

Practice Direction on the procedure following a request by a State, the Truth and Reconciliation Commission, or other legitimate authority to take a statement from a person in the custody of the Special Court for Sierra Leone

Adopted 9 September 2003

Amended 4 October 2003

The Registrar of the Special Court for Sierra Leone,

NOTING that a State, the Truth and Reconciliation Commission ("TRC"), or other legitimate authority may on occasion request the assistance of the Court to take evidence for the purposes of their proceedings from a person who is in the custody of the Special Court or who is in the custody of another authority based on an order or request of the Special Court;

HEREBY issues this Practice Direction in consultation with the President of the Special Court pursuant to Rule 33(D) of the Rules of Procedure and Evidence of the Special Court, setting out the procedure governing such requests:

1. A request by a State, the TRC, or other legitimate authority for assistance to question or take evidence from a person who is in the custody of the Special Court or who is in the custody of another authority based on an order or request of the Special Court ("detainee") shall be transmitted to the Registrar. In addition, all correspondence between the detainee and a State, the TRC, or other legitimate authority shall be copied to the detainee's counsel.
2. Requests shall be in writing and shall contain:
 1. details of the authority ("requesting authority") making the request;
 2. the name of the detainee to whom the request relates;
 3. details of the purpose of the request and a summary of the reasons for the request;
 4. a description of any offences or suspected offences charged or likely to be charged or under investigation by the requesting authority;
 5. any relevant dates, such as the date of the trial at which the evidence is required, or any cause for special urgency (as appropriate);
 6. details of any caution which should be given to the detainee under the law of the requesting authority;
 7. a list either of specific questions or of subject areas about which questions are to be asked; and
 8. a description of any persons from the requesting authority seeking to be present at the questioning and a description of the facilities which will be required for recording and transcribing the questioning.
3. The Registrar shall notify the President of any request. The request shall be forwarded to the Presiding Judge as appropriate, and to the Prosecutor and the Defence Office.

4. The Registrar shall inform the detainee and the detainee's counsel of the request. The Registrar shall ensure that the detainee has ample opportunity to take legal advice before deciding whether or not to agree to the questioning and is made aware:

1. that the detainee is not obliged to agree to the questioning or, if he does, that he is not bound to answer any particular question;
2. that the questioning will be transcribed and the transcript filed with the Court Management Section;
3. that a copy of the record may be made available, upon order by the Presiding Judge, to a party or defence counsel for potential use in proceedings before the Special Court unless the questioning is covered, in whole or in part, by a confidentiality order, statute, or protocol, in which case a party or defence counsel may apply to the appropriate chamber for an order that the record of the questioning shall be disclosed in the interests of justice (which may include the interests of justice with respect to other suspects or accused before the Special Court); and
4. that no decision, judgement, conclusion, or comment by the requesting authority will be allowed to influence the Special Court in determining the detainee's guilt or innocence.

5. In the event that the detainee agrees to the questioning (such agreement having been signed in writing by the detainee and confirmed by the detainee's counsel), the Registrar shall inform the parties and place the request before the Presiding Judge. The Presiding Judge shall instruct the parties and the detainee's counsel on the procedures to be followed on making representations concerning the request. After such representations are made the Presiding Judge shall grant approval (conditional or otherwise) if the said judge is satisfied that the detainee agrees to the questioning and has been fully advised in terms of paragraph 4 above. In such circumstances, the request for questioning will only be rejected if the Presiding Judge is satisfied that a refusal is necessary in the interests of justice or to maintain the integrity of the proceedings of the Special Court. An appeal against rejection shall be decided by the President if it is made expeditiously and jointly by the detainee and the requesting authority.

6. Once the Presiding Judge has approved the request, the Registrar shall make appropriate arrangements for the questioning to proceed on a date convenient for the detainee's counsel to be present. The Registrar shall ensure that the detainee has the services of an interpreter if requested.

7. The questioning shall be supervised by a legal officer nominated by and acting on behalf of the Registrar. This officer shall have the authority to stop the questioning if it goes significantly beyond the scope of the questions notified pursuant to paragraph 2 (g) above and/or if any conditions imposed by the Presiding Judge (e.g., as to identification of protected witnesses) are not observed.

(signed)

ROBIN VINCENT
REGISTRAR

Dated 4 October 2003