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Basic Legal Texts of the Special Court for Sierra Leone

RULES OF PROCEDURE AND EVIDENCE

Amended on 7 March 2003
Amended on 1 August 2003
Amended on 30 October 2003
Amended on 14 March 2004
Amended on 29 May 2004
Amended on 14 May 2005
Amended on 13 May 2006

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Part I - GENERAL PROVISIONS

Rule 1: Entry into Force *(amended 7 March 2003)*

These Rules of Procedure and Evidence as first amended on 7 March 2003, are applicable pursuant to Article 14 of the Statute of the Special Court for Sierra Leone, and entered into force on 12 April 2002.

Rule 2: Definitions *(amended 29 May 2004)*

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

Accused: A person against whom one or more counts in an indictment have been approved in accordance with Rule 47;

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

Arrest: The act of apprehending and taking a suspect or an accused into custody;

Council of Judges: The Council of Judges as referred to in Rule 23;

Defence: The Accused and/or the Accused's counsel;

Defence Office: The Office established by the Registrar for the purpose of ensuring the rights of suspects and accused in accordance with the Statute and Rules of Procedure and Evidence;

Deputy Prosecutor: The Deputy Prosecutor appointed pursuant to Article 3 of the Agreement;

Designated Judge: A Judge designated for a certain period of time pursuant to Rule 28;

Detention Facility: The Detention Facility of the Special Court shall include all premises where suspects or accused are detained in accordance with these Rules and with the Rules of Detention;

Headquarters Agreement: The Headquarters Agreement between the Republic of Sierra Leone and the Special Court for Sierra Leone signed in Freetown on 21 October 2003;

- Investigation:** All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence, whether before or after approval of an indictment;
- Management Committee:** The Committee established pursuant to Article 7 of the Agreement;
- Party:** The Prosecutor or the Defence;
- Principal Defender:** The Principal Defender as appointed by the Registrar;
- Pre-Hearing Judge:** A Judge of the Appeals Chamber responsible for the pre-hearing proceedings of an appeal as designated pursuant to Rule 109;
- President:** The President of the Special Court as referred to in Article 12 of the Statute;
- Prosecutor:** The Prosecutor appointed pursuant to Article 3 of the Agreement;
- Public Holiday:** A Public Holiday shall be an official public holiday of the Republic of Sierra Leone or of the United Nations;
- Registrar:** The Registrar appointed pursuant to Article 4 of the Agreement;
- Regulations:** The provisions framed by the Prosecutor pursuant to Rule 37 (A) for the purpose of directing the functions of the Office of the Prosecutor;
- Rules:** The Rules referred to in Rule 1, as amended and currently in force;
- Rules of Detention:** Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Special Court for Sierra Leone or otherwise Detained by the Special Court;
- Special Court:** The Special Court for Sierra Leone established by the Agreement and consisting of the following organs: the Chambers, the Office of the Prosecutor and the Registry;
- Statute:** The Statute of the Special Court annexed to the Agreement;
- Suspect:** A person concerning whom the Prosecutor possesses reliable information which tends to show that he may

have committed a crime over which the Special Court has jurisdiction in accordance with Article 1 of the Statute;

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

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

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

Rule 3: Working Language *(amended 7 March 2003)*

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

Rule 4: Sittings away from the Seat of the Special Court *(amended 7 March 2003)*

A Chamber or a Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President. In so doing, audio or video-link technology, email or other available electronic instruments may be used if authorised by the President or Presiding Judge.

Rule 5: Non-compliance with the Rules *(amended 29 May 2004)*

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

Rule 6: Amendment of the Rules *(amended 29 May 2004)*

- (A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor, the Registrar, the Principal Defender and by the Sierra Leone Bar

Association or any other entity invited by the President to make proposals for amendments.

- (B) Proposals for amendment may be adopted at a Plenary Meeting of the Special Court.
- (C) An amendment of the Rules may be adopted otherwise than as stipulated in Sub-Rule (B) above, provided it is approved unanimously by any appropriate means either done in writing or confirmed in writing.
- (D) An amendment shall, unless otherwise indicated, enter into force immediately. The Registrar shall publish the amendment by appropriate means.

Rule 7: Time limits (*amended 1 August 2003 and 13 May 2006*)

- (A) Unless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, counsel for the Accused or the Prosecutor as the case may be.
- (B) Where a time limit is expressed in days, only ordinary calendar days shall be counted. Weekdays, Saturdays, Sundays and Public Holidays shall be counted as days. However, should the time limit expire on a Saturday, Sunday, Public Holiday or a day falling within judicial recess, the time limit shall automatically be extended to the subsequent working day.
- (C) Unless otherwise ordered by a Chamber or a Designated Judge, any response to a motion shall be filed within ten days. Any reply to the response shall be filed within five days.

Rule 7bis: Motions for extension of time (*adopted 14 May 2005*)

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

Part II - COOPERATION FROM STATES AND JUDICIAL ASSISTANCE

Rule 8: Requests and Orders *(amended 1 August 2003)*

- (A) The Government of Sierra Leone shall cooperate with all organs of the Special Court at all stages of the proceedings. Requests by any organ of the Special Court shall be complied with in accordance with Article 17 of the Agreement. An order issued by a Chamber or by a Judge shall have the same force or effect as if issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone court.
- (B) Except in cases to which Rule 11, 13, 59 or 60 applies, where a Chamber or a Judge is satisfied that the Government of Sierra Leone has failed to comply with a request made in relation to any proceedings before that Chamber or Judge, the Chamber or Judge may refer the matter to the President to take appropriate action.
- (C) The Special Court may invite third States not party to the Agreement to provide assistance on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.
- (D) Where a third State, which has entered into an ad hoc arrangement or an agreement with the Special Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the President may take appropriate action.
- (E) Where it appears to the Prosecutor that a crime within the jurisdiction of the Special Court is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, he may request the State to forward to him all relevant information in that respect. The Government of Sierra Leone shall transmit to him such information forthwith in accordance with Article 17 of the Agreement.

Rule 9: Application for Deferral *(amended 7 March 2003)*

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

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

- (iv) Fall within Rule 72(B),

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

Rule 10: Order or Request for Deferral (*amended 1 August 2003*)

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

Rule 11: Non-compliance with an Order for Deferral (*amended 7 March 2003*)

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

Rule 12: Determinations of Courts of any State (*amended 7 March 2003*)

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

Rule 13: Double Jeopardy (*amended 7 March 2003*)

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

Part III - ORGANIZATION OF THE SPECIAL COURT

Section 1: The Judges

Rule 14: Solemn Declaration (*amended 14 March 2004*)

- (A) Before taking up his duties each Judge shall make the following solemn declaration:

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

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

Rule 15: Disqualification of Judges (*amended 29 May 2004*)

- (A) A Judge may not sit at a trial or appeal in any case in which his impartiality might reasonably be doubted on any substantial ground.
- (B) Any party may apply to the Chamber of which the Judge is a member for the disqualification of the said Judge on the above ground.
- (C) Where the Judge voluntarily withdraws from the Trial Chamber, the President may assign the alternate judge, in accordance with Article 12(4) of the Statute, or another Trial Chamber Judge to sit in his place. Where a judge voluntarily withdraws from the Appeals Chamber, the Alternate Judge may sit in his place.
- (D) Where it is alleged that a Judge is not fit to sit as member of the Special Court, the matter shall be referred from the Chamber to the Council of Judges.
- (E) Should the Council of Judges determine that:
- (i) the allegations contained in the application appear to be of a serious nature, and
 - (ii) there appears to be a *prima facie* basis for such application,
- it shall refer the matter to the Plenary Meeting which will consider it and make a recommendation to the body which appointed the Judge, if required.
- (F) At each stage, the challenged Judge shall be entitled to present his comments on the matter, but shall not take part in the deliberations and in the decision thereof.
- (G) The Judge who approves an indictment or who is involved with any pre-trial or interlocutory matter against a suspect or accused, shall not for that reason be disqualified from sitting as a member of a Chamber for the trial or appeal of that accused.

Rule 16: Absence and Resignation (amended 29 May 2004)

- (A) If a Judge is unable to continue sitting in a proceeding, trial or appeal which has partly been heard for a short duration and the remaining Judges are satisfied that it is in the interests of justice to do so, those remaining Judges may order that the proceeding, trial or appeal continue in the absence of that Judge for a period of not more than five working days.
- (B) If a Judge is, for any reason, unable to continue sitting in a proceeding, trial or appeal which has partly been heard for a period which is or is likely to be longer than five days, the President may designate an alternate Judge as provided in Article 12(4) of the Statute.
 - (i) If an alternate Judge is not available as provided in Article 12(4) of the Statute, and the remaining Judges are satisfied that it would not affect the decision either way, the remaining Judges may continue in the absence of that Judge.
 - (ii) Where a trial or appeal chamber proceeds in the absence of one Judge, in the event that the decision is split evenly a new proceeding, trial or appeal shall be ordered.
- (C) If a Judge is, for any reason, unable to sit in a proceeding, trial or appeal which has not yet been heard but has been scheduled, the President may designate an alternate Judge as provided in Article 12 (4) of the Statute.
- (D) A Judge who decides to resign shall give notice of his resignation in writing to the President, who shall transmit it to the Secretary-General of the United Nations and the Government of Sierra Leone.

Rule 17: Precedence (amended 7 March 2003)

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

Section 2: The Presidency

Rule 18: Election of the President (amended 14 March 2004)

- (A) The Presiding Judge of the Appeals Chamber shall be the President of the Special Court.

- (B) The Presiding Judge of the Appeals Chamber shall be elected for a non renewable term of one year or such shorter term as shall coincide with the duration of his term of office as a Judge.
- (C) If the President ceases to be a member of the Special Court or resigns his office before the expiration of his term, the Judges of the Appeals Chamber shall elect from among their number a successor for the remainder of the term.
- (D) The Presiding Judge of the Appeals Chamber shall be elected by a majority of the votes of the Judges appointed to the Appeals Chamber.
- (E) This Rule shall be deemed to have entered into force on the 7th of March 2003.

Rule 19: Functions of the President *(amended 7 March 2003)*

- (A) The President shall preside at all plenary meetings of the Special Court, coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Agreement, the Statute and the Rules.
- (B) The President may after appropriate consultation issue Practice Directions, consistent with the Agreement, the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Special Court.

Rule 20: The Vice-Presidency *(amended 7 March 2003)*

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

Rule 21: Functions of the Vice-President *(amended 29 May 2004)*

The Vice-President, who's term of office shall be four months, shall exercise the functions of the President in case the latter is absent from Sierra Leone or is unable to act.

Rule 22: Replacements *(amended 7 March 2003)*

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

Section 3: Internal Functioning of the Special Court

Rule 23: The Council of Judges (amended 29 May 2004 and 13 May 2006)

- (A) There shall be a Council of Judges which shall be composed of the President and the Presiding Judges of the Trial Chambers.
- (B) The President shall consult the Council of Judges on all major questions or matters relating to the functioning of the Special Court.
- (C) In order to ensure the coordination of the activities of all organs of the Special Court, the Council of Judges, or its representative, shall meet with the Registrar, the Prosecutor and the Principal Defender, or their representatives.
- (D) The President shall consult the Council of Judges with respect to the functions set forth in Rule 19 and 33, and particularly all the Registry activities relating to the administrative support provided to the Chambers.

Rule 24: Plenary Meetings of the Special Court (amended 7 March 2003)

The Judges shall meet in plenary to:

- (i) Adopt and amend the Rules;
- (ii) Adopt the Annual Report provided for in Article 25 of the Statute;
- (iii) Decide upon matters relating to the internal functioning of the Chambers and the Special Court;
- (iv) Exercise any other functions provided for in the Agreement, the Statute or in the Rules.

Rule 25: Dates of Plenary Meetings (amended 7 March 2003)

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

Rule 26: Quorum and Vote (amended 14 May 2005)

- (A) The quorum for each Plenary Meeting of the Special Court shall be seven Judges, including at least one judge from each Trial Chamber.
- (B) Subject to Rule 6(A) and (B) and Rule 18(C), the decisions of the Plenary Meeting of the Special Court shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge who acts in his place shall have a casting vote.

Section 4: The Chambers

Rule 26bis: The Chambers *(adopted 29 May 2004)*

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.

Rule 27: The Trial Chambers *(amended 14 May 2005)*

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

Rule 27bis: The Appeals Chamber *(amended 29 May 2004)*

- (A) The Presiding Judge of the Appeals Chamber shall coordinate the work of the Chamber and liaise with the Registrar on matters affecting the Appeals Chamber and will exercise such other functions as may be conferred on him by the Agreement, the Statute, and the Rules.
- (B) The Presiding Judge may issue, after appropriate consultations, Practice Directions in relation to the Appeals Chamber.
- (C) The provisions of Rule 17 will apply in the event of the Presiding Judge being unable to carry out his functions.
- (D) Unless otherwise provided in these Rules, the Appeals Chamber shall, for each appeal, be composed of all its five members.

Rule 28: Designated Judges *(amended 1 August 2003 and 13 May 2006)*

After consultation with the Judges concerned, the President shall designate for a given period such Judges as necessary to whom indictments, warrants, and all other pre-trial matters not pertaining to a case already assigned to a Chamber, shall be transmitted for review. The Registrar shall publish the information by appropriate means and as soon as possible.

Rule 29: Deliberations

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

Section 5: The Registrar

Rule 30: Appointment of the Registrar *(amended 7 March 2003)*

The Secretary-General of the United Nations, in consultation with the President of the Special Court, shall appoint a Registrar.

Rule 31: Appointment of the Deputy Registrar and Registry Staff *(amended 7 March 2003)*

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

Rule 32: Solemn Declaration *(amended 7 March 2003)*

The Registrar shall make the following declaration before the President:

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

Rule 33: Functions of the Registrar *(amended 29 May 2004)*

- (A) The Registrar shall assist the Chambers, the Plenary Meetings of the Special Court, the Council of Judges, the Judges and the Prosecutor, the Principal Defender and the Defence in the performance of their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Special Court and shall serve as its channel of communication.
- (B) The Registrar, in the execution of his functions, may make oral or written representations to Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.
- (C) The Registrar, mindful of the need to ensure respect for human rights and fundamental freedoms and particularly the presumption of innocence, shall, with the approval of the Council of Judges, adopt and amend rules governing the detention of persons awaiting Trial or Appeal or otherwise detained by the Special Court and ensure conditions of detention.

- (D) The Registrar may, with the approval of the Council of Judges, issue Practice Directions addressing particular aspects of the practice and procedure in the Registry of the Special Court and in respect of other matters within the powers of the Registrar.

Rule 34: Witnesses and Victims Section *(amended 29 May 2004)*

- (A) The Registrar shall set up a Witnesses and Victims Section which, in accordance with the Statute, the Agreement and the Rules, and in consultation with the Office of the Prosecutor, for Prosecution witnesses, and the Defence Office, for Defence witnesses, shall, amongst other things, perform the following functions with respect to all witnesses, victims who appear before the Special Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:
- (i) Recommend to the Special Court the adoption of protective and security measures for them;
 - (ii) Provide them with adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support;
 - (iii) Ensure that they receive relevant support, counselling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children.
- (B) The Section personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children. Where appropriate the Section shall cooperate with non-governmental and intergovernmental organizations.

Rule 35: Minutes *(amended 7 March 2003)*

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

Rule 36: Cause Book *(amended 7 March 2003)*

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

Section 6: The Prosecutor

Rule 37: Functions of the Prosecutor (amended 7 March 2003)

- (A) The Prosecutor shall perform all the functions provided by the Statute in accordance with the Rules and with such Regulations, consistent with the Agreement and the Statute and the Rules, as may be framed by him.
- (B) The Prosecutor's powers under Parts IV to VIII of the Rules may be exercised by staff members of the Office of the Prosecutor authorized by him, or by any person acting under his direction.

Rule 38: The Deputy Prosecutor (amended 7 March 2003)

The Deputy Prosecutor shall exercise the functions of the Prosecutor in the event of his absence or inability to act or upon the Prosecutor's express instructions.

Part IV - INVESTIGATIONS, RIGHTS OF SUSPECTS AND ACCUSED

Section 1: Investigations

Rule 39: Conduct of Investigations (amended 7 March 2003)

In the conduct of an investigation, the Prosecutor may:

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

Rule 40: Provisional Measures (amended 29 May 2004)

- (A) In case of urgency, the Prosecutor may request any State:

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

Rule 40*bis*: Transfer and Provisional Detention of Suspects (*amended 29 May 2004*)

- (A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by the Designated Judge, a request for the transfer and/or provisional detention of a suspect in the premises of the Detention Facility. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a brief summary of the material upon which the Prosecutor relies.
- (B) The Designated Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:
- (i) The Prosecutor has requested a State to arrest the suspect and to place him in custody, in accordance with Rule 40, or the suspect is otherwise detained by a State;
 - (ii) Where there are provisional charges, and where there is reason to believe that the suspect may have committed a crime or crimes specified in those provisional charges over which the Special Court has jurisdiction; and

- (iii) The Designated Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, physical or mental injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.
- (C) The provisional detention of the suspect may be ordered for a period not exceeding 30 days from the day after the transfer of the suspect to the Detention Facility.
- (D) The order for the transfer and provisional detention of the suspect shall be signed by the Designated Judge and bear the seal of the Special Court. The order shall set forth the basis of the request made by the Prosecutor under Sub-Rule (A), including the provisional charge, and shall state the Designated Judge's grounds for making the order, having regard to Sub-Rule (B). The order, shall also specify the initial time limit for the provisional detention of the suspect and when served on the suspect be accompanied by a statement of his rights, as specified in this Rule and in Rules 42 and 43.
- (E) As soon as possible, copies of the order and of the request by the Prosecutor shall be served upon the suspect and his counsel by the Registrar.
- (F) At the Prosecutor's request indicating the grounds upon which it is made and if warranted by the needs of the investigation, the Designated Judge who made the initial order, or another Designated Judge, may decide, subsequent to an *inter partes* hearing and before the end of the period of detention, to extend the provisional detention for a period not exceeding 30 days.
- (G) At the Prosecutor's request indicating the grounds upon which it is made and if warranted by special circumstances, the Designated Judge who made the initial order, or another Designated Judge, may decide, subsequent to an *inter partes* hearing and before the end of the period of detention, to extend the detention for a further period not exceeding 30 days.
- (H) The total period of provisional detention shall in no case exceed 90 days after the day of transfer of the suspect to the Special Court, at the end of which, in the event the indictment has not been approved and an arrest warrant signed, the suspect shall be released or, if appropriate, be delivered to the authorities of the State to which the request was initially made.
- (I) The provisions in Rules 55(B) to 59 shall apply to the execution of the order for the transfer and provisional detention of the suspect.
- (J) After his transfer to the seat of the Special Court, the suspect, assisted by his counsel, shall be brought, without delay, before the Designated Judge who made the initial order, or another Designated Judge, who shall ensure that his rights are respected.

- (K) During detention, the Prosecutor, the suspect or his counsel may submit to the Trial Chamber all applications relative to the propriety of provisional detention or to the suspect's release.
- (L) Without prejudice to Sub-Rules (C) to (H), the Rules of Detention shall apply to the provisional detention of persons under this Rule.

Rule 41: Preservation of Information

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

Rule 42: Rights of Suspects during Investigation *(amended 7 March 2003)*

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

Rule 43: Recording Questioning of Suspects *(amended 1 August 2003)*

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

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

Section 2: Defence Counsel

Rule 44: Appointment and Qualifications of Counsel (*amended 29 May 2004*)

- (A) Counsel engaged by a suspect or an accused shall file his power of attorney with the Registrar at the earliest opportunity. Subject to verification by the Registrar, a counsel shall be considered qualified to represent a suspect or accused, provided that he has been admitted to the practice of law in a State and practiced criminal law for a minimum of five years.
- (B) In the performance of their duties counsel shall be subject to the relevant provisions of the Agreement, the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Special Court, the Headquarters Agreement, the Code of Professional Conduct and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel.

Rule 45: Defence Office (*amended 14 May 2005*)

The Registrar shall establish, maintain and develop a Defence Office, for the purpose of ensuring the rights of suspects and accused. The Defence Office shall be headed by the Special Court Principal Defender.

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- (A) The Defence Office shall, in accordance with the Statute and Rules, provide advice, assistance and representation to:
- (i) suspects being questioned by the Special Court or its agents under Rule 42, including non-custodial questioning;
 - (ii) accused persons before the Special Court.
- (B) The Defence Office shall fulfil its functions by providing, *inter alia*:
- (i) initial legal advice and assistance by duty counsel who shall be situated within a reasonable proximity to the Detention Facility and the seat of the Special Court and shall be available as far as practicable to attend the Detention Facility in the event of being summoned;
 - (ii) legal assistance as ordered by the Special Court in accordance with Rule 61, if the accused does not have sufficient means to pay for it, as the interests of justice may so require;
 - (iii) adequate facilities for counsel in the preparation of the defence.
- (C) The Principal Defender shall, in providing an effective defence, maintain a list of highly qualified criminal defence counsel whom he believes are appropriate to act as duty counsel or to lead the defence or appeal of an accused. Such counsel, who may include members of the Defence Office, shall:
- (i) speak fluent English;
 - (ii) be admitted to practice law in any State;
 - (iii) have at least 7 years' relevant experience; and
 - (iv) have indicated their willingness and full-time availability to be assigned by the Special Court to suspects or accused.
- (D) Any request for replacement of an assigned counsel shall be made to the Principal Defender. Under exceptional circumstances, the request may be made to a Chamber upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings.
- (E) Subject to any order of a Chamber, Counsel will represent the accused and conduct the case to finality. Failure to do so, absent just cause approved by the Chamber, may result in forfeiture of fees in whole or in part. In such circumstances the Chamber may make an order accordingly. Counsel shall only be permitted to withdraw from the case to which he has been assigned in the most exceptional circumstances. In the event of such withdrawal the Principal Defender shall assign another Counsel who may be a member of the Defence Office, to the indigent accused.

- (F) Notwithstanding Rules 44(A) and 45(C)(iii), the Principal Defender may, in exceptional circumstances, assign as co-counsel, individuals with less than five years admission to the bar of a State.

Rule 45bis: Declaration of Means by the Accused (*amended 1 August 2003*)

- (A) If, after his transfer to the Special Court, the suspect or accused wishes to request legal assistance, he shall make a declaration of his means to the Registrar.
- (B) If a suspect or an accused elects to conduct his own defence, he shall so notify the Registrar in writing at the first opportunity.

Rule 46: Misconduct of Counsel (*amended 29 May 2004*)

- (A) A Chamber may, after a warning, impose sanctions against or refuse audience to a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. This provision is applicable to counsel for the prosecution.
- (B) A Chamber may determine that counsel is no longer eligible to represent a suspect or accused before the Special Court, pursuant to Rule 45. If declared ineligible, removed counsel shall transmit to replacement counsel all materials relevant to the representation.
- (C) Counsel who bring motions, or conduct other activities, that in the opinion of a Chamber are either frivolous or constitute abuse of process may be sanctioned for those actions as the Chamber may direct. Sanctions may include fines upon counsel; non-payment, in whole or in part, of fees associated with the motion or its costs, or such other sanctions as the Chamber may direct.
- (D) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his State of admission.
- (E) If a counsel assigned pursuant to Rule 45 is sanctioned by being refused audience, the Chamber shall instruct the Registrar to replace the counsel.
- (F) This Rule is applicable to counsel for the Prosecution as well as counsel appearing for the Defence and to any counsel appearing as *amicus curiae*.
- (G) The Registrar may set up a Code of Professional Conduct enunciating the principles of professional ethics to be observed by counsel having right of audience before the Special Court, subject to adoption by the Plenary Meeting. Amendments to the Code shall be made in consultation with representatives of the Prosecutor and Defence counsel, and subject to adoption by the Plenary Meeting. If the Registrar has strong grounds for

believing that counsel has committed a serious violation of the Code of Professional Conduct so adopted, he may report the matter to the President for appropriate action under this rule.

- (H) Decisions made by a Trial Chamber under Sub-Rules (A) to (C) above may be appealed with leave from that Chamber. Where such leave is refused, the Party may apply to a bench of at least three Appeals Chamber Judges for leave.

Part V - PRE-TRIAL PROCEEDINGS

Section 1: Indictments

Rule 47: Review of Indictment (*amended 1 August 2003*)

- (A) An indictment submitted in accordance with the following procedure shall be approved by the Designated Judge.
- (B) The Prosecutor, if satisfied in the course of an investigation that a suspect has committed a crime or crimes within the jurisdiction of the Special Court, shall prepare and submit to the Registrar an indictment for approval by the aforementioned Judge.
- (C) The indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor's case summary briefly setting out the allegations he proposes to prove in making his case.
- (D) The Registrar shall submit the indictment and accompanying material to the Designated Judge for review.
- (E) The designated Judge shall review the indictment and the accompanying material to determine whether the indictment should be approved. The Judge shall approve the indictment if he is satisfied that:
 - (i) the indictment charges the suspect with a crime or crimes within the jurisdiction of the Special Court; and
 - (ii) that the allegations in the Prosecution's case summary would, if proven, amount to the crime or crimes as particularised in the indictment.
- (F) The Designated Judge may approve or dismiss each count.
- (G) If at least one count is approved, the indictment shall go forward. If no count is approved, the indictment shall be returned to the Prosecutor.

- (H) Upon approval of the indictment:
 - (i) The Judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the proceedings in accordance with these Rules.; and
 - (ii) The suspect shall have the status of an accused.
- (I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently submitting an amended indictment including that count.

Rule 48: Joinder of Accused or Trials (*amended 14 March 2004*)

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

Rule 49: Joinder of Crimes

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

Rule 50: Amendment of Indictment (*amended 14 March 2004*)

- (A) The Prosecutor may amend an indictment, without prior leave, at any time before its approval, but thereafter, until the initial appearance of the accused pursuant to Rule 61, only with leave of the Designated Judge who reviewed it but, in exceptional circumstances, by leave of another Judge. At or after such initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73. If leave to amend is granted, Rule 47(G) and Rule 52 apply to the amended indictment.
- (B) If the amended indictment includes new charges and the accused has already made his initial appearance in accordance with Rule 61:
 - (i) A further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges;

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- (ii) Within seven days from such appearance, the Prosecutor shall disclose all materials envisaged in Rule 66(A)(i) pertaining to the new charges;
- (iii) The accused shall have a further period of ten days from the date of such disclosure by the Prosecutor in which to file preliminary motions pursuant to Rule 72 and relating to the new charges.

Rule 51: Withdrawal of Indictment *(amended 1 August 2003)*

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

Rule 52: Service of Indictment *(amended 29 May 2004)*

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

Rule 53: Non-disclosure (amended 1 August 2003)

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

Section 2: Orders and Warrants

Rule 54: General Provision

At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 55: Execution of Arrest Warrants (amended 29 May 2004)

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

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

Rule 56: Warrant of Arrest to Third States *(amended 7 March 2003)*

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

Rule 57: Procedure after Arrest *(amended 7 March 2003)*

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

Rule 58: Transfer to the Special Court from Third States *(amended 29 May 2004)*

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

Rule 59: Failure to Execute a Warrant of Arrest or Transfer Order *(amended 29 May 2004)*

- (A) Where the Sierra Leone authorities, to whom a warrant of arrest or transfer order has been transmitted, are unable to execute the warrant of arrest or transfer order, they shall report forthwith their inability to the Registrar, and the reasons therefore.

- (B) If, within a reasonable time after the warrant of arrest or transfer order has been transmitted to the Sierra Leone authorities, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Registrar may refer to the President to take appropriate action.

Rule 60: Trial in the Absence of the Accused (*amended 1 August 2003*)

- (A) An accused may not be tried in his absence, unless:
- (i) the accused has made his initial appearance, has been afforded the right to appear at his own trial, but refuses so to do; or
 - (ii) the accused, having made his initial appearance, is at large and refuses to appear in court.
- (B) In either case the accused may be represented by counsel of his choice, or as directed by a Judge or Trial Chamber. The matter may be permitted to proceed if the Judge or Trial Chamber is satisfied that the accused has, expressly or impliedly, waived his right to be present.

Rule 61: Initial Appearance of Accused and Plea (*amended 1 August 2003 and 13 May 2006*)

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

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

Rule 62: Procedure upon Guilty Plea *(amended 29 May 2004)*

- (A) If an accused pleads guilty in accordance with Rule 61(v), or requests to change his plea to guilty, the Trial Chamber shall satisfy itself that the guilty plea:
- (i) is made freely and voluntarily;
 - (ii) is an informed plea;
 - (iii) is unequivocal;
 - (iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case.
- (B) Thereafter the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

Rule 63: Questioning of the Accused *(amended 7 March 2003)*

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

Rule 64: Detention on Remand *(amended 29 May 2004)*

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

Rule 65: Bail *(amended 7 March 2003)*

- (A) Once detained, an accused shall not be granted bail except upon an order of a Judge or Trial Chamber.
- (B) Bail may be ordered by a Judge or a Trial Chamber after hearing the State to which the accused seeks to be released and only if it is satisfied that the

accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

- (C) An accused may only make one application for bail to the Judge or Trial Chamber unless there has been a material change in circumstances.
- (D) The Judge or Trial Chamber may impose such conditions upon the granting of bail to the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused at trial and the protection of others.
- (E) Any decision rendered under this Rule shall be subject to appeal in cases where leave is granted by a Single Judge of the Appeals Chamber, upon good cause being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision.
- (F) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been granted bail or is for any other reason at large. The provisions of Section 2 of Part V shall apply.
- (G) The Prosecutor may appeal a decision to grant bail. In the event of such an appeal, the accused shall remain in custody until the appeal is heard and determined.
- (H) Appeals from bail decisions shall be heard by a bench of at least three Appeals Chamber Judges.

Rule 65 bis: Status Conferences *(amended 1 August 2003)*

A status conference may be convened by the Designated Judge or by the Trial Chamber. The status conference shall:

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

Section 3: Production of Evidence

Rule 66: Disclosure of materials by the Prosecutor *(amended 29 May 2004)*

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

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

Rule 67: Reciprocal Disclosure of Evidence (*amended 7 March 2003*)

Subject to the provisions of Rules 53 and 69:

- (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
 - (i) The Prosecutor shall notify the defence of the names of the witnesses that he intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with Sub-Rule (ii) below, or any defence pleaded in the Defence Case Statement served under Sub-Rule (C);
 - (ii) The defence shall notify the Prosecutor of its intent to enter:

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

Rule 68: Disclosure of Exculpatory Evidence *(amended 14 March 2004)*

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

Rule 69: Protection of Victims and Witnesses *(amended 29 May 2004)*

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

Rule 70: Matters not Subject to Disclosure *(amended 7 March 2003)*

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

Section 4: Depositions

Rule 71: Depositions (*amended 7 March 2003*)

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

Section 5: Preliminary Motions

Rule 72: Preliminary Motions (*amended 29 May 2004*)

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

- (C) Objections based on lack of jurisdiction or to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Trial Chamber.
- (D) The Trial Chamber shall, except as provided by Sub-Rules (E) and (F) below, dispose of preliminary motions before the trial, and its decisions thereon shall not be subject to interlocutory appeal.
- (E) Preliminary motions made in the Trial Chamber prior to the Prosecutor's opening statement which raise a serious issue relating to jurisdiction shall be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable.
- (F) Preliminary motions made in the Trial Chamber prior to the Prosecutor's opening statement which, in the opinion of the Trial Chamber, raise an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial shall be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable.
- (G) Where the Trial Chamber refers a motion to the Appeals Chamber pursuant to Sub-Rules (E) or (F) above, any party wishing to file additional written submissions must seek leave from the Appeals Chamber which will impose time limits for further submissions, responses and replies if leave is granted.
- (H) References by the Trial Chamber pursuant to Sub-Rules (E) and (F) above shall not operate as a stay of proceedings. Such references shall not operate as a stay of the trial itself unless the Trial or Appeal Chamber so orders.
- (I) This Rule shall be deemed to have entered into force on the 7th of March, 2003.

Part VI - PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1: General Provisions

Rule 72bis: General Provisions on Applicable Law *(adopted 29 May 2004)*

The applicable laws of the Special Court include:

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

with the Statute, the Agreement, and with international customary law and internationally recognized norms and standards.

Rule 73: Motions *(amended 14 May 2005)*

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

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

- (A) The Trial Chamber or a Judge designated from among its members shall hold a Pre-Trial Conference prior to the commencement of the trial.
- (B) Prior to the Pre-Trial Conference the Trial Chamber or a Judge designated from among its members may order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following:
 - (i) A pre-trial brief addressing the factual and legal issues;
 - (ii) Admissions by the parties and a statement of other matters not in dispute;
 - (iii) A statement of contested matters of fact and law;
 - (iv) A list of witnesses the Prosecutor intends to call with:
 - (a) The name or pseudonym of each witness;

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- (b) A summary of the facts on which each witness will testify;
- (c) The points in the indictment on which each witness will testify;
and
- (d) The estimated length of time required for each witness;
- (v) A list of exhibits the Prosecutor intends to offer stating, where possible, whether or not the defence has any objection as to authenticity.

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

- (C) The Trial Chamber or a Judge designated from among its members may order the Prosecutor to shorten the examination-in-chief of some witnesses.
- (D) The Trial Chamber or a Judge designated from among its members may order the Prosecutor to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.
- (E) After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.
- (F) Prior to the Pre-Trial Conference, the Trial Chamber or a Judge designated from among its members may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial.

Rule 73 *ter*: Pre-Defence Conference (*amended 29 May 2004 and 13 May 2006*)

- (A) The Trial Chamber or a Judge designated from among its members may hold a Conference prior to the commencement by the defence of its case.
- (B) Prior to that Conference, the Trial Chamber or a Judge designated from among its members may order that the defence, before the commencement of its case but after the close of the case for the prosecution, file the following:
 - (i) Admissions by the parties and a statement of other matters which are not in dispute;
 - (ii) A statement of contested matters of fact and law;
 - (iii) A list of witnesses the defence intends to call with:

- (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment as to which each witness will testify; and
 - (d) The estimated length of time required for each witness;
- (iv) A list of exhibits the defence intends to offer in its case, stating where possible whether or not the Prosecutor has any objection as to authenticity.

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

- (C) The Trial Chamber or a Judge designated from among its members may order the defence to shorten the estimated length of the examination-in-chief for some witnesses.
- (D) The Trial Chamber or a Judge designated from among its members may order the defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.
- (E) After the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

Rule 74: *Amicus Curiae* (amended 7 March 2003)

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

Rule 74 bis: Medical examination of the accused (amended 1 August 2003)

- (A) A Judge or Trial Chamber may, on its own motion, or at the request of a party, order a medical, psychiatric or psychological examination of the accused.
- (B) The Registrar shall keep a list of approved experts for the purpose of examinations under Sub-Rule (A) above.
- (C) Where the Trial Chamber is satisfied that the accused is unfit to stand trial, it shall order that the trial be adjourned. The Trial Chamber may, on its own motion or at the request of the Prosecutor or the Defence, review the case of

the accused. In any event, the case shall be reviewed every ninety days unless there are reasons to do otherwise. If necessary, the Trial Chamber may order further examinations of the accused. When the Trial Chamber is satisfied that the accused has become fit to stand trial, it shall proceed.

Rule 75: Measures for the Protection of Victims and Witnesses
(amended 14 May 2005)

- (A) A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.
- (B) A Judge or a Chamber may hold an *in camera* proceeding to determine whether to order:
 - (i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:
 - (a) Expunging names and identifying information from the Special Court's public records;
 - (b) Non-disclosure to the public of any records identifying the victim or witness;
 - (c) Giving of testimony through image- or voice- altering devices or closed circuit television, video link or other similar technologies; and
 - (d) Assignment of a pseudonym;
 - (ii) Closed sessions, in accordance with Rule 79;
 - (iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.
- (C) A Judge or a Chamber shall control the manner of questioning to avoid any harassment or intimidation.
- (D) The Witnesses and Victims Section shall ensure that the witness has been informed before giving evidence that his or her testimony and his or her identity may be disclosed at a later date in another case, pursuant to Rule 75(F).
- (E) When making an order under Sub-Rule (A) above, a Judge or Chamber shall wherever appropriate state in the order whether the transcript of those

proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Special Court.

- (F) Once protective measures have been ordered in respect of a witness or victim in any proceedings before the Special Court (the "first proceedings"), such protective measures:
- (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Special Court (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but;
 - (ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.
- (G) A party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings shall apply to the Chamber seized of the second proceedings.
- (H) Before determining an application under Sub-Rule (G) above, if the effect of the change serves to decrease the protective measures granted to the victim or witness by the Chamber in the first proceedings, the Chamber seized of the second proceedings shall obtain all relevant information from the first proceedings, and may consult with any Judge who ordered the protective measures in the first proceedings, or the relevant Chamber.
- (I) An application to a Chamber to rescind, vary or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber, and any reference in this Rule to "a Chamber" shall include a reference to "a Judge of that Chamber".
- (J) If the Chamber seized of the second proceedings rescinds, varies or augments the protective measures ordered in the first proceedings, these changes shall apply only with regard to the second proceedings.

Rule 76: Solemn Declaration by Interpreters and Translators

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

Rule 77: Contempt of the Special Court (amended 14 May 2005)

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- (A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and willfully interferes with its administration of justice, including any person who:
- (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;
 - (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
 - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;
 - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or
 - (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court.
- (B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.
- (C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:
- (i) deal with the matter summarily itself;
 - (ii) refer the matter to the appropriate authorities of Sierra Leone; or
 - (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.
- (D) Proceedings under Sub-Rule (C)(iii) above may be assigned to be heard by a single judge of any Trial Chamber or a Trial Chamber.

- (E) The rules of procedure and evidence in Parts IV to VIII shall apply, as appropriate, to proceedings under this Rule.
- (F) Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be entitled to legal assistance in accordance with Rule 45.
- (G) The maximum penalty that may be imposed on a person found to be in contempt of the Special Court pursuant to Sub-Rule (C)(i) shall be a term of imprisonment not exceeding six months, or a fine not exceeding 2 million Leones, or both; and the maximum penalty pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 2 million leones, or both.
- (H) Payment of a fine shall be made to the Registrar to be held in a separate account.
- (I) If a counsel is found guilty of contempt of the Special Court pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to appear before the Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.
- (J) Any conviction rendered under this Rule shall be subject to appeal.
- (K) Appeals pursuant to this Rule shall be heard by a bench of at least three Judges of the Appeals Chamber. In accordance with Rule 117 such appeals may be determined entirely on the basis of written submissions.
- (L) In the event of contempt occurring during proceedings before the Appeals Chamber or a Judge of the Appeals Chamber, the matter may be dealt with summarily from which there shall be no right of appeal or referred to a Trial Chamber for proceedings in accordance with Sub-Rules (C) to (I) above.

Rule 78: Open Sessions

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

Rule 79: Closed Sessions (*amended 14 May 2005*)

- (A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:
 - (i) national security; or
 - (ii) protecting the privacy, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or

- (iii) protecting the interest of justice.
- (B) The Trial Chamber shall make public the reasons for its order.
- (C) In the event that it is necessary to exclude the public, the Trial Chamber should if appropriate permit representatives of monitoring agencies to remain. Such representatives should, if appropriate, have access to the transcripts of closed sessions.

Rule 80: Control of Proceedings *(amended 7 March 2003)*

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

Rule 81: Records of Proceedings and Preservation of Evidence

- (A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.
- (B) The Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering the non disclosure no longer exist.
- (C) The Registrar shall retain and preserve all physical evidence offered during the proceedings.
- (D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registry, may be authorised at the discretion of the Trial Chamber.

Section 2: Case Presentation

Rule 82: Joint and Separate Trials

- (A) In joint trials, each accused shall be accorded the same rights as if he were being tried separately.
- (B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of

interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 83: Instruments of Restraint (*amended 1 August 2003*)

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

Rule 84: Opening Statements (*amended 1 August 2003*)

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

Rule 85: Presentation of Evidence (*amended 14 May 2005*)

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

Rule 86: Closing Arguments (*amended 14 May 2005*)

- (A) After the presentation of all the evidence, the Prosecutor shall and the defence may present a closing argument.
- (B) A party shall file a final trial brief with the Trial Chamber not later than five days prior to the day set for the presentation of that party's closing argument.

- (C) The parties shall inform the Trial Chamber of the anticipated length of closing arguments; the Trial Chamber may limit the length of those arguments in the interests of justice.

Rule 87: Deliberations

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

Rule 88: Judgement (*amended 7 March 2003*)

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

Section 3: Rules of Evidence

Rule 89: General Provisions (*amended 7 March 2003*)

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence.

Rule 90: Testimony of Witnesses (amended 7 March 2003)

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

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

Or

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

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

Rule 91: False Testimony under Solemn Declaration (amended 1 August 2003)

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

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

Rule 92: Confessions *(amended 1 August 2003)*

A confession by the suspect or the accused given during questioning by the Prosecutor shall, provided the requirements of Rule 43 and Rule 63 were complied with, be presumed to have been free and voluntary.

Rule 92 bis: Alternative Proof of Facts *(amended 14 March 2004)*

- (A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

Rule 93: Evidence of Consistent Pattern of Conduct *(amended 7 March 2003)*

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

Rule 94: Judicial Notice *(amended 1 August 2003)*

- (A) A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

- (B) At the request of a party or of its own motion, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the current proceedings.

Rule 94bis: Testimony of Expert Witnesses (*amended 7 March 2003*)

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

Rule 95: Exclusion of Evidence (*amended 7 March 2003*)

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

Rule 96: Rules of Evidence in Cases of Sexual Assault (*amended 7 March 2003*)

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

- (i) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (ii) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (iii) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

- (iv) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of sexual nature of the prior or subsequent conduct of a victim or witness.

Rule 97: Lawyer-Client Privilege *(amended 7 March 2003)*

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

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

Rule 98: Motion for Judgment of Acquittal *(amended 14 May 2005 and 13 May 2006)*

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

Section 4: Sentencing Procedure

Rule 99: Status of the Acquitted Person *(amended 7 March 2003)*

- (A) In case of acquittal, the Special Court shall, subject to Sub-Rule (B) below, order the release of the accused.
- (B) If, at the time the acquittal is pronounced, the Prosecutor advises the Trial Chamber in open court of his intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, on application of the Prosecutor and upon hearing the parties, in its discretion, issue an order for the continued detention of the accused, pending the determination of the appeal.

Rule 100: Sentencing Procedure *(amended 29 May 2004)*

- (A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 14 days after such conviction or guilty plea. The defendant shall thereafter, but no more than 21 days after the Prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

- (B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing.
- (C) The sentence may be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102 (B).

Rule 101: Penalties *(amended 29 May 2004)*

- (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
 - (i) Any aggravating circumstances;
 - (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
 - (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- (D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

Rule 102: Status of the Convicted Person *(amended 29 May 2004)*

- (A) Subject to the Trial Chamber's directions in terms of Rule 101, the sentence shall begin to run from the day it is pronounced under Rule 100(B). However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64.
- (B) If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is for any other reason at liberty, and he is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed.

Rule 103: Place of Imprisonment *(amended 14 March 2004)*

- (A) Imprisonment shall be served in Sierra Leone, unless circumstances require otherwise. The Special Court may conclude agreements with other countries willing to accept and imprison convicted persons.
- (B) The place of imprisonment for each convicted person shall be designated by the President.
- (C) Transfer of the convicted person to the place of imprisonment shall be effected as soon as possible after the time limit for appeal has lapsed.

Rule 104: Forfeiture of Property *(amended 7 March 2003)*

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

Rule 105: Compensation to Victims *(amended 7 March 2003)*

- (A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.
- (B) Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation.
- (C) For the purposes of a claim made under Sub-Rule (B) the judgement of the Special Court shall be final and binding as to the criminal responsibility of the convicted person for such injury.

Part VII - APPELLATE PROCEEDINGS

Rule 106: General Provisions *(amended 1 August 2003)*

- (A) Pursuant to Article 20 of the Statute, the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:
 - (a) A procedural error;
 - (b) An error on a question on law invalidating the decision;
 - (c) An error of fact which has occasioned a miscarriage of justice.
- (B) The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.
- (C) The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply as appropriate to proceedings in the Appeals Chamber.

Rule 107: Practice Directions for the Appeals Chamber *(amended 7 March 2003)*

The President may issue Practice Directions, in consultation with the Vice-President, addressing detailed aspects of the conduct of proceedings before the Appeals Chamber.

Rule 108: Notice of Appeal *(amended 1 August 2003)*

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

Rule 109: Pre-Hearing Judge *(amended 1 August 2003)*

- (A) The Presiding Judge of the Appeals Chamber may designate from among its members a Pre-Hearing Judge.
- (B) The Pre-Hearing Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including

the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing.

- (C) The Pre-Hearing Judge shall record the points of agreement and disagreement between the parties on matters of law and fact. In this connection, he or she may order the parties to file further written submissions with the Pre-Hearing Judge or the Appeals Chamber.
- (D) The Appeals Chamber may of its own initiative exercise any of the functions of the Pre-Hearing Judge.

Rule 110: Record on Appeal *(amended 7 March 2003)*

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

Rule 111: Appellant's Submissions *(amended 7 March 2003)*

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

Rule 112: Respondent's Submissions *(amended 7 March 2003)*

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

Rule 113: Submissions in Reply *(amended 7 March 2003)*

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

Rule 114: Date of Hearing *(amended 7 March 2003)*

After the expiration of the time-limits for filing the submissions provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing in open court, unless it decides to rule on such appeals based solely on the submissions of the parties. The Registrar shall notify the parties accordingly.

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

- (A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. The motion shall

also set out in full the reasons and supporting evidence on which the party relies to establish that the proposed additional evidence was not available to it at trial. The motion shall be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing of the appeal. Rebuttal material may be presented by any party affected by the motion.

- (B) Where the Appeals Chamber finds that such additional evidence was not available at trial and is relevant and credible, it will determine if it could have been a decisive factor in reaching the decision at trial. Where it could have been such a factor, the Appeals Chamber may authorise the presentation of such additional evidence and consider the additional evidence and any rebuttal material together with that already on the record to arrive at a final judgement in accordance with Rule 118.
- (C) The Appeals Chamber may decide the motion prior to the appeal, or at the time of the hearing on appeal. It may decide the motion with or without an oral hearing.

Rule 116: Extension of Time Limits

The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause.

Rule 117: Expedited Procedure (*amended 29 May 2004*)

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

Rule 118: Judgement on Appeal (*amended 7 March 2003*)

- (A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal and on any additional evidence as has been presented to it.
- (B) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

- (C) In appropriate circumstances the Appeals Chamber may order that the accused be retried before the Trial Chamber.
- (D) If the Appeals Chamber reverses an acquittal of an accused by the Trial Chamber on any count, the Appeals Chamber shall proceed to sentence the accused in respect of that offence.
- (E) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.
- (F) The written judgement shall be filed and registered with the Registry.

Rule 119: Status of the Accused Following Judgement on Appeal
(amended 29 May 2004)

- (A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.
- (B) Where the accused is not present when the Appeal judgement is due to be delivered, it may, unless it pronounces his acquittal, order his arrest or transfer to the Special Court.

Part VIII – REVIEW PROCEEDINGS

Rule 120: Request for Review *(amended 7 March 2003)*

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

Rule 121: Preliminary Examination *(amended 7 March 2003)*

An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

- (i) Reconvene the Trial Chamber;
- (ii) Retain jurisdiction over the matter.

Rule 122: Appeals *(amended 7 March 2003)*

The judgement of a Trial Chamber on review may be appealed in accordance with the provisions of Part VII.

Part IX - PARDON AND COMMUTATION OF SENTENCE

Rule 123: Notification by States *(amended 29 May 2004)*

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he is eligible for pardon or commutation of sentence, the State concerned shall, in accordance with Article 23 of the Statute, notify the Registrar.

Rule 124: Determination by the President *(amended 7 March 2003)*

There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.