

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

**Submitted by the Independent Expert  
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## I. EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. INTRODUCTION

### A. The mandate of the Independent Expert and its limits

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

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

16. It follows that I will take the current status of judicial proceedings as a fact: two trials are about to terminate, a third one is likely to end in December 2007, and the Charles Taylor trial is set to start in The Hague in April 2007.<sup>1</sup> Appellate proceedings are likely to begin in the first half of 2007, as soon as the first trial judgments and, potentially, sentencing judgments are delivered. Starting from this basic premise, I will concentrate on proposing measures designed to:

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

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

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

**B. Non-interference in judicial independence**

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

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

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

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

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

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

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

### **C. Cooperation lent by the relevant authorities**

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

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

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

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

#### A. Main features

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

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

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

#### B. Merits and challenges of the Special Court

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

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

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

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

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

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

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

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

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

*i. Location*

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

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

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

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

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

## *ii. Insecure funding*

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

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

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

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

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

### *iii. Remote Appeals Chamber*

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

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

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

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

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

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

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

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

#### *iv. Lack of judicial leadership*

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

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

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

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

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

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

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

*v. Insufficient contribution of the Defence Office*

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

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

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

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

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<sup>8</sup> Rules of Procedure and Evidence, Rule 33 (A).

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

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

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<sup>9</sup> Rules of Procedure and Evidence, Rules 72(E), 72(F), 100.

## IV. ASSESSMENT OF JUDICIAL OUTPUT AND PRODUCTIVITY

### A. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B. Factors influencing the duration of judicial proceedings**

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

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

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

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

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

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

*i. Inherent reasons shared by all international criminal courts*

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

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

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

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

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

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

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

#### *ii. The adversarial model*

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

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

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

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

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

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

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

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

### *iii. External factors*

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

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

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

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

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

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

#### *iv. Insufficient judicial management*

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

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

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

### **C. Use of courtroom space and resources**

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

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

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

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

## V. PROPOSALS FOR AMELIORATING THE FUNCTIONING OF THE SPECIAL COURT

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

### A. Ensuring judicial leadership and a more efficient central management

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

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

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

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

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<sup>19</sup> Rules of Procedure and Evidence, Rule 23 (B).

<sup>20</sup> Rules of Procedure and Evidence, Rule 23 (C).

<sup>21</sup> Rules of Procedure and Evidence, Rule 33 (A).

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

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

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

## **B. Enhancing the efficiency of the proceedings**

### ***i. Improving trial and appeal management***

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

100. Hence, my suggestions were aimed at:

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

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

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

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

**(a) Reducing the charges preferred by the prosecution**

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

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

**(b) Managing the pre-trial phase**

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

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

**(c) Admitting written evidence**

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

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

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

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

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

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

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

**(e) Ensuring Expeditious and Fair Appellate Proceedings**

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

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

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

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

**(f) Exchanging experience with other international Judges**

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

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

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

***ii. Providing adequate legal resources to Chambers***

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

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

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

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

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

**(a) Augmenting the Appeals Chamber's legal support**

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

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

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

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

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

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

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

**(c) Recruiting experienced staff**

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

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

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

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

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

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

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

**(d) Improving working methods in Chambers**

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

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

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

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

**(e) Improving the resources available to Chambers**

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

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

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

### **C. Improving the resources of the Defence**

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

#### ***i. Providing adequate remuneration***

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

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

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

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

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

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

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

#### *ii. Increasing the availability of logistical resources*

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

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

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

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

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

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

### *iii. Reducing administrative obstacles*

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

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

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

### *iv. Upgrading the substantive legal role of the Defence Office*

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

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

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

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

*v. Enhancing the appellate expertise of the defence teams*

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

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

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

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<sup>27</sup> Statute of the Special Court, Article 20(3).

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

#### **D. Maximizing courtroom resources**

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

##### ***i. Overall Court efficiency in decision making***

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

158. The scheduling of the AFRC decision on motion for judgment of acquittal illustrates the importance of advance planning of key trial steps.<sup>28</sup> When Prosecution witness TF1-217 finished his testimony on 17 October 2005, the Prosecution was not in a position to conclude its case because it was waiting for a number of outstanding decisions from the Trial Chamber. As a result of these decisions, one witness was recalled and heard on 7 November 2005 and the Prosecution rested its case on 21 November 2005. From this date, the defence was allotted three weeks to file a motion seeking a judgment of acquittal. The Prosecution was allowed three weeks to respond to the motion and the defence had one further week to reply. According to this schedule, even though the case was essentially concluded on 17 October 2005, the filings for the motion were not complete until 31 January 2006. Part of this delay was caused by the intervening judicial recess. The decision on the motion was eventually rendered on 31 March 2006. The Trial Chamber and the parties then began to prepare the schedule for the defence cases, which started on 5 June 2006.<sup>29</sup> Aside from a few status conferences, the second courtroom was not in regular use from 17 October 2005 until 5 June 2006.

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

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

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

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

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

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

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

#### *ii. Communication with the parties and the Registry*

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

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

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

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

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

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

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

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

### ***iii. Enforcing the schedule***

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

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

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

## **E. Enhancing good management**

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

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

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

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

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

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

*i. Fostering communication within the Registry*

**(a) Administrative Instructions may impede communication**

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

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

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

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

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

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

**(b) Insufficient transparency may obstruct progress**

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

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

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

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

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

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

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

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

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

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

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

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

**(c) The need to promote more trust**

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

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

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

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

***ii. Combating staff turnover***

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

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

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<sup>37</sup> Information Circular no. 024, Delegation of Authority, 21 September 2006.

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

193. The perception of job insecurity is one of the biggest disincentives to joining the Court and one of the strongest incentives for staff to leave the Court. It is well known that the Special Court has a limited mandate and that it will be winding down over the next few years. The Completion Strategy document on the Special Court's website indicates that the first two trials and appeals would be finished in mid-2006 and the third appeal would be completed in early to mid-2007.<sup>38</sup> These dates are grossly out of step with the current milestones. No effort has been made to communicate the accurate projections to the public, including prospective staff. Although the current Completion Strategy has been recently communicated to Section Chiefs, many staff remain unaware of the new milestones. Many staff members also fear that the financial insecurity of the Court could put an earlier stop to the institution. These perceptions prevail even in light of the fact that the Special Court will still be in scaled-down operation in the course of 2009.

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

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

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

#### **(a) Implementing the Personnel Policy**

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

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

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

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

### **(b) Offering training incentives**

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

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

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

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

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<sup>39</sup> SCSL Completion Strategy-Personnel Policy, 22 March 2006, para. 37.

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

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

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

### *iii. Preventing discrimination and abuse*

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

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

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

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

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

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

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

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

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

#### **F. Improving conditions of detention of indictees**

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

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

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

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

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

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

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

## VI. PROBLEMS RELATING TO THE TAYLOR TRIAL IN THE HAGUE

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

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

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

### A. Strategic and operational plans should be worked out

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

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

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

would require much longer proceedings.<sup>44</sup> No clear direction was provided by senior management.

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

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

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

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

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

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

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

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

### **B. An Alternate Judge should be appointed**

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

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

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

### **C. Prosecution concerns should be addressed**

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

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

<sup>46</sup> Transcript of Status Conference, 22 September 2006, pp. 3–4.

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

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

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

#### **D. Defence issues should be resolved**

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

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

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

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<sup>47</sup> Transcript of Status Conference, 22 September 2006, p. 4.

### **E. Potential problems with witness movement**

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

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

### **F. Expanding outreach from The Hague to Liberia**

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

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

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

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<sup>48</sup> United Nations Security Council Resolution 1688, 16 June 2006, para. 6.

<sup>49</sup> *Prosecutor v. Taylor*, Order Changing Venue of Proceedings, June 2006.

## VII. COMPLETION STRATEGY

### A. Milestones of the remaining years

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

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

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

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

## **B. What should be done**

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

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

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

### ***i. Securing adequate funding***

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

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

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

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

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

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

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

### *ii. Planning for Appeals*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *iii. Setting up the residual mechanism*

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

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

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

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

*iv. Laying the foundations for a legacy*

**(a) Downsizing staff in a reasonable way**

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

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

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

**(b) Training local staff**

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

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

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

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

### **(c) Extending the Outreach Program**

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

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

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

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

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

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

**(d) Improving the Court’s website**

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

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

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

## VIII. THE SPECIAL COURT'S LEGACY

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

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

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

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

### A. Use of the Court's physical infrastructures

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

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

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

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

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

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

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

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

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

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

**C. Supporting trials of mid-level defendants**

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

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

**D. Reaching out to the Sierra Leonean legal profession**

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

**E. Redeploying Local Staff**

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

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

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

## IX. SUMMING UP OF CONCLUSIONS

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

### A. Merits of the Special Court that should be enhanced

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

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

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

### B. Major shortcomings

#### i. *"Shoestring justice"*<sup>62</sup>

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

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

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

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

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

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

### *ii. Lack of a strong judicial leadership from the outset*

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

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

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

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

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

#### *iv. Other failings*

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

## **X. RECOMMENDATIONS**

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

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

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

### **II. ENHANCING JUDICIAL LEADERSHIP**

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

### **III. MAXIMIZING THE EFFICIENCY OF THE PROCEEDINGS**

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

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

#### **IV. BOLSTERING THE DEFENCE**

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

#### **V. ENHANCING GOOD MANAGEMENT**

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

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

#### **VI. PREPARING THE TAYLOR CASE EFFICIENTLY**

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

#### **VII. WORKING OUT A WATERTIGHT COMPLETION STRATEGY**

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

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

#### **VIII. FORGING AN ENDURING LEGACY**

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

## LIST OF ANNEXES

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