



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

RULES OF PROCEDURE AND EVIDENCE

Amended on 4 December 2013
Amended on 2 December 2015
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Part I - GENERAL PROVISIONS

Rule 1: Entry into Force

These Rules of Procedure and Evidence as first amended on 7 March 2003, are applicable pursuant to Article 16(1) of the Statute of the Residual Special Court for Sierra Leone, and entered into force, as further amended, on 1 January 2014.¹

Rule 2: Definitions

(A) In the Rules, unless the context otherwise requires, the following terms shall mean:

- Accused:** A person against whom one or more counts in an indictment have been approved in accordance with Rule 47;
- Arrest:** The act of apprehending and taking a suspect, an accused or convicted person into custody;
- Chambers:** The President and when necessary a Trial Chamber and Appeals Chamber as referred to in Article 2 of the RSCSL Agreement that will be established in the event the need arises pursuant to Article 13 of the RSCSL Agreement;
- Convicted person:** A person convicted of a crime under the SCSL or RSCSL Statute, except where that conviction has been set aside by the Appeals Chamber in accordance with the SCSL or RSCSL Statute and the Rules;
- Council of Judges:** The Council of Judges as referred to in Rule 23 if one is convened;
- Defence:** The Accused or convicted person and/or the Accused's or convicted person's counsel;
- Defence Office:** The Office established by the Registrar, if the need arises for proceedings before the Residual Special Court, for the purpose of ensuring the rights of suspects, accused and convicted persons in accordance with the RSCSL Statute and Rules;
- Designated Judge:** A Judge designated for a certain period of time pursuant to Rule 28;

¹ These Rules are based on the Rules of Procedure and Evidence of the Special Court for Sierra Leone obtaining at the time of its closure, pursuant to article 16(1) of the RSCSL Statute.

- Detention Facility:** The Detention Facility of the Residual Special Court shall include all premises where suspects or accused, or convicted persons are detained in accordance with these Rules and with the Rules of Detention;
- Extraordinary Committee:** A committee comprising of 2 international Judges and 1 national Judge appointed by the President
- Headquarters Agreements:** The Headquarters Agreement between the Republic of Sierra Leone and the Special Court for Sierra Leone signed in Freetown on 21 October 2003; the Headquarters Agreement between the Kingdom of the Netherlands and the Special Court for Sierra Leone signed in The Hague on 19 June 2006; the Headquarters Agreement between the Republic of Sierra Leone and the Residual Special Court for Sierra Leone signed in Freetown on 31 October 2012; and the Headquarters Agreement between the Kingdom of the Netherlands and the Residual Special Court for Sierra Leone signed in The Hague on 19 December 2013.
- Investigation:** All activities undertaken by the Prosecutor under the RSCSL Statute and the Rules for the collection of information and evidence, whether before or after approval of an indictment;
- Oversight Committee:** The Committee established pursuant to Article 4 of the RSCSL Agreement;
- Party:** The Prosecutor or the Defence;
- Pre-Hearing Judge:** A Judge of the Appeals Chamber responsible for the pre-hearing proceedings of an appeal as designated pursuant to Rule 109;
- President:** The President of the Residual Special Court as referred to in Article 2 of the RSCSL Agreement and elected pursuant to Article 12(1) of the RSCSL Statute;
- Principal Defender:** The Principal Defender as appointed by the Registrar if a Defence Office is established;
- Prosecutor:** The Prosecutor of the Residual Special Court as referred to in Article 2 of the RSCSL Agreement and appointed pursuant to Article 14 of the RSCSL Statute;
- Public Holiday:** A Public Holiday shall be an official public holiday of the Republic of Sierra Leone or of the United Nations;
- Registrar:** The Registrar of the Residual Special Court as referred to in Article 2 of the RSCSL Agreement and appointed pursuant to Article 15 of the RSCSL Statute;
- Regulations:** The provisions framed by the Prosecutor pursuant to Rule 37(A);
- RSCSL Agreement:** The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for

Sierra Leone signed in Freetown on 11 August 2010 with Statute annexed;

RSCSL defence staff: Staff of the Residual Special Court representing the interests of the defence, including staff of the Defence Office, if one is established, and the Principal Defender, if one is appointed;

RSCSL Statute: The Statute of the Residual Special Court annexed to the RSCSL Agreement;

Residual Special Court: The Residual Special Court for Sierra Leone established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone signed on 11 August 2010, with Statute annexed, and composed of the Chambers, the Prosecutor and the Registrar.

Rules: The Rules referred to in Rule 1, as amended and currently in force;

Rules of Detention: The rules governing the detention of persons awaiting trial or appeal before the Residual Special Court or otherwise detained by the Residual Special Court as referred to in Rule 33(C);

SCSL Agreement: The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed in Freetown on 16 January 2002 with Statute annexed;

SCSL Statute: The Statute of the Special Court annexed to the SCSL Agreement;

Special Court: The Special Court for Sierra Leone established by the SCSL Agreement and consisting of the following organs: the Chambers, the Office of the Prosecutor and the Registry;

Suspect: A person concerning whom the Prosecutor possesses reliable information which tends to show that he or she may have committed a crime over which the Residual Special Court has jurisdiction in accordance with Article 1 of the RSCSL Statute and may be considered to bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of, and implementation of the peace process of Sierra Leone;

Transaction: A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;

Victim: A person against whom a crime, over which the Special Court or Residual Special Court has jurisdiction, has allegedly been committed or has been found to have been committed.

(B) In the Rules, the singular shall include the plural, and vice-versa.

Rule 3: Working Language

- (A) The working language of the Residual Special Court shall be English.
- (B) The accused or suspect or convicted person shall have the right to use his or her own language.
- (C) Any person appearing before or giving evidence to the Residual Special Court, who does not have sufficient knowledge of English, may ask for permission to use his or her own language.
- (D) The Registrar shall make any necessary arrangements for interpretation and translation.

Rule 4: Sittings away from the Seat of the Residual Special Court

- (A) In accordance with Article 12(2) of the RSCSL Statute, the President shall in as far as possible carry out his or her functions remotely and shall be present at the seat of the Residual Special Court only as necessary to carry out his or her functions.
- (B) A Chamber or a Judge may exercise their functions away from the Seat of the Residual Special Court. In so doing, audio or video-link technology, email or other available electronic media may be used unless the President or Presiding Judge orders otherwise.

Rule 5: Non-compliance with the Rules

Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the President, Trial Chamber, Appeals Chamber or Judge designated by the President or Trial or Appeals Chamber may grant relief if the non-compliance has caused material prejudice to the objecting party.

Rule 6: Amendment of the Rules 6 A (amended on 30 November 2018)

- (A) Proposals for amendment of the Rules of Procedure and Evidence may be made by the President, a Judge, the Prosecutor, the Registrar, RSCSL defence staff and by the Sierra Leone Bar Association or any other entity invited by the President to make proposals for amendments.
 - (i) Notice of any such proposal shall be given to the President and the Registrar not less than ten calendar days before the amendment is to be considered for adoption pursuant to Rule 6(B) or 6 (C).
 - (ii) The Registrar shall give notice forthwith of the proposed amendment to the Judges, the Prosecutor, RSCSL defence staff and the Sierra Leone Bar Association or any other entity invited by the President to make proposals for amendments.
- (B) Proposals for amendment may be adopted:
 - (a) at a Plenary Meeting of the Residual Special Court convened by the President in accordance with Article 16(2) of the RSCSL Statute ; or
 - (b) by a simple majority of all Judges in writing, provided that proposals are circulated in writing to all Judges on the roster.
- (C) An amendment of the Rules may be adopted otherwise than as stipulated in Sub-Rule (B), provided it is approved unanimously by any appropriate means either done in writing or confirmed in writing.
- (D) An amendment shall, unless otherwise indicated, enter into force immediately. The Registrar shall publish the amendment by appropriate means.

Rule 7: Time limits

- (A) Unless otherwise ordered by the President, a Chamber or by a Designated Judge, or otherwise provided by the Rules, the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, counsel for the Accused or convicted person, or the Prosecutor as the case may be.
- (B) Where a time limit is less than 7 days, only ordinary calendar days shall be counted. Weekdays, Saturdays, Sundays and Court-recognised Public Holidays shall not be counted as days. Should the time limit expire on a Saturday, Sunday, or Court-recognised Public Holiday or a day falling within judicial recess, the time limit shall automatically be extended to the subsequent working day.
- (C) Unless otherwise ordered by a Chamber or a Designated Judge, any response to a motion shall be filed within ten days of service of the motion by the Registry. Any reply to the response shall be filed within five days of service of the response by the Registry.

Rule 7bis: Motions for extension of time

Any response to a motion for extension of time shall be filed within five days of the receipt of the motion. There is no right of reply. A motion for an extension of time may be disposed of without giving the other party the opportunity to respond if a Judge or Chamber is of the opinion that no prejudice will be caused to the other party.

Part II - COOPERATION FROM STATES AND JUDICIAL ASSISTANCE

Rule 8: Requests and Orders

- (A) The Government of Sierra Leone shall cooperate with all organs of the Residual Special Court in all its operations in accordance with Article 11 of the RSCSL Agreement. Requests by any organ of the Residual Special Court shall be complied with in accordance with Article 11 of the RSCSL Agreement. An order issued by a Chamber or by a Judge shall have the same force or effect as if issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone court in accordance with section 20 of the Special Court Agreement, 2002 (Ratification) Act, 2002.
- (B) Except in cases to which Rule 11, 13, 59 or 60 applies, where a Chamber or a Judge is satisfied that the Government of Sierra Leone has failed to comply with a request made in relation to any proceedings before that Chamber or Judge, the Chamber or Judge may refer the matter to the President to take appropriate action. The President may also take appropriate action *proprio motu*.
- (C) The Residual Special Court may invite third States not party to the RSCSL Agreement to provide assistance on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.
- (D) Where a third State, which has entered into an ad hoc arrangement or an agreement with the Residual Special Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the President may take appropriate action.

- (E) Where it appears to the Prosecutor that a crime within the jurisdiction of the Residual Special Court is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, he or she may request the State to forward to him or her all relevant information in that respect. The Government of Sierra Leone shall transmit to him or her such information forthwith in accordance with Article 11 of the RSCSL Agreement.

Rule 9: Application for Deferral

Where it appears that crimes which are the subject of investigations or proceedings instituted in the courts of a State:

- (i) Are the subject of an investigation by the Prosecutor;
- (ii) Should be the subject of an investigation by the Prosecutor considering, amongst others:
 - (a) The seriousness of the offences;
 - (b) The status of the accused at the time of the alleged offences; or
 - (c) The general importance of the legal questions involved in the case;
- (iii) Are the subject of an indictment in the Residual Special Court; or
- (iv) Fall within Rule 72(B),

the Prosecutor may apply for an order or request for deferral under Rule 10.

Rule 10: Order or Request for Deferral

- (A) If it appears to the President or Trial Chamber seized of an application under Rule 9 that Sub-Rules (i), (ii) or (iii) of Rule 9 is satisfied, the President or Trial Chamber shall issue an order or request assistance to the effect that the court defer to the competence of the Residual Special Court.
- (B) An order or request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgment, if already delivered, be forwarded to the Registrar.

Rule 11: Non-compliance with an Order for Deferral

If, within 21 days after an order for deferral has been notified by the Registrar to the Government of Sierra Leone under whose jurisdiction the investigations or proceedings have been instituted, the Government of Sierra Leone fails to file a response which satisfies the Trial Chamber that it has taken or is taking adequate steps to comply with the order, the Trial Chamber may refer the matter to the President to take appropriate action. The President may also take appropriate action *proprio motu*.

Rule 11bis: Referral of an Indictment to Another Court

- (A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Residual Special Court, the Referral Bench (i.e. the President, a Designated Judge or a bench of three Judges appointed by the President) solely and exclusively shall determine whether the case should be referred to the

authorities of a State having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

- (B) The Referral Bench may order such referral at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that, if convicted, neither the death penalty nor a term of life imprisonment, as opposed to a fixed number of years, will be imposed on the accused.
- (C) The Referral Bench may instruct the Registrar to assign counsel to represent an accused in proceedings pursuant to this Rule, whether or not the accused is in the custody of the Residual Special Court.
- (D) Where an order is issued pursuant to this Rule:
 - (i) The accused, if in the custody of the Residual Special Court, shall be handed over to the authorities of the State concerned;
 - (ii) The Referral Bench may order that protective measures for certain witnesses or victims remain in force; and
 - (iii) The Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment.
- (E) Where the accused is not in the custody of the Residual Special Court, the Referral Bench may issue a warrant for the arrest of the accused, which shall specify the State to which he or she is to be transferred for trial.
- (F) A Referral Bench shall have the powers of, and insofar as applicable shall follow the procedures laid down for, a Trial Chamber under the Rules.
- (G) An appeal by the accused or the Prosecutor shall lie as of right to the Appeals Chamber from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fourteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision. The President, or, if necessary, the Vice President or a Judge designated by the President, may order that the appeal be heard by a three-Judge panel or a five-Judge panel.
- (H) The Residual Special Court shall take appropriate measures to monitor any case referred, including with the assistance of international or regional organizations, in accordance with Article 7(2) of the RSCSL Statute.
- (I) In accordance with Article 7(3) of the RSCSL Statute, the Residual Special Court may revoke the referral only if:
 - (i) The national jurisdiction is unwilling or unable to prosecute the accused; or

- (ii) The national court proceedings are not impartial or independent, are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; and
- (iii) The accused has not yet been found guilty or acquitted.

Rule 12: Determinations of Courts of any State

Subject to Article 9(2) of the RSCSL Statute, determinations of courts of any State are not binding on the Residual Special Court.

Rule 13: Double Jeopardy

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for acts for which that person has already been tried by the Special Court or the Residual Special Court, he or she shall issue a reasoned order or request to such court seeking permanent discontinuance of its proceedings. If that court fails to do so, the President may take appropriate action.

Part III - ORGANIZATION OF THE RESIDUAL SPECIAL COURT

Section 1: The Judges

Rule 14: Solemn Declaration

- (A) Before being assigned to the roster of Judges, each Judge shall make the following solemn declaration:

"I solemnly declare that I will without fear or favour, affection or ill-will, serve as a Judge of the Residual Special Court, honestly, faithfully, impartially and conscientiously."

- (B) The text of the declaration signed by the Judge and witnessed by the Secretary-General of the United Nations or his or her representative, and the President of Sierra Leone or his or her representative, shall be kept in the records of the Residual Special Court.
- (C) The Judge may make his or her declaration remotely by video-conference.

Rule 15: Disqualification of Judges

- (A) A Judge may not sit at a trial or appeal in any case in which his or her impartiality might reasonably be doubted on any substantial ground.
- (B) Any party may apply to the Chamber of which the Judge is a member for the disqualification of the said Judge on the above ground.
- (C) If an application is made under Sub-Rule (B), the challenged Judge shall be entitled to present his or her comments on the matter.

- (D) The Judge shall withdraw on his or her own motion or following a finding by the Chamber that Sub-Rule (A) applies.
- (E) Where the Judge withdraws from the Trial Chamber or the Appeals Chamber, the President may assign another Judge from the roster of Judges to sit in his or her place.
- (F) The Judge who approves an indictment or who is involved with any pre-trial or interlocutory matter against a suspect or accused, shall not for that reason be disqualified from sitting as a member of a Chamber for the trial or appeal of that accused.

Rule 15 bis: Unfitness to Sit

- (A) Where it is alleged that a Judge is not fit to sit as a member of the Residual Special Court, the President may refer the matter to an Extraordinary Committee which shall conduct a preliminary examination of the allegation. Unless it is the President whose unfitness to sit is at issue, in such a situation, the Vice President or any Judge may refer the matter to the Extraordinary Committee.
- (B) Should the President determine that:
 - (i) the allegation is of a serious nature; and
 - (ii) there appears to be a substantial basis for such allegation,the President shall refer the matter to the Plenary Meeting which will consider it and, if necessary, make a recommendation to the body which appointed the Judge.
- (C) At each stage, the challenged Judge shall be entitled to present his or her comments on the matter.

Rule 16: Absence and Resignation

- (A) If a Judge is unable to continue sitting in a proceeding, trial or appeal which has partly been heard for a short duration and the remaining Judges are satisfied that it is in the interests of justice to do so, those remaining Judges may order that the proceeding, trial or appeal continue in the absence of that Judge for a period of not more than five working days.
- (B) If a Judge is, for any reason, unable to continue sitting in a proceeding, trial or appeal which has partly been heard for a period which is or is likely to be longer than five days, the President may designate another Judge from the roster of Judges.
 - (i) If another Judge is not available from the roster of Judges, and the remaining Judges are satisfied that it would not affect the decision either way, the remaining Judges may continue in the absence of that Judge.
 - (ii) Where a Trial or Appeals Chamber proceeds in the absence of one Judge, in the event that the decision is split evenly a new proceeding, trial or appeal shall be ordered.
- (C) If a Judge is, for any reason, unable to sit in a proceeding, trial or appeal which has not yet been heard but has been scheduled, the President may designate another Judge from the roster of Judges.

- (D) A Judge who decides to resign shall give notice of his or her resignation in writing to the President, who shall transmit it to the Secretary-General of the United Nations and the Government of Sierra Leone.

Rule 16bis: Alternate Judges

- (A) If a Trial Chamber or Appeals Chamber is convened to prosecute the remaining fugitive SCSL indictee pursuant to Article 1(2) of the RSCSL Statute, the President may designate an alternate Judge from the Roster of Judges to be present at each stage of the trial or appeal to which he or she has been designated.
- (B) During the proceedings, the alternate Judge may, through the Presiding Judge of the Trial Chamber or Appeals Chamber, pose questions which are necessary for the alternate Judge's understanding of the trial or appeal proceedings.
- (C) An alternate Judge shall be present during the deliberations of the Trial Chamber or the Appeals Chamber to which he or she has been designated but shall not be entitled to vote thereat.
- (D) The alternate Judge may perform such other functions within the Trial Chamber or Appeals Chamber as the Presiding Judge in consultation with the other Judges of the Chamber may deem necessary.

Rule 17: Precedence

- (A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.
- (B) Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.
- (C) In case of re-election, the total period of service as a Judge of the Residual Special Court shall be taken into account.

Section 2: The Presidency

Rule 18: Election of the President (amended on 02 December 2016)

- (A) The Judges on the roster shall elect a President in accordance with Article 12(1) of the RSCSL Statute.
- (B) The President shall convene a Plenary Meeting for the Judges on the roster to attend in person for the purpose of electing a President.
- (C) Nominations for the position of President shall be by secret ballot. The Judges shall cast their votes for the candidates with the two highest nominations and who have accepted their nominations. If one of the two candidates declines his or her nomination, the candidate with the next highest number of nominations will take his or her place. The candidate with the highest number of votes shall be elected President..

- (D) The President shall be elected from among the Judges who have not previously served in that office. The term of the President shall be two years or such shorter term as shall coincide with the duration of his or her term of office as a Judge.

Rule 19: Functions of the President (amended on 02 December 2016)

- (A) The President shall preside at all Plenary Meetings of the Residual 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 or her by the RSCSL Agreement, the RSCSL Statute and the Rules.
- (B) In order to ensure the proper operation of the activities of the Residual Special Court, the President shall liaise with the Registrar, the Prosecutor, the Defence or their representatives.
- (C) The President may after appropriate consultation and after allowing comment from the Prosecutor and RSCSL defence staff issue Practice Directions, consistent with the RSCSL Agreement, the RSCSL Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Residual Special Court. The Practice Directions obtaining at the time of the closure of the Special Court shall apply *mutatis mutandis* to the functions of the Residual Special Court.
- (D) 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 RSCSL defence staff, the President shall take all appropriate measures aimed at furthering the conduct of fair, impartial and expeditious trials and appeals.
- (E) The President shall submit an annual report on the operation and activities of the Residual Special Court to the Secretary-General and to the Government of Sierra Leone, in accordance with Article 26(1) of the RSCSL Statute.
- (F) The President shall in as far as possible carry out his or her functions remotely and shall be present at the seat of the Residual Special Court only as necessary to carry out his or her functions. The President shall be remunerated on a *pro-rata* basis.

Rule 20: The Vice-Presidency (amended on 02 December 2016)

- (A) The Vice-President shall be elected from among the Judges who have not previously served in that office. The term of the Vice President shall be two years, or such shorter term as shall coincide with the duration of his or her term of office as a Judge.
- (B) The same procedure for election of a President as provided in Rule 18(B) and (C), shall apply to the election of a Vice President.

Rule 21: Functions of the Vice-President (amended on 02 December 2016)

The Vice-President shall exercise the functions of the President in case the latter is unable to act, ceases to be a member of the Residual Special Court or resigns his or her office before the expiration of his or her term.

Rule 22: Replacements

If neither the President nor the Vice-President can carry out the functions of the Presidency, this shall be assumed by a senior Judge, determined in accordance with Rule 17.

Section 3: Internal Functioning of the Residual Special Court

Rule 23: The Council of Judges

- (A) Where appropriate, there may be a Council of Judges which shall be composed of the President and the Presiding Judges of the Trial Chambers and the Appeals Chamber.
- (B) Where established, the President shall consult the Council of Judges on all major questions or matters relating to the functioning of the Residual Special Court.
- (C) In order to ensure the coordination of the activities of all organs of the Special Court, the Council of Judges, where established, or its representative, shall liaise with the Registrar, the Prosecutor and the RSCSL defence staff, or their representatives.
- (D) Where established, 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.

Rule 24: Plenary Meetings of the Residual Special Court (amended on 02 December 2016)

- (A) The President may convene a Plenary Meeting to adopt and amend the Rules, in accordance with Article 16(2) of the RSCSL Statute.
- (B) The President may authorise Plenary Meetings to be conducted in person or remotely by written procedure, audio or video-link technology or other available electronic media, provided that the technology is adequate to meet the needs of the Plenary.
- (C) Decisions taken at Plenary Meetings held remotely in accordance with Sub-Rule (B) shall be adopted if circulated to all the Judges and agreed in writing by the majority of the Judges.
- (D) During the Plenary, the Judges may:
 - (i) decide upon matters relating to the internal functioning of the Chambers, if convened pursuant to Article 13 of the RSCSL Statute, and the Rules of the RSCSL; and
 - (ii) exercise any other functions provided for in the RSCSL Agreement, the RSCSL Statute or in the Rules.

Rule 25: Dates of Plenary Meetings

Plenary Meetings shall be convened by the President if so requested by at least nine Judges, and may be convened whenever the exercise of his or her functions under the RSCSL Agreement, the RSCSL Statute or the Rules so requires.

Rule 26: Quorum and Vote (amended on 02 December 2016)

- (A) The quorum for each Plenary Meeting of the Residual Special Court shall be five international and three national Judges.
- (B) Subject to Rule 6(A) and (B) and Rule 18(C), the decisions of the Plenary Meeting of the Residual Special Court shall be taken by the majority of the Judges present or voting by proxy. A Judge may instruct another Judge present at the Plenary Meeting in writing to be his or her proxy and may give voting instructions or give a general proxy.
- (C) In the event of an equality of votes, the President or the Judge who acts in his or her place shall have a casting vote.

Section 4: *The Chambers*

Rule 26bis: *The Chambers*

A Trial Chamber, an Appeals Chamber and the Duty Judge acting pursuant to Article 12(1) of the RSCSL Statute shall ensure that a trial is fair and expeditious and that proceedings before the Residual Special Court are conducted in accordance with the RSCSL Agreement, the RSCSL Statute and the Rules, with full respect for the rights of the accused or convicted person and due regard for the protection of victims and witnesses.

Rule 27: *The Trial Chamber*

- (A) If a Trial Chamber is convened pursuant to Article 13(1) of the RSCSL Statute, the Presiding Judge shall be elected by the Chamber for a renewable term of one year or such shorter term as shall coincide with the duration of his or her term of office as a Judge. He or she may be re-elected.
- (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 or her by the RSCSL Agreement, the RSCSL 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 or her functions.

Rule 27bis: *The Appeals Chamber*

- (A) If an Appeals Chamber is convened pursuant to Article 13(2), the Presiding Judge shall be elected by the Chamber for a renewable term of one year or such shorter term as shall coincide with the duration of his or her term of office as a Judge. He or she may be re-elected.
- (B) The Presiding Judge of the Appeals Chamber shall coordinate the work of the Chamber and liaise with the Registrar on matters affecting the Appeals Chamber and will exercise such other functions as may be conferred on him or her by the RSCSL Agreement, the RSCSL Statute, and the Rules.
- (C) The Presiding Judge may issue, after appropriate consultations, Practice Directions in relation to the Appeals Chamber.

- (D) The provisions of Rule 17 will apply in the event of the Presiding Judge being unable to carry out his or her functions.
- (E) Unless otherwise provided in these Rules, the Appeals Chamber shall, for each appeal, be composed of all its five members.

Rule 28: Designated Judges

The President shall act as the Designated Judge in accordance with Article 12(1) of the RSCSL Statute and in exceptional circumstances, may designate for a given period such Judges as necessary as duty Judge to exercise judicial functions that cannot be carried out by the President or by a Trial Chamber or Appeals Chamber which has already been convened, in accordance with Article 13(3) of the RSCSL Statute. The Registrar shall publish the information by appropriate means and as soon as possible.

Rule 29: Deliberations

The deliberations of the Chambers shall take place in private and remain secret.

Section 5: The Registrar

Rule 30: Appointment of the Registrar

The Secretary-General of the United Nations, in consultation with the President of the Residual Special Court, shall appoint a Registrar, pursuant to Article 15(1) of the RSCSL Statute.

Rule 31: Appointment of the Deputy Registrar and Registry Staff

The Registrar shall appoint such other staff as may be required for the efficient functioning of the Registry, including a Deputy Registrar, if necessary.

Rule 32: Solemn Declaration

The Registrar shall make the following declaration before the President:

"I solemnly declare that I will perform the duties incumbent upon me as Registrar of the Residual Special Court in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Agreement, the Statute and the Rules of Procedure and Evidence of the Residual Special Court."

Rule 33: Functions of the Registrar

- (A) The Registrar shall assist the Chambers, the Plenary Meetings of the Residual Special Court, the Judges, the Prosecutor the Principal Defender, if so appointed, and the Defence in the performance of their functions. Under the authority of and in consultation with the President, he or she shall be responsible for the administration and servicing of the Residual Special Court and in that regard shall serve as its channel of communication and ensure open and effective communication between the President and the Registrar on financial, administrative and other pertinent issues.
- (B) The Registrar, in the execution of his or her functions, may make oral or written representations to Chambers on any issue arising in the context of a specific case which

affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.

- (C) The Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Special Court for Sierra Leone or otherwise Detained by the Special Court as obtaining at the time of closure of the Special Court shall apply *mutatis mutandis* to the Residual Special Court. The Registrar, mindful of the need to ensure respect for human rights and fundamental freedoms and particularly the presumption of innocence, shall, after consultation with the Prosecutor and RSCSL defence staff and with the approval of the President, amend those Rules of Detention as required and ensure conditions of detention.
- (D) The Registrar may, with the approval of the President, issue Practice Directions addressing particular aspects of the practice and procedure in the Registry of the Residual Special Court and in respect of other matters within the powers of the Registrar.

Rule 34: Witnesses and Victims Protection and Support

- (A) The Registrar shall ensure that there are staff to provide witness and victim protection and support, in accordance with Article 6 of the RSCSL Agreement and Article 18 of the RSCSL Statute. These staff, in accordance with the RSCSL Statute, the RSCSL Agreement and the Rules, and in consultation with the Prosecutor, for Prosecution witnesses, and the RSCSL defence staff, for Defence witnesses, shall, amongst other things, perform the following functions with respect to all witnesses and victims who appeared before the Special Court or who appear before the Residual Special Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:
 - (i) Recommend to the Residual Special Court the adoption of protective and security measures for them;
 - (ii) Provide them with adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support; and
 - (iii) Ensure that they receive relevant support, counselling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children.
- (B) Where appropriate, witness and victim protection and support staff shall cooperate with non-governmental and intergovernmental organizations.
- (C) The witness and victim protection and support personnel shall maintain contact information for all witnesses and shall inform witnesses of any impending pardon, commutation of sentence or early release of persons against whom they testified
- (D) The roster created and maintained by the Registrar pursuant to Article 15(4) of the RSCSL Statute shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children, in respect of witness and victim protection and support.

Rule 35: Minutes

Except where a full record is made under Rule 81, the Registrar, or staff designated by him or her, shall take minutes of the Plenary Meetings of the Residual Special Court and of the sittings of the Chambers or a Judge, other than private deliberations.

Rule 36: Cause Book

The Registrar shall keep a Cause Book which shall list, subject to Rule 53, all the particulars of each case including the index of the contents of the case file. The Cause Book shall be open to the public.

Section 6: The Prosecutor

Rule 37: Functions of the Prosecutor

- (A) The Prosecutor shall perform all the functions provided by the RSCSL Statute in accordance with the Rules and with such Regulations, consistent with the RSCSL Agreement and the RSCSL Statute and the Rules, as may be framed by him or her.
- (B) The Prosecutor's powers under Parts IV to VIII of the Rules may be exercised by staff members authorized by him or her, or by any person acting under his or her direction.
- (C) The Prosecutor shall have final approval authority regarding which individuals are selected to carry out his or her functions and regarding which individuals are placed on any roster of suitably qualified potential staff who will be called upon as needed to perform functions as required for the Prosecutor.

Part IV - INVESTIGATIONS, RIGHTS OF SUSPECTS, ACCUSED AND CONVICTED PERSONS

Section 1: Investigations

Rule 39: Conduct of Investigations

In the conduct of an investigation, the Prosecutor may:

- (i) Summon and question suspects, interview victims and witnesses and record their statements, collect evidence and conduct on-site investigations;
- (ii) Take all measures deemed necessary for the purpose of the investigation, including the taking of any special measures to provide for the safety, the support and the assistance of potential witnesses and sources;
- (iii) Seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL); and
- (iv) Request such orders as may be necessary from a Trial Chamber or a Judge.

Rule 40: Provisional Measures

- (A) In case of urgency, the Prosecutor may request any State:
 - (i) To arrest a suspect and place him or her in custody in accordance with the laws of that State;

- (ii) To seize all physical evidence; and
 - (iii) To take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.
- (B) Within 10 days from any arrest under Sub-Rule (A) above, the Prosecutor shall apply to the President or Designated Judge for an order pursuant to Rule 40*bis* to transfer the suspect to the Detention Facility or to such other place as the President may decide, with the advice of the Registrar, and to detain him or her provisionally. After consultation with the Prosecutor and the Registrar, the transfer shall be arranged between the authorities concerned, and the Registrar.
- (C) The suspect shall be released if:
 - (i) the Chamber so rules; or
 - (ii) the Prosecutor fails to apply for an order under rule 40*bis* within ten days of the arrest.

Rule 40*bis*: Transfer and Provisional Detention of Suspects

- (A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by the President or Designated Judge, a request for the transfer and/or provisional detention of a suspect in the premises of the Detention Facility. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a brief summary of the material upon which the Prosecutor relies.
- (B) The President or Designated Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:
 - (i) The Prosecutor has requested a State to arrest the suspect and to place him or her in custody, in accordance with Rule 40, or the suspect is otherwise detained by a State;
 - (ii) Where there are provisional charges, and where there is reason to believe that the suspect may have committed a crime or crimes specified in those provisional charges over which the Residual Special Court has jurisdiction; and
 - (iii) The President or Designated Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, physical or mental injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.
- (C) The provisional detention of the suspect may be ordered for a period not exceeding 30 days from the day after the transfer of the suspect to the Detention Facility.
- (D) The order for the transfer and provisional detention of the suspect shall be signed by the President or Designated Judge and bear the seal of the Residual Special Court. The order shall set forth the basis of the request made by the Prosecutor under Sub-Rule (A), including the provisional charge, and shall state the President or Designated Judge's grounds for making the order, having regard to Sub-Rule (B). The order shall also specify the initial time limit for the provisional detention of the suspect and when served on the suspect be

accompanied by a statement of his or her rights, as specified in this Rule and in Rules 42 and 43.

- (E) As soon as possible, copies of the order and of the request by the Prosecutor shall be served upon the suspect and his or her counsel by the Registrar.
- (F) At the Prosecutor's request indicating the grounds upon which it is made and if warranted by the needs of the investigation, the President or Designated Judge who made the initial order, or another Designated Judge, may decide, subsequent to an *inter partes* hearing and before the end of the period of detention, to extend the provisional detention for a period not exceeding 30 days.
- (G) At the Prosecutor's request indicating the grounds upon which it is made and if warranted by special circumstances, the President or Designated Judge who made the initial order, or another Designated Judge, may decide, subsequent to an *inter partes* hearing and before the end of the period of detention, to extend the detention for a further period not exceeding 30 days.
- (H) The total period of provisional detention shall in no case exceed 90 days after the day of transfer of the suspect to the Residual Special Court, at the end of which, in the event the indictment has not been approved and an arrest warrant signed, the suspect shall be released or, if appropriate, be delivered to the authorities of the State to which the request was initially made.
- (I) The provisions in Rules 55(B) to 59 shall apply to the execution of the order for the transfer and provisional detention of the suspect.
- (J) After his or her transfer to the seat of the Residual Special Court, the suspect, assisted by his or her counsel, shall be brought, without delay, before the President or Designated Judge who made the initial order, or another Designated Judge, who shall ensure that his or her rights are respected.
- (K) During detention, the Prosecutor, the suspect or his or her counsel may submit to the President, Designated Judge or Trial Chamber all applications relative to the propriety of provisional detention or to the suspect's release.
- (L) Without prejudice to Sub-Rules (C) to (H), the Rules of Detention shall apply to the provisional detention of persons under this Rule.

Rule 41: Preservation of Information

- (A) Subject to Rule 81 regarding the preservation of physical evidence offered during the proceedings, the Prosecutor shall be responsible for the preservation, storage and security of information and physical evidence obtained in the course of his or her investigations.
- (B) The Prosecutor shall draw up an inventory of all materials seized from the accused, including documents, books, papers, and other objects, and shall serve a copy thereof on the accused. Materials that are of no evidentiary value shall be returned without delay to the accused.

Rule 42: Rights of Suspects during Investigation

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which he or she shall be informed by the Prosecutor prior to questioning, in a language he or she speaks and understands:
- (i) The right to legal assistance of his own choosing, including the right to have legal assistance provided by the RSCSL where the interests of justice so require and where the suspect does not have sufficient means to pay for it;
 - (ii) The right to have the free assistance of an interpreter if he or she cannot understand or speak the language to be used for questioning; and
 - (iii) The right to remain silent, and to be cautioned that any statement he or she makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his or her right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43: Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded, in accordance with the following procedure:

- (i) The suspect shall be informed in a language he or she speaks and understands that the questioning is being audio-recorded or video-recorded;
- (ii) In the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
- (iii) At the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything he or she has said, and to add anything he or she may wish, and the time of conclusion shall be recorded;
- (iv) The content of the recording shall then be transcribed as soon as practicable after the conclusion of questioning and a copy of the transcript supplied to the suspect, together with a copy of the recording or, if multiple recording apparatus was used, one of the original recorded tapes; and
- (v) After a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

Section 2: Defence Counsel

Rule 44: Appointment and Qualifications of Counsel

- (A) Counsel engaged by a suspect, an accused or a convicted person shall file his or her power of attorney with the Registrar at the earliest opportunity. Subject to verification by the Registrar, a counsel shall be considered qualified to represent a suspect, accused or convicted person,

provided that he or she has been admitted to the practice of law in a State and practiced criminal law for a minimum of five years.

- (B) In the performance of their duties counsel shall be subject to the relevant provisions of the RSCSL Agreement, the RSCSL Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Residual Special Court, the Headquarters Agreements, the Code of Professional Conduct and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel.

Rule 45: Staff of the Defence Office (amended on 02 December 2015)

- (A) The staff of the Defence Office shall, in accordance with the RSCSL Statute and Rules, provide advice, assistance and representation to:
- (i) suspects being questioned by the Residual Special Court or its agents under Rule 42, including non-custodial questioning;
 - (ii) accused persons before the Residual Special Court; and
 - (ii) convicted persons conducting review proceedings before the Residual Special Court.
- (B) The staff of the Defence Office may provide advice, assistance, and representation to convicted persons for any other matters before the residual Special Court.
- (C) The staff of the Defence Office shall fulfil its functions by providing, *inter alia*:
- (i) initial legal advice and assistance by duty counsel who shall be available as far as practicable to attend the Detention Facility in the event of being summoned;
 - (ii) legal assistance as ordered by the Residual Special Court in accordance with Rule 61, if the accused does not have sufficient means to pay for it, or legal assistance to a convicted person for the conduct of review proceedings before the Residual Special Court, if the convicted person does not have sufficient means to pay for it, as the interests of justice may so require; and
 - (iii) adequate facilities for counsel in the preparation of the defence.
- (D) The Registrar shall maintain a list of highly qualified criminal defence counsel whom he or she believes are appropriate to act as duty counsel, to lead the defence or appeal of an accused or to represent convicted persons in review proceedings before the Residual Special Court. Such counsel shall:
- (i) speak fluent English;
 - (ii) be admitted to practice law in any State;
 - (iii) have at least 7 years' relevant experience; and
 - (iv) have indicated their willingness and full-time availability to be assigned by the Residual Special Court to suspects, accused or convicted persons.
- (E) Any request for replacement of an assigned counsel shall be made to the Registrar. Under exceptional circumstances, the request may be made to a Chamber upon good cause being

shown and after having been satisfied that the request is not designed to delay the proceedings.

- (F) Subject to any order of a Chamber, Counsel will represent the accused and conduct the case to finality. Failure to do so, absent just cause approved by the Chamber, may result in forfeiture of fees in whole or in part. In such circumstances the Chamber may make an order accordingly. Counsel shall only be permitted to withdraw from the case to which he or she has been assigned in the most exceptional circumstances. In the event of such withdrawal the Registrar shall assign another Counsel to the indigent accused.
- (G) Notwithstanding Rules 44(A) and 45(D)(iii), the Registrar may, in exceptional circumstances, assign as co-counsel, individuals with less than five years admission to the bar of a State.
- (G) If the need arises for proceedings before the Residual Special Court, the Registrar may establish, maintain and develop a Defence Office, for the purpose of ensuring the rights of suspects, accused and convicted persons. If so established, the Defence Office shall be responsible for the functions in Sub-Rules (A), (B) and(C). The Defence Office may be headed by a Residual Special Court Principal Defender.

Rule 45bis: Declaration of Means by the Suspect, Accused or Convicted Person

- (A) If, after his or her transfer to the Residual Special Court, the suspect or accused wishes to request legal assistance, he or she shall make a declaration of his or her means to the Registrar.
- (B) If a suspect or an accused elects to conduct his or her own defence, he or she shall so notify the Registrar in writing at the first opportunity.
- (C) If a convicted person wishes to request legal assistance for the conduct of review proceedings before the Residual Special Court, he or she shall make a declaration of his or her means to the Registrar.
- (D) The President, Trial Chamber or Appeals Chamber, as appropriate, shall determine if the Accused is fit to conduct his or her own defence, balancing his or her right to do so with his or her capacity to do so and with safeguards against potential disruptions to the proceedings which might be occasioned by self representation.

Rule 46: Misconduct of Counsel

- (A) This Rule is applicable to counsel for the Prosecution as well as counsel appearing for the Defence and to any counsel appearing as *amicus curiae*.
- (B) The President, Designated Judge or Chamber may, after a warning, impose sanctions against or refuse audience to a counsel if, in its opinion, his or her conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice.
- (C) The President, Designated Judge or Chamber may determine that counsel is no longer eligible to represent a suspect, accused or convicted person before the Residual Special Court, pursuant to Rule 45. If declared ineligible, removed counsel shall transmit to replacement counsel all materials relevant to the representation.

- (D) Counsel who bring motions, or conduct other activities, that in the opinion of the President, Designated Judge or Chamber are either frivolous or constitute abuse of process may be sanctioned for those actions as the President, Designated Judge or Chamber may direct. Sanctions may include fines upon counsel; non-payment, in whole or in part, of fees associated with the motion or its costs; or such other sanctions as the President, Designated Judge or Chamber may direct.
 - (E) The President or a Judge or Chamber, with the approval of the President, may also communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his or her State of admission.
 - (F) If a counsel assigned pursuant to Rule 45 is sanctioned by being refused audience, the President, Designated Judge or Chamber shall instruct the Registrar to replace the counsel.
 - (G) The Code of Professional Conduct enunciating the principles of professional ethics to be observed by counsel having right of audience before the Special Court obtaining at the time of closure of the Special Court shall apply *mutatis mutandis* to counsel having the right of audience before the Residual Special Court. Amendments to the Code shall be made in consultation with representatives of the Prosecutor and Defence counsel, and subject to adoption by the Plenary Meeting. If the Registrar has strong grounds for believing that counsel has committed a serious violation of the Code of Professional Conduct so adopted, he or she may report the matter to the President for appropriate action under this Rule.
 - (H) Decisions made by a Trial Chamber under Sub-Rules (A) to (C) may be appealed with leave from that Chamber. Where such leave is refused, the Party may apply to a bench of at least three Appeals Chamber Judges for leave.
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Part V - PRE-TRIAL PROCEEDINGS

Section 1: Indictments

Rule 47: Review of Indictment

- (A) An indictment shall be approved by the President or Designated Judge in accordance with the following procedure.
- (B) The Prosecutor, if satisfied in the course of an investigation that a suspect has committed a crime or crimes within the jurisdiction of the Residual Special Court, shall prepare and submit to the Registrar an indictment for approval by the President or Designated Judge.
- (C) The indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor's case summary briefly setting out the allegations he or she proposes to prove in making his or her case.
- (D) The Registrar shall submit the indictment and accompanying material to the President or Designated Judge for review.

- (E) The President or Designated Judge shall review the indictment and the accompanying material to determine whether the indictment should be approved. The President or Judge shall approve the indictment if he or she is satisfied that:
 - (i) The indictment charges the suspect with a crime or crimes within the jurisdiction of the Residual Special Court; and
 - (ii) The allegations in the Prosecution's case summary would, if proven, amount to the crime or crimes as particularised in the indictment.
- (F) The President or Designated Judge may approve or dismiss each count.
- (G) If at least one count is approved, the indictment shall go forward. If no count is approved, the indictment shall be returned to the Prosecutor.
- (H) Upon approval of the indictment:
 - (i) The President or Designated Judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the proceedings in accordance with these Rules; and
 - (ii) The suspect shall have the status of an accused.
- (I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently submitting an amended indictment including that count.

Rule 48: Joinder of Accused or Trials

- (A) Persons accused of the same or different crimes committed in the course of the same transaction may be jointly indicted and tried.
- (B) Persons who are separately indicted, accused of the same or different crimes committed in the course of the same transaction, may be tried together, with leave granted by the President or a Trial Chamber pursuant to Rule 73.
- (C) The President or a Trial Chamber may order the concurrent hearing of evidence common to the trials of persons separately indicted or joined in separate trials and who are accused of the same or different crimes committed in the course of the same transaction. Such a hearing may be granted with leave of the President or a Trial Chamber pursuant to Rule 73.

Rule 49: Joinder of Crimes

Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.

Rule 50: Amendment of Indictment

- (A) The Prosecutor may amend an indictment, without prior leave, at any time before its approval, but thereafter, until the initial appearance of the accused pursuant to Rule 61, only with leave of the Designated Judge who reviewed it but, in exceptional circumstances, by leave of the President or another Judge. At or after such initial appearance, an amendment of

an indictment may only be made by leave granted by the President or a Trial Chamber pursuant to Rule 73. If leave to amend is granted, Rule 47(G) and Rule 52 apply to the amended indictment.

- (B) If the amended indictment includes new charges and the accused has already made his or her initial appearance in accordance with Rule 61:
 - (i) A further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges;
 - (ii) Within seven days from such appearance, the Prosecutor shall disclose all materials envisaged in Rule 66(A)(i) pertaining to the new charges; and
 - (iii) The accused shall have a further period of ten days from the date of such disclosure by the Prosecutor in which to file preliminary motions pursuant to Rule 72 and relating to the new charges.

Rule 51: Withdrawal of Indictment

- (A) The Prosecutor may withdraw an indictment at any time before its approval pursuant to Rule 47.
- (B) After the approval of an indictment pursuant to Rule 47, but prior to the commencement of the trial, the Prosecutor may withdraw an indictment upon providing to the President, Designated Judge or Trial Chamber in open court a statement of the reasons for the withdrawal.
- (C) Once the trial of an accused has commenced, the Prosecutor may withdraw an indictment only by leave granted by the President, Designated Judge or Trial Chamber.
- (D) The withdrawal of the indictment shall be promptly notified to the accused and to counsel for the accused.

Rule 52: Service of Indictment

- (A) Service of the indictment shall be effected personally on the accused at the time the accused is taken into the custody of the Residual Special Court or as soon as possible thereafter.
- (B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment approved in accordance with Rule 47.
- (C) An indictment that has been permitted to proceed by the Designated Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Residual Special Court. If the accused does not understand English and if the language understood is a written language known to the Registrar, a translation of the indictment in that language shall also be prepared. In the case that the accused is illiterate or his or her language is an oral language, the Registrar will ensure that the indictment is read to the accused by an interpreter, and that he or she is served with a recording of the interpretation.
- (D) Subject to Rule 53, upon approval by the Designated Judge the indictment shall be made public.

Rule 53: Non-disclosure

- (A) In exceptional circumstances, the President or Designated Judge may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.
- (B) When approving an indictment the President or Designated Judge may, on the application of the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.
- (C) The President, Designated Judge or the Trial Chamber may, on the application of the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

Section 2: Orders and Warrants

Rule 54: General Provisions

- (A) At the request of either party or of its own motion, the President, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.
- (B) The President may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of fulfilling his or her functions.

Rule 55: Execution of Arrest Warrants

- (A) A warrant of arrest shall be signed by the President or Designated Judge and shall bear the seal of the Residual Special Court. It shall be accompanied by a copy of the indictment, and a statement of the rights of the accused.
- (B) The Registrar shall transmit to the relevant authorities in whose territory or under whose jurisdiction or control the accused resides, or was last known to be, three sets of certified copies of:
 - (i) The warrant for arrest of the accused and an order for his or her transfer to the Residual Special Court;
 - (ii) The approved indictment; and
 - (iii) A statement of the rights of the accused; and if necessary a translation thereof in a language understood by the accused.
- (C) The Registrar shall request the said authorities to:
 - (i) Cause the arrest of the accused and his or her transfer to the Residual Special Court;
 - (ii) Serve a set of the aforementioned documents upon the accused;

- (iii) Cause the documents to be read to the accused in a language understood by him or her and to caution him or her as to his or her rights in that language; and
 - (iv) Return one set of the documents together with proof of service to the Residual Special Court.
- (D) When an arrest warrant issued by the Residual Special Court is executed, the Prosecutor or his or her representative may be present as from the time of arrest.

Rule 56: Warrant of Arrest to Third States

- (A) Upon the request of the Prosecutor, and if satisfied that to do so would facilitate the arrest of an accused who may move from State to State, or whose whereabouts are unknown, the President or a Judge may address a warrant of arrest to any third State, as well as any relevant international body including the International Criminal Police Organisation (INTERPOL).
- (B) The Registrar shall transmit such a warrant to the national authorities of such States, or to the relevant international body, as may be indicated by the Prosecutor.

Rule 57: Procedure after Arrest

Upon the arrest of the accused and in accordance with the arrest warrant pursuant to which the accused is arrested, the State concerned shall detain him or her, and shall promptly notify the Registrar. The transfer of the accused in accordance with the arrest warrant to the seat of the Residual Special Court, or to such other place as the President may decide, after consultation with the Prosecutor and the Registrar, shall be arranged by the State authorities concerned, in liaison with the authorities of the host country and the Registrar.

Rule 58: Transfer to the Residual Special Court from Third States

The Residual Special Court may request third States to arrest and transfer suspects and accused to the Residual Special Court on the basis of an *ad hoc* arrangement, an agreement with such State or any other appropriate basis.

Rule 59: Failure to Execute a Warrant of Arrest or Transfer Order

- (A) Where the Sierra Leone authorities, to whom a warrant of arrest or transfer order has been transmitted, are unable to execute the warrant of arrest or transfer order, they shall report forthwith their inability to the Registrar, and the reasons therefor in accordance with section 21 of the Special Court Agreement, 2002 (Ratification) Act, 2002.
- (B) If, within a reasonable time after the warrant of arrest or transfer order has been transmitted to the Sierra Leone authorities, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Registrar may refer to the President to take appropriate action.

Rule 60: Trial in the Absence of the Accused

- (A) An accused may not be tried in his or her absence, unless:

- (i) the accused has made his or her initial appearance, has been afforded the right to appear at his or her own trial, but refuses so to do; or
 - (ii) the accused, having made his or her initial appearance, is at large and refuses to appear in court.
- (B) In either case the accused may be represented by counsel of his choice, or as directed by a Judge or Trial Chamber. The matter may be permitted to proceed if the Judge or Trial Chamber is satisfied that the accused has, expressly or impliedly, waived his or her right to be present.

Rule 61: Initial Appearance of Accused and Plea

Upon his or her transfer to the Residual Special Court, the accused shall be brought before the President, Designated Judge or a Judge as soon as practicable, and shall be formally charged. The President, Designated Judge or Judge shall:

- (i) Satisfy himself or herself that the rights of the accused are respected, including the right to counsel, the right to an interpreter and the right not to be compelled to testify against him or herself or to confess guilt, and in so doing, shall question the accused with regard to his or her means and instruct the Registrar to provide legal assistance to the accused as necessary, unless the accused elects to act as his or her own counsel or refuses representation;
- (ii) Read or have the indictment read to the accused in a language he or she speaks and understands, and satisfy himself or herself that the accused understands the indictment;
- (iii) Call upon the accused to enter a plea of guilty or not guilty on each count; should the accused fail to do so, enter a plea of not guilty on his or her behalf; and
- (iv) In case of a plea of not guilty, instruct the Registrar to set a date for trial; or
- (v) In case of a plea of guilty, act in accordance with Rule 62 or refer the plea to the Trial Chamber so that it may act in accordance with Rule 62.

Rule 62: Procedure upon Guilty Plea

- (A) If an accused pleads guilty in accordance with Rule 61(v), or requests to change his or her plea to guilty, the President, Designated Judge or Trial Chamber shall satisfy itself that the guilty plea:
- (i) is made freely and voluntarily;
 - (ii) is an informed plea;
 - (iii) is unequivocal; and
 - (iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case.

- (B) Thereafter the President, Designated Judge or Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

Rule 63: Questioning of the Accused

- (A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.
- (B) The questioning, including any waiver of the right to counsel, shall be audio-recorded and, if possible, video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42(A)(iii).

Rule 64: Detention on Remand

Upon his or her transfer to the Residual Special Court, the accused shall be detained in the Detention Facility, or facilities otherwise made available pursuant to Rule 8(C). The Registrar, in a case where he or she considers it necessary, may order special measures of detention of an accused outside the Detention Facility. The order of the Registrar shall be put before the President for endorsement within 48 hours of the order being issued.

Rule 65: Bail

- (A) Once detained, an accused shall not be granted bail except upon an order of the President, a Judge or Trial Chamber.
- (B) Bail may be ordered by the President, a Judge or a Trial Chamber after hearing the State to which the accused seeks to be released and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.
- (C) An accused may only make one application for bail to the President, Judge or Trial Chamber unless there has been a material change in circumstances.
- (D) The President, Judge or Trial Chamber may impose such conditions upon the granting of bail to the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused at trial and the protection of others.
- (E) Any decision rendered under this Rule shall be subject to appeal in cases where leave is granted by a Single Judge of the Appeals Chamber, upon good cause being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision.
- (F) If necessary, the President, Designated Judge or Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been granted bail or is for any other reason at large. The provisions of Section 2 of Part V shall apply.
- (G) The Prosecutor may appeal a decision to grant bail. In the event of such an appeal, the accused shall remain in custody until the appeal is heard and determined.

- (H) Appeals from bail decisions shall be heard by a bench of at least three Appeals Chamber Judges.

Rule 65bis: Status Conferences

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; and
- (ii) review the status of his or her case and to allow the accused the opportunity to raise issues in relation thereto.

Section 3: Production of Evidence

Rule 66: Disclosure of materials by the Prosecutor

(A) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:

- (i) Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92bis at trial.
 - (ii) Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by the President, a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, the President, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.
 - (iii) At the request of the Defence, subject to Sub-Rule (B), permit the Defence to inspect any books, documents, photographs and tangible objects in his or her custody or control, which are material to the preparation of the defence, upon a showing by the defence of categories of, or specific, books, documents, photographs and tangible objects which the defence considers to be material to the preparation of a defence, or to inspect any books, documents, photographs and tangible objects in his or her custody or control which are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.
- (B) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the President or a Judge designated by the President sitting *ex parte* and *in camera*, but with notice to the Defence, to be relieved from the obligation to disclose pursuant to Sub-Rule (A). When making such an application the Prosecutor shall provide, only to the President or such Judge, the information or materials that are sought to be kept confidential.

Rule 67: Reciprocal Disclosure of Evidence

Subject to the provisions of Rules 53 and 69:

- (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
 - (i) The Prosecutor shall notify the Defence of the names of the witnesses that he or she intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with Sub-Rule (ii) below, or any defence pleaded in the Defence Case Statement served under Sub-Rule (C);
 - (ii) The Defence shall notify the Prosecutor of its intent to enter:
 - (a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; and
 - (b) Any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.
- (B) Failure of the Defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences.
- (C) To assist the Prosecutor with its disclosure obligations pursuant to Rule 68, the Defence may prior to trial provide the Prosecutor with a Defence Case Statement. The Defence Case Statement shall:
 - (i) set out in general terms the nature of the accused's defence;
 - (ii) indicate the matters on which he or she takes issue with the prosecution; and
 - (iii) set out, in the case of each such matter, the reason why he or she takes issue with the prosecution.
- (D) If either party discovers additional evidence or information or materials which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the President, Designated Judge or Trial Chamber of the existence of the additional evidence or information or materials.

Rule 68: Disclosure of Exculpatory Evidence

- (A) The Prosecutor shall, within 14 days of receipt of the Defence Case Statement, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which may be relevant to issues raised in the Defence Case Statement.
- (B) The Prosecutor shall, within 30 days of the initial appearance of the accused, make a statement under this Rule disclosing to the Defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the

accused or may affect the credibility of prosecution evidence. The Prosecutor shall be under a continuing obligation to disclose any such exculpatory material.

Rule 69: Protection of Victims and Witnesses

- (A) In exceptional circumstances, either of the parties may apply to the President, Designated Judge, a Judge of the Trial Chamber or the Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the President, Designated Judge, Judge or Chamber decides otherwise.
- (B) In the determination of protective measures for victims and witnesses, the President, Designated Judge, Judge or Trial Chamber may consult the witness and victim protection and support staff of the Residual Special Court.
- (C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time before a witness is to be called to allow adequate time for preparation of the prosecution and the defence.

Rule 70: Matters not Subject to Disclosure

- (A) Notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under the aforementioned provisions.
- (B) If the Prosecutor is in possession of information which has been provided to him or her on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused. The consent shall be in writing.
- (C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the President, Designated Judge or Trial Chamber may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the President, Designated Judge or Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance.
- (D) If the Prosecutor calls as a witness the person providing or a representative of the entity providing information under this Rule, the President, Designated Judge or Trial Chamber may not compel the witness to answer any question the witness declines to answer on grounds of confidentiality.
- (E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to limitations contained in Sub-Rules (C) and (D).
- (F) Nothing in Sub-Rule (C) or (D) above shall affect a Trial Chamber's power to exclude evidence under Rule 95.

- (G) In the event of a conflict with Rule 68 on Disclosure of Exculpatory Evidence, the Prosecutor shall bring the matter to the attention of a Judge designated by the President sitting *ex parte* and in camera for resolution of the conflict.

Section 4: Depositions

Rule 71: Depositions

- (A) At the request of either party, the President, Designated Judge or a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial and appoint for that purpose a Legal Officer.
- (B) The motion for the taking of a deposition shall be in writing and shall indicate the name and whereabouts of the witness whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the interests of justice justifying the taking of the deposition.
- (C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the witness.
- (D) The deposition may also be given by means of a video-conference.
- (E) The Legal Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. He or she shall transmit the record to the Trial Chamber.

Section 5: Preliminary Motions

Rule 72: Preliminary Motions

- (A) Preliminary motions by either party shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i).
- (B) Preliminary motions by the accused are:
- (i) Objections based on lack of jurisdiction;
 - (ii) Objections based on defects in the form of the indictment;
 - (iii) Applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82(B);
 - (iv) Objections based on the denial of request for assignment of counsel; or
 - (v) Objections based on abuse of process.
- (C) Objections based on lack of jurisdiction or to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the President, Designated Judge or Trial Chamber.

- (D) The President, Designated Judge or Trial Chamber shall except as provided by Sub-Rules (E) and (F) below, dispose of preliminary motions before the trial, and its decisions thereon shall not be subject to interlocutory appeal.
- (E) If an Appeals Chamber has been convened pursuant to article 13(2) of the RSCSL Statute, preliminary motions made in the Trial Chamber prior to the Prosecutor’s opening statement which raise a serious issue relating to jurisdiction may be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable.
- (F) If an Appeals Chamber has been convened pursuant to article 13(2) of the RSCSL Statute, preliminary motions made to the President, Designated Judge or Trial Chamber prior to the Prosecutor’s opening statement which, in the opinion of the President, Designated Judge or Trial Chamber, raise an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial may be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable.
- (G) Where the President, Designated Judge or Trial Chamber refers a motion to the Appeals Chamber pursuant to Sub-Rule (E) or (F) above, any party wishing to file additional written submissions must seek leave from the Appeals Chamber which will impose time limits for further submissions, responses and replies if leave is granted.
- (H) References by the President, Designated Judge or Trial Chamber pursuant to Sub-Rules (E) and (F) above shall not operate as a stay of proceedings. Such references shall not operate as a stay of the trial itself unless the President, Designated Judge or Trial or Appeal Chamber so orders.

Part VI - TRIAL PROCEEDINGS

Section 1: General Provisions

Rule 72bis: General Provisions on Applicable Law)

The applicable laws of the Residual Special Court include:

- (i) the RSCSL Statute, the RSCSL Agreement, and the Rules;
- (iii) where appropriate, other applicable treaties and the principles and rules of international customary law;
- (iii) general principles of law derived from national laws of legal systems of the world including, as appropriate, the national laws of the Republic of Sierra Leone, provided that those principles are not inconsistent with the RSCSL Statute, the RSCSL Agreement, and with international customary law and internationally recognized norms and standards.

Rule 73: Motions

- (A) Subject to Rule 72, either party may move before the President, Designated Judge or a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The President, Designated Judge or the Trial Chamber, or a Judge designated by the Trial

Chamber from among its members, shall rule on such motions 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 President or an Appellate Judge designated by the President may give leave to appeal. Such leave should be sought within 7 days of the decision and shall not operate as a stay of proceedings unless the President, Designated Judge or Trial Chamber so orders.
- (C) Whenever the President, Designated Judge or Trial Chamber and the Appeals Chamber of the Court are seized of the same Motion raising the same or similar issue or issues, the President, Designated Judge or 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 the President, Designated Judge or 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.

Rule 73 bis: Pre-Trial Conference

- (A) The President, Designated Judge or 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 President, Designated Judge, Trial Chamber or a Judge designated from among its members may order the Prosecutor, within a time limit set by the President, Designated Judge, 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; and
 - (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 President, Designated Judge, 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 President, Designated Judge, 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 President, Designated Judge, 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 or she considers it to be in the interests of justice, move the President, Designated Judge, Trial Chamber for leave to reinstate the list of witnesses or to vary his or her decision as to which witnesses are to be called.
- (F) Prior to the Pre-Trial Conference, the President, Designated Judge, 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 President, Designated Judge, Trial Chamber or the said Judge, and before the date set for trial.
- (G) In the interest of a fair and expeditious trial, the President, Designated Judge or 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 President, Designated Judge, or 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 73 *ter*: Pre-Defence Conference

- (A) The Trial Chamber or a Judge designated from among its members may hold a Conference prior to the commencement by the Defence of its case.
- (B) Prior to that Conference, the Trial Chamber or a Judge designated from among its members may order that the Defence, before the commencement of its case but after the close of the case for the prosecution, file the following:
 - (i) Admissions by the parties and a statement of other matters which are not in dispute;
 - (ii) A statement of contested matters of fact and law;
 - (iii) A list of witnesses the defence 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 as to which each witness will testify; and
 - (d) The estimated length of time required for each witness;
 - (iv) A list of exhibits the Defence intends to offer in its case, stating where possible whether or not the Prosecutor has any objection as to authenticity.

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

- (C) The Trial Chamber or a Judge designated from among its members may order the Defence to shorten the estimated length of the examination-in-chief for some witnesses.
- (D) The Trial Chamber or a Judge designated from among its members may order the Defence 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 defence case, the Defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

Rule 74: *Amicus Curiae*

The President, Designated Judge or a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to make submissions on any issue specified by the President, Designated Judge or Chamber.

Rule 74 bis: Medical examination of the accused

- (A) The President, a Judge or Trial Chamber may, on its own motion, or at the request of a party, order a medical, psychiatric or psychological examination of the accused or convicted person, in which case the President, Judge or Trial Chamber shall appoint one or more experts from the list of experts kept by the Registrar.
- (B) The Registrar shall keep a list of approved experts for the purpose of examinations under Sub-Rule (A) above.
- (C) Where the President, Judge or Trial Chamber is satisfied that the accused is unfit to stand trial, it shall order that the trial be adjourned. The President, Judge or Trial Chamber may, on its own motion or at the request of the Prosecutor or the Defence, review the case of the accused. In any event, the case shall be reviewed every ninety days unless there are reasons to do otherwise. If necessary, the President, Judge or Trial Chamber may order further examinations of the accused. When the President, Judge or Trial Chamber is satisfied that the accused has become fit to stand trial, it shall proceed.

Rule 75: Measures for the Protection of Victims and Witnesses

- (A) The President, a Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the witness and victim protection and support staff of the Residual Special Court, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.
- (B) The President, a Judge or a Chamber may hold an *in camera* proceeding to determine whether to order:

- (i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him or her by such means as:
 - (a) Expunging names and identifying information from the public records of the Special Court or Residual Special Court;
 - (b) Non-disclosure to the public of any records identifying the victim or witness;
 - (c) Giving of testimony through image- or voice- altering devices or closed circuit television, video link or other similar technologies; and
 - (d) Assignment of a pseudonym;
 - (ii) Closed sessions, in accordance with Rule 79; and
 - (iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.
- (C) The President, a Judge or a Chamber shall control the manner of questioning to avoid any harassment or intimidation.
- (D) The witness and victim protection and support staff shall ensure that the witness has been informed before giving evidence that his or her testimony and his or her identity may be disclosed at a later date in another case, pursuant to Sub-Rule (F).
- (E) When making an order under Sub-Rule (A) above, the President, a Judge or Chamber shall wherever appropriate state in the order whether the transcript of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Residual Special Court.
- (F) Once protective measures have been ordered in respect of a witness or victim in any proceedings before the Special Court or Residual Special Court (the "first proceedings"), such protective measures:
- (i) Shall continue to have effect *mutatis mutandis* in any other proceedings before the Residual Special Court (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but
 - (ii) Shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.
- (G) A party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings shall apply to the President, Designated Judge or Chamber seized of the second proceedings.
- (H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Special Court or Residual Special Court may seek to rescind, vary or augment

protective measures ordered in proceedings before the Special Court or Residual Special Court by applying to the President, who may:

- (i) refer the application to a Designated Judge or any Chamber, however constituted, remaining seized of the first proceedings;
 - (ii) if no Chamber remains seized of the first proceedings, refer the application to a Designated Judge or Chamber seized of second proceedings; or
 - (iii) decide the matter.
- (I) Before determining an application under Sub-Rules (G) or (H) above, the President, Designated Judge or Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the Prosecutor and Defence, and shall consult with the President or any Judge who ordered the protective measures in the first proceedings if that Judge remains a Judge of the Special Court or Residual Special Court, and with the Prosecution and Defence.
- (J) When a party seeks to vary existing protective measures, the witness must consent to the variance or the applicant must show that existing protective measures are no longer necessary because of changed circumstances, such as that the potential threats to the security of the witness have diminished since the order for protective measures was made. The applicant should present supporting evidence capable of establishing on a preponderance of probabilities that the witness is no longer in need of protection. The President, Designated Judge or Chamber must first determine whether the applicant has satisfied this obligation, warranting a variation of the protective measures order, and, if so, then determine the nature and extent of the variations to be ordered.
- (K) An application to rescind, vary or augment protective measures in respect of a victim or witness may be dealt with either by the President, Designated Judge or a Chamber or by a Judge of that Chamber, and any reference to “a Chamber” shall include a reference to “a Judge of that Chamber”.
- (L) If the Chamber seized of the second proceedings rescinds, varies or augments the protective measures ordered in the first proceedings, these changes shall apply only with regard to the second proceedings.

Rule 76: Solemn Declaration by Interpreters and Translators

Before performing any duties, an interpreter or a translator shall solemnly declare to do so faithfully, independently, impartially and with full respect for the duty of confidentiality.

Rule 77: Contempt of the Special Court or Residual Special Court

- (A) The Residual Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and willfully interferes with the administration of justice by the Special Court or Residual Special Court, including any person who:
- (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;

- (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber of the Special Court or Residual Special Court;
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
 - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;
 - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber;
 - (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court or Residual Special Court;
 - (vii) accepts, obtains or agrees to accept a bribe in respect of evidence in proceedings before Chambers; or
 - (viii) solicits, accepts or agrees to accept a bribe as an official of the Court in connection with his or her official duties.
- (B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court or Residual Special Court with the same penalties.
- (C) When the President, a Trial Chamber or Appeals Chamber has reason to believe that a person may be in contempt of the Special Court or Residual Special Court, the President or Chamber may, in accordance with Article 12 of the RSCSL Statute:
- (i) deal with the matter summarily;
 - (ii) refer the matter to the appropriate authorities of Sierra Leone; or
 - (iii) direct the Prosecutor to investigate the matter and report back to the President, Judge or Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the President, Judge or Chamber considers that there are sufficient grounds to proceed against a person for contempt, the President, Judge or Chamber may issue an order in lieu of an indictment and direct the Prosecutor to prosecute the matter. However, in cases involving a potential conflict of interest on the part of the Prosecutor, the President, Judge or Chamber shall direct the Registrar to appoint an independent prosecutor to investigate and prosecute the matter.
- (D) Proceedings under Sub-Rule (C)(iii) above may be:
- (i) Heard by the President serving as the Duty Judge of the Residual Special Court in accordance with Article 12 of the RSCSL Statute; or
 - (ii) Heard by a Trial Chamber or Appeals Chamber.

- (E) The Rules in Parts IV to VIII shall apply, as appropriate, to proceedings under this Rule.
- (F) Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be entitled to legal assistance in accordance with Rule 45.
- (G) The maximum penalty that may be imposed on a person found to be in contempt of the Special Court or Residual Special Court pursuant to Sub-Rule (C)(i) shall be a term of imprisonment not exceeding six months, or a fine not exceeding 2 million Leones, or both; and the maximum penalty pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 20 million leones, or both. However, should contemptuous conduct substantially contribute to and/or result in death or serious injury, the Trial Chamber may impose a sentence of a specified number of years beyond seven years. In imposing any determinate sentence for such conduct, the Trial Chamber shall be guided by the factors set out in the SCSL Statute and the Rules, and may have recourse to the sentencing practices within the Sierra Leonean judicial system for homicide, assault, battery and harassment or other relevant crimes.
- (H) Payment of a fine shall be made to the Registrar to be held in a separate account.
- (I) If a counsel is found guilty of contempt of the Special Court or Residual Special Court pursuant to this Rule, the President or Chamber making such finding may also determine that counsel is no longer eligible to appear before the Residual Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.
- (J) Any conviction rendered under this Rule shall be subject to appeal.
- (K) Subject to Sub-Rule (L), appeals pursuant to this Rule shall be heard by a bench of at least three Judges of the Appeals Chamber convened by the President in accordance with Article 13(2) of the RSCSL Statute. In accordance with Rule 117 such appeals may be determined entirely on the basis of written submissions.
- (L) In the case of contempt occurring during proceedings before the Appeals Chamber, the Chamber may deal with the matter summarily. An appeal against a decision rendered under this Sub-Rule may be submitted in writing to the President within fifteen days of the filing of the impugned decision. Such appeal shall be decided by three different Judges assigned by the President from the roster of Judges. Where the impugned decision is rendered orally, the appeal shall be filed within fifteen days of the oral decision, unless:
 - (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
 - (ii) the Appeals Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

Rule 78: Open Sessions

All proceedings before the President, Designated Judge or a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

Rule 79: Closed Sessions

- (A) The President, Designated Judge or Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:
 - (i) national security;
 - (ii) protecting the privacy, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
 - (iii) protecting the interests of justice.
- (B) The President, Designated Judge or Trial Chamber shall make public the reasons for its order.
- (C) In the event that it is necessary to exclude the public, the President, Designated Judge or Trial Chamber should if appropriate permit representatives of monitoring agencies to remain. Such representatives should, if appropriate, have access to the transcripts of closed sessions.

Rule 80: Control of Proceedings

- (A) The President, Designated Judge or Trial Chamber may exclude a person from the proceedings in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.
- (B) The President, Designated Judge or Trial Chamber may order the removal of an accused from the proceedings and continue the proceedings in his or her absence if he or she has persisted in disruptive conduct following a warning that he or she may be removed. In the event of removal, where possible, provision should be made for the accused to follow the proceedings by video link.

Rule 81: Records of Proceedings and Preservation of Evidence

- (A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the President, Designated Judge or Trial Chamber, video recordings.
- (B) After the publication of the daily final public transcript, the record of proceedings shall not be amended except by order of the President, Designated Judge or Chamber on its own motion or on the application of a party to the President, Designated Judge or Chamber.
- (C) The President, Designated Judge or Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering the non disclosure no longer exist.
- (D) The Registrar shall retain and preserve all physical evidence offered during the proceedings.

- (D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registry, may be authorised at the discretion of the President, Designated Judge or Trial Chamber.

Section 2: Case Presentation

Rule 82: Joint and Separate Trials

- (A) In joint trials, each accused shall be accorded the same rights as if he or she were being tried separately.
- (B) The President, Designated Judge or Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 83: Instruments of Restraint

Instruments of restraint, such as handcuffs, shall not be used except as a precaution against escape during transfer or for security reasons, and shall be removed when the accused appears before the President, a Judge or a Chamber unless otherwise ordered by the President, Judge or Chamber.

Rule 84: Opening Statements

At the opening of his or her case, each party may make an opening statement confined to the evidence he or she intends to present in support of his or her case. The President, Designated Judge or Trial Chamber may limit the length of those statements in the interests of justice.

Rule 85: Presentation of Evidence

- (A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the President, Designated Judge or Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:
- (i) Evidence for the prosecution;
 - (ii) Evidence for the defence;
 - (iii) Prosecution evidence in rebuttal, with leave of the President, Designated Judge or Trial Chamber; and
 - (iv) Evidence ordered by the President, Designated Judge or Trial Chamber.
- (B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him or her in chief, but a Judge may at any stage put any question to the witness.
- (C) The accused may, if he or she so desires, appear as a witness in his or her own defence. If he or she chooses to do so, he or she shall give his evidence under oath or affirmation.
- (D) Evidence may be given directly in court, or via such communications media, including video, closed-circuit television, as the President, Designated Judge or Trial Chamber may order.

Rule 86: Closing Arguments

- (A) After the presentation of all the evidence, the Prosecutor shall and the Defence may present a closing argument.
- (B) A party shall file a final trial brief with the President, Designated Judge or Trial Chamber not later than five days prior to the day set for the presentation of that party's closing argument, or as ordered by the President, Designated Judge or Trial Chamber.
- (C) The parties shall inform the President, Designated Judge or Trial Chamber of the anticipated length of closing arguments; the President, Designated Judge or Trial Chamber may limit the length of those arguments in the interests of justice.

Rule 87: Deliberations

- (A) After presentation of closing arguments, the President, Designated Judge or Presiding Judge shall declare the hearing closed, and the President, Designated Judge or Trial Chamber shall deliberate in private. A finding of guilty may be reached only when the President, Designated Judge or a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.
- (B) The Trial Chamber shall vote separately on each count contained in the indictment. If two or more accused are tried together under Rule 48, separate findings shall be made as to each accused.
- (C) If the President, Designated Judge or Trial Chamber finds the accused guilty on one or more of the counts contained in the indictment, it shall also determine the penalty to be imposed in respect of each of the counts.

Rule 88: Judgment

- (A) The judgment shall be pronounced in public.
- (B) If the President, Designated Judge or Trial Chamber finds the accused guilty of a crime, the President, Designated Judge or Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct as provided in Rule 104.
- (C) The judgment shall be accompanied by a reasoned opinion in writing. Where issued by a Trial Chamber, it shall be rendered by a majority of the Judges. Separate or dissenting opinions may be appended.

Section 3: Rules of Evidence

Rule 89: General Provisions

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the President, Designated Judge or Chambers. The President, Designated Judge or Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, the President, Designated Judge or a Chamber shall apply rules of evidence which will best favour a fair determination of the

matter before it and are consonant with the spirit of the Statute and the general principles of law.

- (C) The President, Designated Judge or a Chamber may admit any relevant evidence.

Rule 90: Testimony of Witnesses

- (A) Witnesses may give evidence directly, or as described in Rules 71 and 85 (D).
- (B) Every adult witness shall, before giving evidence, make one of the following solemn declarations:

"I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."

Or

"I solemnly swear on the [insert holy book] that I will speak the truth, the whole truth and nothing but the truth."

- (C) A child shall be permitted to testify if the President, Designated Judge or Chamber is of the opinion that he or she is sufficiently mature to be able to report the facts of which he or she had knowledge, that he or she understands the duty to tell the truth, and is not subject to undue influence. However, he or she shall not be compelled to testify by solemn declaration.
- (D) A witness, other than an expert, who has not yet testified, may not be present without leave of the President, Designated Judge or Trial Chamber when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.
- (E) A witness may refuse to make any statement which might tend to incriminate him or her. The President, Designated Judge or Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony under solemn declaration.
- (F) The President, Designated Judge or Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:
 - (i) Make the interrogation and presentation effective for the ascertainment of the truth; and
 - (ii) Avoid the wasting of time.

Rule 91: False Testimony under Solemn Declaration

- (A) The President, Designated Judge or a Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.

- (B) If the President, Designated Judge or a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, the President, Designated Judge or Chamber may follow the procedure, as applicable, in Rule 77.
- (C) The maximum penalty for false testimony under solemn declaration shall be a fine of 2 million Leones or a term of imprisonment of 2 years, or both. The payment of any fine imposed shall be made to the Registrar to be held in the separate account referred to in Rule 77(H).
- (D) Sub-Rules (A) to (C) shall apply to a person who knowingly and wilfully makes a false statement in a written statement which the person knows, or has reason to know, may be used in evidence in proceedings before the Special Court or Residual Special Court.

Rule 92: Confessions

Where a confession by the suspect or the accused given during questioning by the Prosecutor complies with the requirements of Rule 43 and Rule 63, there is a rebuttable presumption that the confession was given freely and voluntarily.

Rule 92bis: Alternative Proof of Facts

- (A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

Rule 92ter: Other Admission of Written Statements and Transcripts

The Designated Judge or 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 Special Court 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 92quater: Unavailable Persons

- (A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92bis, if the Trial Chamber:
 - (i) is satisfied of the person's unavailability as set out above; and

- (ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
- (B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

Rule 93: Evidence of Consistent Pattern of Conduct

- (A) Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the RSCSL Statute may be admissible in the interests of justice.
- (B) Acts tending to show such a pattern of conduct shall be disclosed by the Prosecutor to the Defence pursuant to Rule 66.

Rule 94: Judicial Notice

- (A) A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
- (B) At the request of a party or of its own motion, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from proceedings of the Special Court or other proceedings of the Residual Special Court relating to the matter at issue in the current proceedings.

Rule 94bis: Testimony of Expert Witnesses

- (A) Notwithstanding the provisions of Rule 66(A), Rule 73bis (B)(iv)(b) and Rule 73ter (B)(iii)(b), the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.
- (B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:
 - (i) It accepts the expert witness statement; or
 - (ii) It wishes to cross-examine the expert witness.
- (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

Rule 95: Exclusion of Evidence

No evidence shall be admitted if its admission would bring the administration of justice into serious disrepute.

Rule 96: Rules of Evidence in Cases of Sexual Assault

In cases of sexual violence, the Residual Special Court shall be guided by and, where appropriate, apply the following principles:

- (i) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (ii) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (iii) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (iv) Evidence relating to the sexual nature of the prior or subsequent conduct of a victim or witness will only be admissible in exceptional circumstances and after notice has been given to the Court and the Parties. If such evidence is admitted, it may not be the basis for an inference about the credibility, character or predisposition to sexual availability of that victim or witness.

Rule 97: Lawyer-Client Privilege

All communications between lawyer and client shall be regarded as privileged, and consequently disclosure cannot be ordered, unless:

- (i) The client consents to such disclosure;
- (ii) The client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure; or
- (iii) The client has alleged ineffective assistance of counsel, in which case the privilege is waived as to all communications relevant to the claim of ineffective assistance.

Rule 98: Motion for Judgment of Acquittal

If, after the close of the case for the prosecution, there is no evidence capable of supporting a conviction on one or more counts of the indictment, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgment of acquittal on those counts.

Section 4: Sentencing Procedure

Rule 99: Status of the Acquitted Person

- (A) In case of acquittal, the Residual Special Court shall, subject to Sub-Rule (B) below, order the release of the accused.
- (B) If, at the time the acquittal is pronounced, the Prosecutor advises the Trial Chamber in open court of his or her intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, on application of the Prosecutor, issue an order for the continued detention of the accused, pending the determination of the appeal. In such a situation, the accused may apply for bail, with the provisions of Rule 65 applying *mutatis mutandis* to such an application.

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 accused 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 judgment in public and in the presence of the convicted person, subject to Rule 102(B).

Rule 101: Penalties

- (A) A person convicted by the Residual Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
- (B) In determining the sentence, the President, Designated Judge or Trial Chamber shall take into account the factors mentioned in Article 20(2) of the RSCSL Statute, as well as such factors as:
 - (i) Any aggravating circumstances;
 - (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction; and
 - (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the RSCSL Statute.
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- (D) Any period during which the convicted person was detained in custody pending his transfer to the Residual Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

Rule 102: Status of the Convicted Person

- (A) Subject to the Trial Chamber's directions in terms of Rule 101, the sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal is given, the enforcement of the judgment shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64.
- (B) If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is for any other reason at liberty, and he or she is not present when the judgment is pronounced, the Trial Chamber shall issue a warrant for his or her arrest. On arrest, he or she shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed.

Rule 103: Place of Imprisonment

- (A) Pursuant to Article 23 of the RSCSL Statute, imprisonment may be served in Sierra Leone or another State that has concluded an agreement to that effect with the Special Court or the Residual Special Court. The Residual Special Court may conclude agreements with other countries willing to accept and imprison convicted persons.
- (B) The place of imprisonment for each convicted person shall be designated by the President.
- (C) Transfer of the convicted person to the place of imprisonment shall be effected as soon as possible after the time limit for appeal has lapsed.

Rule 104: Forfeiture of Property

- (A) After a judgment of conviction containing a specific finding as provided in Rule 88(B) the Trial Chamber, at the request of the Prosecutor or at its own initiative, may hold a special hearing to determine the matter of property forfeiture, including the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.
- (B) The determination may extend to such property or proceeds, even in the hands of third parties not otherwise connected with the crime for which the convicted person has been found guilty. Such third parties shall be entitled to appear at the hearing.
- (C) The Trial Chamber may order the forfeiture of any property, proceeds and any assets it finds has been acquired unlawfully or by criminal conduct, and order its return to the rightful owner, or its transfer to the State of Sierra Leone, as circumstances may require. If the identified property is located in a State other than Sierra Leone, the Trial Chamber shall direct the Registry to notify any relevant intergovernmental organisation or State.

Rule 105: Compensation to Victims

- (A) The Registrar shall transmit to the competent authorities of the States concerned the judgment finding the accused guilty of a crime which has caused injury to a victim.
 - (B) Pursuant to the relevant national legislation, a victim or persons claiming through him or her may bring an action in a national court or other competent body to obtain compensation.
 - (C) For the purposes of a claim made under Sub-Rule (B) the judgment of the Special Court shall be final and binding as to the criminal responsibility of the convicted person for such injury, pursuant to section 45 of the Special Court Agreement, 2002 (Ratification) Act, 2002.
 - (D) If the Residual Special Court receives information about the location of tangible property that provides a reasonable basis to believe the proceeds are connected to any crimes within the jurisdiction of the Special Court or Residual Special Court, the Registrar shall make the appropriate notifications, including to the Government of Sierra Leone and the appropriate authority within any relevant inter-governmental organisation or State.
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Part VII - APPELLATE PROCEEDINGS

Rule 106: General Provisions

- (A) Pursuant to Article 21 of the RSCSL Statute, the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:
 - (a) A procedural error;
 - (b) An error on a question on law invalidating the decision; or
 - (c) An error of fact which has occasioned a miscarriage of justice.
- (B) The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.
- (C) The Rules that govern proceedings in the Trial Chambers shall apply as appropriate to proceedings in the Appeals Chamber.

Rule 107: Practice Directions

The President in consultation with the Presiding Judge of the Appeals Chamber may issue Practice Directions addressing detailed aspects of the conduct of proceedings before the Appeals Chamber. Practice Directions obtaining at the time of the closure of the Special Court shall apply *mutatis mutandis* to proceedings before any Appeals Chamber of the Residual Special Court.

Rule 108: Notice of Appeal

- (A) Subject to Sub-Rule (B), a party seeking to appeal a judgment or sentence shall, not more than 14 days from the receipt of the full judgment and sentence, file with the Registrar and serve upon the other parties a written notice of appeal, setting forth the grounds.
- (B) In appeals pursuant to Rules 77 and 91, the notice and grounds of appeal shall be filed within seven days of the receipt of the decision.
- (C) In appeals pursuant to Rules 46, 65 and 73(B), the notice and grounds of appeal shall be filed within 7 days of the receipt of the decision to grant leave.

Rule 109: Pre-Hearing Judge

- (A) The Presiding Judge of the Appeals Chamber may, after the filing of the notice of appeal, designate a Pre-Hearing Judge from among the members of the Appeals Chamber to supervise all appeals arising from a particular trial.
- (B) The Pre-Hearing Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing.
- (C) The Pre-Hearing Judge may, as soon as possible after the filing of submissions pursuant to Rules 111, 112, and 113 below, convene a hearing or an exchange between the parties to the appeal. The Pre-Hearing Judge may:

- (i) Strike out any ground of appeal that does not come within the appellate jurisdiction conferred by Article 21 of the RSCSL Statute, provided that any party aggrieved by such an order may within 14 days apply for its review by the Appeals Chamber; and
 - (ii) Set a date, in due course, for the substantive appeal hearing after consultation with the President and Registrar, unless he or she decides to recommend to the Appeals Chamber that no oral hearing is necessary and the Appeals Chamber accepts his or her recommendation and decides to rule on the appeal solely on the written submissions of the parties.
- (D) The Pre-Hearing Judge shall record the points of agreement and disagreement between the parties on matters of law and fact. In this connection, he or she may order the parties to file further written submissions with the Pre-Hearing Judge or the Appeals Chamber.
- (E) The Appeals Chamber may of its own initiative exercise any of the functions of the Pre-Hearing Judge.

Rule 110: Record on Appeal

The record on appeal shall consist of the parts of the trial record as designated by the Pre-Hearing Judge, as certified by the Registrar.

Rule 111: Appellant's Submissions

An Appellant's submissions shall be served on the other party or parties and filed with the Registrar within twenty-one days of the notice of appeal pursuant to Rule 108.

Rule 112: Respondent's Submissions

A Respondent's submissions shall be served on the other party or parties and filed with the Registrar within fourteen days of the filing of the Appellant's submissions.

Rule 113: Submissions in Reply

- (A) An Appellant may file submissions in reply within five days after the filing of the Respondent's submissions.
- (B) No further submissions may be filed except with leave of the Appeals Chamber.

Rule 114: Date of Hearing

- (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

- (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 or on a date ordered by the Pre-Hearing Judge. 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 or she 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 116: Extension of Time Limits

The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause. Where the Appeals Chamber is seised of such a motion at a time that it is not fully constituted due to the unavailability of one of its Members for any reason, the remaining Judges of the Appeals Chamber or a Judge designated by them, may rule on the motion if satisfied that it is in the interests of justice to do so.

Rule 117: Expedited Procedure

- (A) A reference under Rule 72(E) or (F), or any appeal under Rule 46, 65, 73(B), 77 or 91 shall be heard expeditiously by a bench of at least three Appeals Chamber Judges and may be determined entirely on the basis of written submissions.
- (B) All time limits and other procedural requirements not otherwise provided for in these Rules shall be fixed by a practice direction issued by the Presiding Judge..
- (C) Unless as otherwise ordered, Rules 109 to 114 and 118(D) shall not apply to such procedures.

Rule 118: Judgment on Appeal

- (A) The Appeals Chamber shall pronounce judgment on the basis of the record on appeal and any oral arguments and additional evidence that has been presented to it.
- (B) The judgment shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
- (C) In appropriate circumstances the Appeals Chamber may order that the accused be retried before the Trial Chamber concerned or another Trial Chamber.
- (D) If the Appeals Chamber reverses an acquittal of an accused by the Trial Chamber on any count, the Appeals Chamber shall proceed to sentence the accused in respect of that offence.

(E) The judgment shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.

(F) The written judgment shall be filed and registered with the Registry.

Rule 119: Status of the Accused Following Judgment on Appeal

(A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.

(B) Where the accused is not present when the Appeal judgment is due to be delivered, it may, unless it pronounces his acquittal, order his arrest or transfer to the Residual Special Court.

Part VIII – REVIEW PROCEEDINGS

Rule 120 – Request for Review

(A) Where, following a final judgment, a new fact has been discovered which was not known to the moving party at the time of the proceedings before the Trial Chamber or Appeals Chamber of the Special Court or Residual Special Court, and which could have been a decisive factor in reaching the decision, the convicted person, or the Prosecutor may submit an application for a review of the judgment.

(B) An application for review shall be submitted to the President.

(C) Any response to an application for review shall be filed within forty days of the filing of the application.

(D) Any reply shall be filed within fifteen days after the filing of the response.

Rule 121- Preliminary Examination

The President may reject the application on the grounds of it being unfounded. Otherwise, the President may, as appropriate, reconvene the original Trial Chamber or if not possible, convene a panel of Judges pursuant to Article 13 (1).

Rule 122 - Appeals

The judgment of a Trial Chamber on review may be appealed. In the event of an appeal, the President may as appropriate, reconvene the original Appeals Chamber or, if not possible, convene a panel of Judges pursuant to Article 13 (2).

Part IX - PARDON, COMMUTATION OF SENTENCE AND EARLY RELEASE

Rule 123: Notification by States)

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall, in accordance with Article 24 of the RSCSL Statute or the relevant article of the Enforcement of Sentences Agreement between the State concerned and the Special Court or Residual Special Court, notify the Registrar.

Rule 124: Pardon, Commutation of Sentence and Early Release

There shall only be pardon, commutation of sentence or early release if the President of the Residual Special Court, in accordance with Article 24 of the RSCSL Statute and in consultation with the Judges who imposed the sentence where possible, and after considering the position of the Prosecutor, which shall incorporate the interests of Prosecution witnesses and victims, as well as the convicted person individually or through counsel, so decides on the basis of the interests of justice and the general principles of law. An early release shall only occur after the prisoner has served a minimum of two-thirds of his or her original sentence.