December 2006 Judge Cassese made a final report on the operations of the court. On reading the final report I observed that although Judge Cassese had alluded to my comments the report did not acknowledge that some of the conclusions that had been arrived at were either not supported by the official documents or were based on rumour. At the time that the final report was submitted to the Management Committee I was on Christmas recess and the Management Committee was aware that I would return to the duty station on 15 January 2006. The Chairman of the Management Committee set the 15 of January as the deadline on which comments for the Cassese Report should be submitted to the committee although he was aware that on this date I would not be in a position to do so as I would be returning to the duty station on the same date.

In my absence the Deputy Registrar, had drafted a response to the Management Committee for the signature of the President of the Court regarding the recommendations that were made in the report. The response indicated that this response was being made on behalf of the Registrar and the Registry. The report was sent to the Management Committee before my return to the court. Although I was not party to the response, I decided that in the interest of the Court speaking with one voice, I would go along with what the President of the Court had said about the recommendations, but I would request that for the sake of transparency, fair play and evenhandedness my observations regarding what the report said about the Registry be annexed to the report just like those of the judges were.

In one of the meetings of the Management Committee it was decided that they would distribute the Cassese Report to third parties who had asked for it. I then wrote to the Management Committee on 7 February that should it be their wish to make the Cassese Report public, then it would only be fair in the interest of transparency to annex my comments to the report together with its attachments so that those who read the Report

have a full and informed picture of how the Registry was being run during the time of my office. This opportunity was also afforded to the Judges of the Special Court who had their comments on the Report attached to it.

Following an exchange of letters [see annex 1 (a)], discussions within the Management Committee and between Justice Cassese and the chairman of the Management Committee, I was given two days within which to submit my comments to the final report which would be appended to the Cassese Report. I now do so.

ENHANCING GOOD MANAGEMENT

In the draft report, paragraphs (142, 143, 144 and 145) asserted that “communication is the most serious obstacle to good management in the Registry.” This conclusion was based on the fact that the Administrative Instructions I had issued as Registrar on 9 August 2006 and 14 August 2006 obstructed informal lines of communication. This conclusion was arrived at without giving me an opportunity to be heard on the issue. In my response on the administrative instruction, I explained that had I been contacted on this matter I would have had the opportunity to clarify that two administrative instructions were issued after the Deputy Registrar was recruited, and if read in their proper contexts, (See Annex 3a) were intended to give a clear guideline as to the chain of command in the newly created Judicial and Legal Services Division Services as well as the Administrative Support Services Division and to foster clear lines of communication. I explained that before the Deputy Registrar came on board, all the chiefs of section in the Judicial and Legal Services Division reported to me and as soon as the Deputy Registrar came on board it became important to clearly delegate duties to him in line with his job description as contained in the vacancy announcement that the Management Committee approved and to make it clear that those chiefs of section that were directly reporting to me should now be reporting to the Deputy Registrar. It was important to ensure that the Deputy Registrar was fully informed by the section chiefs of what was going on in his division.

I indicated in my comment that in the spirit of borrowing from what has worked in the sister tribunals of ICTR and ICTY, the said administrative Instructions were issued to make for optimal performance and were similar to the one which was issued to me when I was appointed Deputy Registrar at ICTR and it worked perfectly well. Contrary to allegations that it stifles communication, bullet points 3 and 5 on page 2 of Annex 3a clearly encourage Chiefs of Section to take responsibility for overseeing the planning and implementation of programmes of activities and daily operations of their respective sections. The Administrative instruction also encourages the Deputy Registrar and chiefs of sections to always discuss solutions to problems arising in their respective sections. Paragraphs 4 and 5 on page 3 of the instruction encouraged cohesion among staff members. Through the administrative instructions regular meetings were formally introduced in the divisions and sections for the first time as follows: a meeting within the section on a weekly basis, a meeting between the heads of divisions and the chiefs of sections in the division every two weeks, a meeting between the Registrar, the Deputy Registrar and the Chief of Administrative Support Services to assess the progress of the

court's work every week. This was in addition to the weekly meetings of the Section Chiefs which had been there before. All this was designed to ensure that there is a regular flow of information about the court's work at every level.

From the clear wording of the Administrative Instruction itself it was not correct that it 'de facto obstructed informal communication between the Divisions.' Staff members are quite free and are regularly encouraged to cohesively work to achieve the mandate of the court. There can be no legislation or regulation of informal communication in the court and it cannot be said that if members of staff are speaking informally, they are defying this administrative instruction which encourages cohesion among staff. I asked that the full content of the instruction be reflected in the report.

The final report failed to reflect the fact that the Administrative instruction in question is in fact a practice that is obtaining in practically, the other sister International Criminal tribunals. It runs into 7 pages of advice for cohesiveness and more communication. Instead the final report just takes one paragraph out of context and ignores the other aspects of the Administrative Instruction and the reason why it was necessary to issue it. Instead the final report has only changed the heading in the draft Report from "Communication is the most serious obstacle" to "communication seems to be a serious obstacle" and "Administrative Instruction impeding Communication" to "Administrative Instruction may impede Communication" without giving the context in which it was issued.

(b) Lack of transparency is obstructing Progress

In the draft report paragraph 146 and 147 stated that the flow of information is also disrupted between the Registrar's office and other sections of the Registry and Chambers by a lack of transparency. Much of the information flowing into the Court is not disseminated to the section chiefs or judges, even when it might affect their work or long term planning. The basis for this allegation was given in paragraph 147 of the report that the minutes of the management committee meetings are only seen by the Registrar. Even the Deputy Registrar and the President may not be informed of the Management Committee concerns. This serious allegation was again made against the Office of the Registrar and widely circulated without first discussing it with me or the judges.

In my comments to the report I told Judge Cassese that had he discussed this with me I would have given him the correct picture regarding these allegations of lack of transparency. I forwarded to him the minutes of the Management Committee contradicting the allegation that those minutes are only seen by the Registrar. I also produced official records of the Plenary Session of the Court held on 24 November 2007 where it was officially acknowledged on pages 9, 11, 14, 15, and 16 by the President and the Judges regarding how communication between them and the Registrar had improved. I also informed him that the practice that the minutes of the management committee are not distributed to the Judges is a practice that had been there right from the inception of the Court before my time. I had merely continued with that practice.

In paragraph 149 there was another allegation that the failure of the dissemination of the completion strategy was another example of lack of transparency by the Registrar.

This allegation was also not true the completion strategy though submitted to the Management Committee in July 2006 had not yet been approved. All members of staff were aware that the completion strategy document had been submitted to the Management Committee but had not been approved. Seeing that it was taking long for the completion strategy to be approved it was distributed on 12 October 2006, long before Justice Cassese arrived at the court to compile his report.

The final report under this heading is extensive and it covers issues that were never raised in the draft report nor discussed with me under this topic. They extend to paragraph 179, to 186. The statement "Lack of transparency is obstructing progress" in the draft report is changed to "Lack of transparency *may obstruct progress*" and the statement stating that "flow of necessary information is also disrupted between the Registrar and other sections of the court" in the draft report has been changed to "the flow of necessary information is *allegedly disrupted*." The final report is being reduced to allegations and not fact. Secondly such allegations would have easily been dispelled if the Judge had talked to the relevant people in the Registry and examined the relevant official Court records which were available. A concession that minutes do go to the Deputy Registrar is reluctantly made with a proviso that not all minutes are sent to him.

Allegations that information regarding fund raising activities is not shared by the Registrar to other stakeholders is clearly contradicted by official court records, namely Annex 5 and 6. These official records in Annex 5 and 6 are with each chief of section as they are distributed immediately they are ready. It is also important to note that the sharing of information contained in these annexes is on a weekly basis in addition to various other meetings indicated in Annex I. Justice Cassese did not bother to look at them.

Of concern in the final report is the allegation in paragraph 173 and 183. In paragraph 173 it is alleged that in spite of the Registrar's success in reaching out to the Judges and for the first time coming up with a realistic and workable Completion Strategy, within "the Registry the Registrar is experiencing some resistance to his more formal style of management.....Senior Managers complain that the Registrar is overriding decisions without providing sufficient explanation and failing to provide strategic vision or leadership. First, this allegation was never discussed with me so that my views could be taken into account. Secondly, nothing could be further from the truth, during my tenure of office at the court I have never experienced the alleged resistance. If I were experiencing such resistance from Senior Managers I would have been the first one to know of such resistance. With the exception of one senior manager, what I had was professional and objective support from all the Senior Managers who report to me.

Paragraph 183 of the final report, alleges as follows "I have been informed of a related concern among the more senior managers that they are making decisions and forming opinions without full appreciation of the facts. This concern has been raised, for example,

in respect of the preparation for The Hague office where section chiefs making budgeting or staffing decisions have not been fully apprised of basic information.’ This allegation which was never discussed with me in the first place is completely untrue and is contradicted by a number of very senior staff in the Registry who have now officially protested the contents of the final Cassese Report to management in the Registry. Within the organizational chart of the Registry there are seven senior managers that directly report to me. These are the Deputy Registrar, The Principal Defender, The Chief of Administrative Support Services, The Chief of Security, The Chief of Personnel, The Outreach Coordinator and the Chief of Public Affairs. All other Managers report to their respective Head of Division.

When the final report came to the court for final comments I was away on holiday. The Deputy Registrar distributed the Report to all senior managers for their comments before it was forwarded to the Management Committee. Two senior Managers wrote to the Deputy Registrar protesting that Justice Cassese or his representative never discussed any of the allegations against the Registrar that pertain to their sections.

The Chief of Security informed the Deputy Registrar that he was never interviewed by Judge Cassese or anyone on his behalf regarding the allegations in paragraphs 183, 184 and 205. He went on to indicate that the information contained in paragraph 183 was incorrect. Please see annex 3 from the Chief of Security Where he states;

“While preparing for The Hague Office, the Chief of Security Section was kept fully informed and also received periodic situation reports. As Security is a vital issue, frequently we were asked to reply to questions/ concerns raised in the period situation report”

On paragraph 184 of the Final Report, the Chief of Security indicated that

“ The Security Section holds internal meetings twice a week, on Tuesday and Thursday at 1500hrs. During the Tuesday meeting the information obtained from the Section Chiefs meeting is disseminated to the lower levels and all information is shared and discussed.’

In regard to Paragraph 205, the Chief of Security explains that all information relating to the number of Security Officers from the Sierra Leonean Police service and the number of Mongolian Guard Force serving at the Special court is completely wrong and contradicted by the actual official Court records.

The Deputy Registrar acknowledged the Chief of Security’s comments as follows

“ It is unfortunate that no meeting for you with Mr. Cassese was ever scheduled. This would have been useful. Unfortunately also it is now too late to provide the figures for the report, this could have been useful in relation to the draft report , which unfortunately you did not receive either.

The Chief of Personnel also informed the Deputy Registrar that she was never interviewed by Judge Cassese or anyone on the Judge's behalf on the allegations against the Registrar that pertain to her section or at all. She indicated that the information contained in the final report in paragraphs 147, 192, 194, 208, 209 and 210 is not accurate or correct. See Annex 4.

The Deputy Registrar again acknowledged as follows:

" I would agree with you that it was a pity that Mr Cassese has never met the Chief of Personnel, this would undoubtedly have been very useful. I think your comments also assist in adapting some of my draft paragraphs relating to personnel as it is necessary to inform the Management Committee that a number of measures proposed by Mr. Cassese have (at least in part) already been in place. Very useful"

Later it transpired that neither Judge Cassese nor anyone on his behalf discussed with the Principal Defender on the allegations contained in paragraphs 173 and 183 or any allegations against the Registrar at all. The Chief of Administrative Support Services was also not interviewed in respect of any matter at all throughout the Cassese assignment. Now if all these senior officials who work directly under the Registrar were never interviewed, I wonder which these nameless people that were giving information that has been discredited by actual Senior Managers who deal with these issues and who have the correct information are.

(c) The need to promote more trust

In the draft report paragraph 151 was very disturbing to me. It was crafted in such a way that it created a well designed and orchestrated smear campaign which was aimed at causing incalculable damage to the reputation and good name of the Registrar. It was based on rumours and it was even conceded in the draft report itself that the rumours were unverified. What was even worse, I found it hard to believe that a paragraph which was calculated to inflict the maximum damage to the reputation and good name of the Registrar was included in the draft report and widely circulated without first affording the Registrar an opportunity to be heard on the spurious allegations contained in it.

The draft report concluded, as the final report has on this point, that the Registrar was micro-managing the court and that this was creating an atmosphere of distrust. The draft report stated that the basis this conclusion was because;

- a) The administrative Instruction (annex 1) made it clear that ' that the judicial and Legal Services Division operates under the Registrar's ultimate authority and that he is responsible for confirming almost all decisions of the Registrar. ';
- b) All travel requests, even if authorized by the section chief must personally be signed by the Registrar. When the Registrar leaves Sierra Leone....even travel requests must await his return';

- c) The recruitment of each and every member of staff must pass his approval’;
- d) In at least one instance, the Registrar has disagreed with the hiring panel’s recommendation;
- e) In another instance, it has been reported that he jumped over a qualified candidate who had been recommended by a panel in order to select someone further down the list.

In my comments on the report in relation to (a) I explained that the actual wording of the Administrative Instruction which was on page 4 of the document was quite different from what was stated in the draft report. If read in context, it would not create the negative view that gives the impression that what is written there is an act of micro managing. What is stated in paragraph 12 of the Administrative Instruction is to make clear the division of responsibilities between the Registrar and the Deputy Registrar. All it says is that ‘ The Registrar has the primary responsibility and is the ultimate supervisor of the Judicial and Legal Services Division.’

What is stated there is not my own creation but accords with Rule 33 of the Rules of Procedure and Evidence of the Special Court and Article 3 of the Special Court Agreement 2002 (Ratification Act 2002. These provisions endow the Registrar with the ultimate responsibility for the management of the court. The Management Committee and the UN Office Of Legal Affairs regard the Registrar as one having primary responsibility for the servicing of the Special court for Sierra Leone and they regard the Registrar as their point of contact at the Court.

In paragraph 13 of the instruction I stated that the ‘Registrar oversees the work of the Deputy Registrar’ This statement accords with the Deputy Registrar’s own Job Description which states that he works under the general supervision of the Registrar. I could not understand how the restating of what is already in the job description of the Deputy Registrar could be regarded as an instant of micro-managing and cause frustration to the Deputy Registrar or any well meaning person. I asked that the final report reflect the sum total of what the Administrative Instruction was all about in order to give a balanced view. This was totally ignored in the final report.

As regards point (b) I explained that this is the way the court has been running since its inception. All travel requests involve the expenditure of funds and must be approved by the Registrar as one who is ultimately accountable for the funds of the court. I attached the design of the form that was in existence long before I joined the court and explained that my own travel authorization to come to the court as interim Registrar was approved and signed for by the previous Registrar. I wondered how an adherence to the existing procedures which accords with the financial rules of the court could be described as micro-managing during the period of my tenure as Registrar. I asked that the final report should reflect that this practice has always been there at the court right from the beginning and was not introduced by me. I also drew the attention of Judge Cassese to

the fact that the statement that when the Registrar leaves Sierra Leone requests must await his return was untrue and was contradicted by the copious official travel requests which were signed by the Deputy Registrar and The Chief of Administrative Support Service when I was away from the Duty station. I provided him with more than thirty six of such copies signed by the Deputy Registrar and the Chief Of Administrative Support Services while I was away for three weeks in October, 2006. I asked that this fact be reflected in the final report. Again this was totally ignored in the final report.

I also explained that the mere fact of my having to approve the recruitment of each and every staff member cannot be said to be micromanaging and be frustrating people of good intention. It is rather an adherence to the Rules of the Court. Rule 31 of the Rules of Procedure and Evidence provides that ' The Registrar shall appoint such other staff as may be required for the efficient functioning of the Registry.' Article 3 (b) of the Special Court Agreement (Ratification) Act 2000 further provides that the Registrar shall be responsible for 'the recruitment, administration and discipline of the support staff. This practice was not my creation but is the practice I found at the court as applied by the previous Registrar, Mr. Robin Vincent which is also the practice of the other sister Criminal Tribunals. I failed to see how following what the law says at a legal institution such as ours could be said to be micro managing or how it could frustrate well intentioned members of staff. I indicated that as Registrar, it was my responsibility to ensure, in consultation with the Personnel Section that recruitment of personnel accords with the vacancy announcement and standards of transparency and to make sure that only qualified candidates are recruited. I asked that the draft report indicate this in order to give it a balanced view.

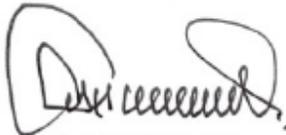
As regard point (d) I confirmed that I disagreed with the Panel's recommendation to hire a candidate who did not have the relevant qualifications and experience required by the vacancy announcement. This was rather a case in which a Chief of Section was bent on hiring an unqualified candidate for the position of an Archivist which position is vital to the court's quest to ensure that its records are properly archived. I produced all the relevant official court records to from personnel section relating to this matter. These documents could have been easily given to the Judge had he decided to ask the relevant sections for the information. I asked the Judge to reflect this into his final report. The matter was dropped and never referred to in the final report.

A regards (e) I indicated to the Judge that I was very concerned that a very damaging rumour was included in the draft report that was widely circulated alleging that I, as Registrar ' jumped over a qualified candidate who had been recommended by the panel in order to select someone further down the list. This was done without first verifying its accuracy or discussing it with me or the personnel section which is responsible for the recruitment process in the court. I explained that there has never been such a case and the personnel Section is not aware of any such case.

Personnel explained that in one case Ms Irura, a Legal Assistant for the Kallon Defence Team, had been selected as Court Room officer. In its report to me the Recruitment Panel had indicated that this appointment may result in a conflict of interest within the

Registry and sought my input. On receipt of this information I immediately referred it to the Registrar's Legal Officer to contact the office of the Prosecutor, the Chambers and the Defence team for their comments on such appointment. The Kallon Team objected to Ms Irura's appointment and the Judges of Trial Chamber I advised that such an appointment should not be made as it might cause conflict of interest. From this it was clear that the reason why Ms Irura was not employed had absolutely nothing to do with me. The matter was dealt with in the most transparent manner and all stakeholders contributed to the decision. Official Court record regarding how this matter was dealt with were attached to my comments. I asked that the final report should reflect this information. The final report actually dropped this essentially scandalous and defamatory matter. This shows the danger of getting unverified information which has not been confirmed by the appropriate officers that deal with the matter. All this could have been avoided if Judge Cassese had asked for the information from the officials that deal with such matters.

Although most of the allegations on which the charge of micro-managing was based were dropped, the final report still clung to this allegation based on rumour and unverified gossip from a handful of ill informed sources. There was no need to rely on allegations and rumour while the court had official records which dispelled those rumours and allegations. There was no reason to rely on rumours and allegations when senior officials who were responsible for issues being discussed were available to make factual information available to the Judge.



L. G. MUNLO SC
11 MAY 2007.