



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

CHURCHILLPLEIN 1, 2517 JW • THE HAGUE • THE NETHERLANDS

P. O. BOX 19536, 2500CM • THE HAGUE • THE NETHERLANDS

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

PRACTICE DIRECTION ON REVIEW OF A JUDGMENT

Adopted on 28 February 2019

Amended on 27 June 2019

PREAMBLE

The President of the Residual Special Court for Sierra Leone (“Special Court”);

NOTING the Statute of the Residual Special Court for Sierra Leone (“Statute”) as annexed to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Residual Special Court for Sierra Leone signed in Freetown on 11 August 2010, and in particular Article 22 thereof;

FURTHER NOTING the Rules of Procedure and Evidence as applicable pursuant to Article 22 of the Statute and in particular Rules 19(C), 120, 121, and 122 thereof;

CONSIDERING that it is in the interest of justice to issue a procedure to implement these provisions;

AWARE that applications for review shall only be made in good faith and for the purpose of preventing a miscarriage of justice;

FURTHER AWARE that a miscarriage of justice occurs when a person is unjustly punished for a crime which s/he has not committed or when a person goes unjustly unpunished for a crime for which s/he is guilty;

MINDFUL that review is an extraordinary procedure AND is not an additional appeal nor is it an opportunity to retry matters or present evidence that was available to the moving party at the time of the original proceeding;

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT THE HAGUE	
NAME	27 JUN 2019 Nancy Nwach-Smwt
SIGN	
TIME	17:12

HEREBY ISSUES this Practice Direction on Review Proceedings Before the Residual Special Court for Sierra Leone:

1. PRINCIPLES

This practice direction is informed by the principle of Finality of Judgment, and subject to the principles that:

- (A) an innocent person should not be punished;
- (B) a person who should have been pronounced guilty should not escape punishment.

2. DEFINITIONS

Applicant	The Convicted Person or the Prosecutor;
Fact:	An act, event or circumstance or incident, as distinguished from a legal point, opinion, consequence or interpretation or a mixed issue of fact and law;
New fact:	A fact not known to the moving party at the time of the original proceedings which has been discovered within a reasonable time prior to the application for review;
Decisive factor	A point or fact that settles something conclusively;
Original Decision	Judgment on conviction or acquittal as affirmed or unchallenged on appeal;
Party	The Prosecutor or the Convicted Person;
President	The President of the Residual Special Court for Sierra Leone.

3. APPLICABILITY

This Practice Direction shall apply immediately upon its entry into force to any proceedings for review brought before the Residual Special Court for Sierra Leone.

4. ELIGIBILITY FOR REVIEW

Review is available where there exists a final judgment.

5. ELEMENTS.

The Party moving for review has the burden of proving each of the following elements:

(A) A fact has been discovered; and

(B) That fact is true; and

(C) That fact is new as defined in Section 2; and

(D) That fact was not known at the time when the final decision of the proceedings before the Special Court was made or though known to the moving party is of such strength or impact that it would affect the original verdict and to ignore it would lead to a miscarriage of justice; and

(E) That fact could have been a decisive factor in reaching the original decision as to guilt, when considered with all other relevant facts already proven beyond a reasonable doubt in the original decision; and

(F) That fact, if proven, could increase or decrease the original sentence.

6. BURDENS

(A) An Applicant who asserts that the conviction was wrong and that punishment should be reduced or vacated must prove that there is a reasonable basis to conclude the existence of the new fact and that because of the new fact the Convicted Person has not committed a crime for which he was convicted in the Original Decision.

(B) An Applicant who asserts that the acquittal was wrong and that punishment should be increased must prove beyond a reasonable doubt the existence of the new fact and that because of the new fact the Convicted Person committed a crime for which he was acquitted in the Original Decision.

7. APPLICATION PROCESS

(A) The Applicant shall apply for review of the judgment by completing Form A and submitting it together with any supporting documentation to the President as soon as is practical after the Applicant has become aware of the new fact;

(B) The President shall consider the application and supporting documents. The President may seek further and better particulars from the Applicant;

(C) The President shall direct the Registrar to serve the application and the supporting evidence on the other party. The other party may, on application through the President, seek further and better particulars from the Applicant;

(D) The other party may file a Response to the application for review. Any such Response shall be filed within forty days of service of the Application and supporting documents.

(E) The Applicant may file a Reply to the Response. Any such Reply shall be filed within fifteen days of the service of the Response.

8. PRELIMINARY EXAMINATION

(A) The President shall receive and review the Application together with all the documentation submitted in support, and the Response and the Reply, if any, and determine whether the Applicant will meet the required burden of proof in establishing that:

(1) The proffer is of a fact, as defined under section 2 above;

(2) That fact is new, that is, was not known at the time when the final decision of the proceedings before the Special Court was made and its discovery was made within a reasonable time of the application;

(B) If the Applicant fails to establish the existence of a new fact, as herein defined, the President or her/his designee shall reject the Application as unfounded and issue a reasoned decision.

(C) If the Applicant establishes the existence of a new fact, as herein defined, the President shall determine whether, assuming the fact to be true

(1) That fact could have been a decisive factor in reaching the original decision, when considered with all other relevant facts already proven beyond a reasonable doubt in the original decision; and

(2) The new fact proffered by the Applicant could have reduced the punishment imposed on the Convicted Person or could have led to the acquittal of the convicted person because:

(a) Had the trial panel had the new fact, it could have acquitted the convicted person of all charges; or

(b) Had the trial panel had the new fact, it could have acquitted the convicted person on one or more counts AND that acquittal could have lessened the punishment; or

(3) The new fact proffered by the Applicant could have increased the punishment imposed on the Convicted Person because, had the trial panel had the new fact, it could have convicted the person beyond a reasonable doubt of the previously acquitted charge AND that conviction could have increased punishment.

(D) If, after applying the procedure set out in this Section the President or her/his designee determines that the application is unfounded s/he shall reject the application and issue a reasoned decision.

9. REVIEW DETERMINATION

(A) If, after applying the procedure set out in Section 8 the President or her/his designee determines that the application has merit s/he shall reconvene the original Trial Panel or convene a different panel of judges in accordance with Article 13(1) of the Statute to adjudicate the application;

(B) The Chamber or panel shall determine if the Applicant has established the elements in Section 5;

(C) The Chamber or panel shall limit the evidentiary inquiry to proof of the new fact in light of the presumption of correctness of the facts established in the original judgment;

(D) The Chamber or panel shall determine what effect, if any, the new fact, once proven, has on the guilt and punishment of the convicted person;

(E) If the Applicant fails to establish by the requisite burden of proof:

- (1) any of the elements entitling the Applicant to a review; or
- (2) the fact itself; or
- (3) that the new fact has any impact on punishment;

the Chamber or panel shall dismiss the Application for review and issue a reasoned decision;

(F) If the Applicant successfully establishes, by the requisite burden of proof:

- (1) that all the elements entitling the Applicant to review have been met; and
- (2) the fact itself; and
- (3) that the new fact impacts punishment;

the Chamber or panel shall issue a reasoned decision correcting the Original Decision regarding culpability and adjust the Sentence accordingly.

10. APPEAL

The judgment of a Trial Chamber or Panel may be appealed, in accordance with the provisions of Part VII and Rule 122 of the Rules of Procedure and Evidence.

11. ANNEXES

Annex A: Form A --Application for Review

This Practice Direction shall enter into force on the 28th day of February 2019.



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Justice Jon Kamanda

President

ANNEX A - APPLICATION FORM REQUESTING REVIEW

This application is made by:

Convicted Person YES / NO
Prosecutor YES / NO

SECTION A - PERSONAL INFORMATION REGARDING CONVICTED PERSON

Name of Convicted Person:

Alias or other Name/s:

Address:

Date of Birth:

Conviction/s:

In Custody/ Not in Custody:

Person Making Application on behalf of the Convicted person (if other than Convicted person himself):

Relationship to Convicted Person:

If Applicant is the Prosecutor: The Representative/Prosecutor's contact details

Address:

Email address:

Telephone number:

SECTION B TO BE COMPLETED BY COURT

TRIAL

Date of Original Trial Decision:

Plea:

Guilty/ Not Guilty:

Names and Addresses of Counsel:

Date of Conviction or Acquittal:

Date of Sentence:

[Empty rectangular box]

APPEALS CHAMBER

Date Appeal Filed:

[Empty rectangular box]

Date of Decision of Appeals Chamber:

[Empty rectangular box]

SECTION C THE NEW FACT (S)

Description of the New Fact (s) that Support this Application

[Empty rectangular box]

Details of when the Applicant became aware of the New Fact(s) that Support this Application

[Empty rectangular box]

Details of how the Applicant became aware of the New Fact(s) that Support this Application

[Empty rectangular box]

Details of the Conviction Counts to which the new facts are relevant

[Empty rectangular box]



Grounds on which the Applicant submits that the new facts change the outcome of the decision in this case

SECTION D DETAILS OF SUPPORTING EVIDENCE AND WITNESS/ES (IF ANY)

Any Affidavits, letters, photographs, plans, drawings, technical and scientific reports, or other evidence which the Applicant submits support this application

Name of Witness/es:

Contact details

Summary of testimony