SIERRA LEONE BAR ASSOCIATION

Report on the Special Court
Rules of Procedure and Evidence Seminar

Bank of Sierra Leone, Kingtom Complex
Freetown, Sierra Leone
Tuesday, 3 December 2002

The Sierra Leone Bar Association would like to acknowledge the work of

NO PEACE WITHOUT JUSTICE
127 Jomo Kenyatta Road
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in creating the opportunity for this seminar, assisting with its realization and producing this report.
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Introduction
The Special Court for Sierra Leone is an experiment in international criminal justice. Unlike the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court is not remote from the region with which it is concerned, but rather is located in Sierra Leone itself. The subject matter jurisdiction of the Special Court not only encompasses crimes under international humanitarian law but also includes certain crimes under Sierra Leone law. Sierra Leone was not excluded from the decision to establish the Special Court; instead, it was Sierra Leone that requested the assistance of the United Nations in setting up the Court, and it was an agreement between Sierra Leone and the United Nations that established the Court.

These unique qualities of the Special Court allow it opportunities to inform and promote understanding about the significance of the Court as a mechanism of accountability. In addition, they raise the possibility of the Court leaving a legacy of practice and jurisprudence, meaningful with respect to not only international law but also Sierra Leone law.

At the same time, these qualities challenge the Special Court, because in order to be an effective mechanism of accountability for the atrocities committed in Sierra Leone, the Court will need to engage the people and institutions of Sierra Leone, and will require substantial, continuing cooperation.

With these opportunities and challenges in mind, the non-governmental organization, No Peace Without Justice, proposed that the members of the Sierra Leone Bar Association and the Judges of the Special Court participate in a discussion on the Court’s Rules of Procedure and Evidence. No Peace Without Justice stressed the important contribution that Sierra Leonean lawyers could make to the Court and the necessity of the Court investing in a relationship with the Sierra Leone legal profession. Moreover, No Peace Without Justice urged that it was essential to the effectiveness of the Court as well as its legacy to involve Sierra Leonean lawyers not only in the daily operations of the Court but also in the critical early decisions, such as the preparation of the Rules.

Both the Bar Association and the Registrar of the Special Court responded with keen interest to this proposal, and with the assistance of No Peace Without Justice, the Special Court Rules of Procedure and Evidence Seminar was held on Tuesday, 3 December 2002 at the Bank of Sierra Leone, Kingtom Complex.

Purpose of the Seminar
The purpose of the seminar was to introduce the Special Court Judges to the Sierra Leone legal community and to initiate a dialogue regarding the Court’s relationship with the Sierra Leone legal system and the legacy that it will leave for that system. More specifically, the seminar was intended to address the need for the Special Court Judges to consult the Sierra Leone legal community with regard to the Court’s Rules of Procedure and Evidence.
While the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (ICTR) form a template for the Special Court Rules, the ICTR Rules require amendment to address the significant differences between the founding documents of the two institutions. This requires close scrutiny of not only the Special Court Agreement and Statute, but also the Special Court Agreement (Ratification) Act, 2002 (Sierra Leone), which implements in domestic law the international obligations of Sierra Leone pursuant to the Agreement. The Special Court Statute also indicates the necessity of consulting with the Sierra Leone legal community regarding the Criminal Procedure Act, 1965 (Sierra Leone), to which the Special Court Judges are expressly directed for guidance when considering the amendments or additions to the Rules.

Prior to the seminar, the Registry of the Special Court completed an initial draft of the Special Court Rules, and it is that draft that the members of the Sierra Leone Bar Association and Special Court Judges discussed. A copy of the Registry’s initial draft of the Rules is available from the Office of the Registrar.

Seminar Discussion

The seminar began with opening remarks by Oliver O. Nylander, President of the Sierra Leone Bar Association, who chaired the discussions. His words were followed by an introduction of the Special Court Judges by Robin Vincent, Registrar of the Special Court. On behalf of his fellow Judges, Geoffrey Robertson QC, the newly elected President of the Court, then noted the crucial importance of the Rules to the delivery of justice, and welcomed the forthcoming discussion. Judge Robertson also expressed his wish that many of those members of the Bar who were present at the seminar would be appearing before him, whether as prosecution or defence counsel.

Ibrahim Sorie Yilla began the substantive work of the seminar with a review of Parts One (General Provisions), Two (Primacy of the Court) and Three (Organization of the Court) of the Registry’s draft of the Special Court Rules. Mr Yilla’s initial comments focused on clarification of definitions and terminology, keeping in mind the unique constitutive documents of the Special Court and the need for a robust Defence. He also proposed clarification of the Rules with respect to issues of compliance by Sierra Leone and cooperation by other States, and proposed structures regarding discipline of court officials, including the Judges, Prosecutor and Registrar, and coordination of the organs of the Court. These latter suggestions began a productive exchange among the participants, including the Judges. A complete written version of Mr Yilla’s comments, as well as the comments of the other seminar discussion leaders, form the body of this report and follow this summary.

After Mr Yilla, Abdulai Charm reviewed Parts Four (Investigations and Rights of Suspects) and Five (Pre-Trial Proceedings) of the Rules. Mr Charm’s comments focused on the rights of suspects and accused, and they included suggestions to reinforce the right to a speedy trial by decreasing the maximum period of provisional detention. Mr Charm also addressed the relevant experience requirement for counsel, and everyone was reminded of Judge Hassan Bubacarr Jallow’s analysis of these issues with respect to the ICTR. Additionally with regard to Defence counsel, Judge Robertson made the suggestion that the Court might consider a form of public defender office in order to put the Defence on equal footing with the Prosecutor. Lastly, Mr Charm commented on the need for
efficiency and recommended the Court implement regular status conferences as under the
Rules of the International Criminal Tribunal for the former Yugoslavia (ICTY).

At this point in the seminar, D.B. Qwee, a representative from the Office of the
Attorney General and Minister of Justice of Sierra Leone, introduced comments, and
distributed them to the participants of the seminar. Those comments, which mainly
concerned coordination of the Special Court Agreement (Ratification) Act and the
Special Court Rules, are not reproduced here, but are available from the Office of the
Attorney General.

The discussion then continued with a review of Part Six (Proceedings Before Trial
Chambers) of the Rules by Glenna Thompson. Ms Thompson commented on the need
for a joint pre-trial conference for the Prosecutor and the Defence, but cautioned that
there would need to be an examination of the amount of pre-trial disclosure required of
the Defence. The Ombudsman of Sierra Leone, Francis Gabbidon, concurred with her
concern, and some Judges expressed the need to review closely the relevant rules. Other
comments by Ms Thompson addressed the need for clearer standards with respect to
protection of witnesses, illegally obtained evidence and instruction of expert witnesses, as
well as the need to create a special framework for the investigation false testimony by
prosecution witnesses. She additionally requested that terminology and practices reflect
Sierra Leonean legal tradition. Examples of her suggestions included substituting the
term application for motion, allowing translators and witnesses to take a religious oath,
and restricting the power of the Court itself to order the production of additional
evidence or summon additional witnesses. To these suggestions, Melron Nicol-Wilson
also added that any fines should be listed in Leones, not dollars. Lastly, Ms Thompson
requested the Rule regarding compensation to victims in national courts be made to
conform to Sierra Leone law.

The final three parts of the Rules – Parts Seven (Appellate Proceedings), Eight (Review
Proceedings) and Nine (Pardon and Commutation of Sentence) – were reviewed by the
Honourable Cecil Osho Williams and Joseph Konuwa Lansana. Their initial comments
compared the appellate procedure of Sierra Leone with that of the Special Court, and
suggested that the Judges consult the Sierra Leone Rules Committee and the Judicial and
Legal Services Committee about these issues. Subsequent comments with respect to
appellate proceedings focused on measures to increase efficiency, including reference to
practices under Sierra Leone law. Regarding review proceedings, the suggestion was
made to consider compensation to anyone imprisoned but later acquitted after a review
proceeding. Finally, it was suggested that a review of the laws of pardon of a State
should be conducted prior to the Court sending a convicted person there for
imprisonment.

At the end of the discussion, the Judges expressed their appreciation for the submissions
made by the Sierra Leone Bar Association. They also noted that while they cannot apply
the Criminal Procedure Act of Sierra Leone in a wholesale manner, they would very
much like to incorporate provisions as much as possible, and welcomed further
submissions by the Sierra Leone Bar.

The seminar then closed with brief concluding remarks from the Mr Nylander and Mr
Vincent, as well as a Vote of Thanks from No Peace Without Justice, the text of which is
reproduced at the conclusion of this report.
II. Review of Parts One (General Provisions), Two (Primacy of the Court) and Three (Organization of the Court) of the Draft Special Court Rules

Ibrahim Sorie Yilla
Sierra Leone Bar Association

Notwithstanding the provisions of Rule 1(B) that the masculine shall include the feminine, it is proposed that the Special Court Rules of Procedure and Evidence be written in a gender-neutral language. This position is consistent with the Special Court Agreement, the Special Court Statute and the Rules of Procedure and Evidence of the ICTY.

It is also proposed that references to “Government of Sierra Leone” be amended to read the “Republic of Sierra Leone” because the Agreement created obligations for the sovereign State of Sierra Leone. Reference is made to the doctrine of succession in international law that is binding on Governments, and the agency relationship between the Government and the State.

Part One

Rule 1

It is proposed that the rule include the full name of the Court, the Special Court for Sierra Leone.

It also is proposed that the Rules may only come into force upon their adoption by the Judges of the Special Court. Reference is made to article 14(1) of the Special Court Statute and Rule 24 of the proposed Rules of Procedure and Evidence.

Rule 2

It is proposed that the definitions be arranged in two groups, each in alphabetical order. The first group would consist of the definitions for “Agreement,” “Rules,” “Special Court” and “Statute.” The second group would consist of the remaining definitions. These proposals are modelled on the ICTY Rules.

It is also proposed that the definition of:

- “Management Committee” be changed to reflect that the Management Committee is only “referred to in” – not “established pursuant to” – article 7 of the Agreement;
- “Party” be changed to include a suspect, so that a suspect may have the same rights as the accused, for example, with regard to objections on the grounds of non-compliance with the Rules or Regulations (Rule 5); and
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• “Victim” be changed to include not only those persons against whom a crime over which the Special Court has jurisdiction has allegedly been committed, but also those against whom a crime has been found to have been committed.

Additionally, no definition has been proffered for the following:

(i) Convicted Person,
(ii) Appellant and
(iii) Acquitted Person.

Rule 6

It is proposed that, because the Statute and Rule 6(B) of the Rules of Procedure provide that in amending the Rules the Judges of the Court may be guided by the Criminal Procedure Act, 1965, Sierra Leone, the Sierra Leone Bar Association, as the independent institution most knowledgeable with respect to that Act, be able to make a proposal for amendment to the Rules. It is also proposed that the Defence Unit (or Association of Defence Counsel) should also be considered capable to make proposals for amendments.

Additionally, it is also proposed that, in the interest of fairness and equality of arms, qualified Defence Counsel appointed or assigned pursuant to Rule 44, Rule 44bis or Rule 45 be able to make a proposal for amendment of the Rules.

It is further proposed that, in the interest of fairness, a suspect and a convicted or acquitted person should enjoy the same protections as accused against any prejudice resulting from an amendment to the Rules. The ICTY Rules include this protection and there would not appear to be any reason not to include it here.

Rule 7

It is proposed that the rule be deleted because there is only one text of the Rules – the English text.

Rule 7bis

It is proposed that the Appeals Chamber (especially in matters relating to interlocutory appeals) also be recognized as competent to request the President report non-compliance with obligations.

It also is proposed that non-compliance with obligations by Sierra Leone be reported not only to the Management Committee but also to the United Nations, as the other party to the Agreement. This is applicable to both Sub-Rules (A) and (B).

Rule 7ter

It is proposed that the Rules listed as exceptions be amended to refer only to those Rules regarding States other than Sierra Leone, and that the language of the Rule be amended so that it clearly refers to States other than Sierra Leone.
It also is proposed that, in recognition of the limited life span of the Court, and to encourage swift cooperation with the Court, the Rule focus on delay in cooperation with – as opposed to delay in responding to – a request. This position is consistent with article 56 of the UN Charter.

It is further proposed that the Appeals Chambers be recognized as competent to request the President report non-cooperation with requests.

Rule 7quarter

It is proposed that, to avoid confusion as well as prejudice to any party or counsel, Sub-Rule (B), which automatically extends any time limit expiring on a Saturday, Sunday or a Public Holiday to the subsequent working day, be retained.

Part Two

Rule 8

It is proposed that, for the sake of clarity, the heading for the rule read “Request for Information from Sierra Leone.”

Rule 8bis

It is proposed that, for the sake of clarity, the body of the rule specify that it concerns requests for information from States other than Sierra Leone.

It is further proposed that the rule indicate the basis for the request for cooperation. The language from paragraph 5(a) of article 87 of the Rome Statute of the International Criminal Court could be used in this regard. It reads: “on the basis of an ad hoc arrangement, an agreement with such State, or any other appropriate basis.”

Rule 9

It is proposed that clause (iv) be removed as duplicative. Rule 72(B) discusses preliminary motions by the accused. By definition, any accused would be covered by clause (iii).

Rule 10bis

It is proposed that the following be added to the heading: “from Courts of States other than Sierra Leone.”

Rule 11

It is proposed that the clause, “under whose jurisdiction the investigations or criminal proceedings have been instituted,” be deleted as unnecessary.

It is also proposed that non-compliance with an order for deferral by Sierra Leone be reported not only to the Management Committee but also to the United Nations, as the other party to the Agreement.
Rule 11bis

It is proposed that, for the sake of clarity, the rule specify that it concerns requests for deferral directed to States other than Sierra Leone.

It is also proposed that, because the Special Court lacks the power to order a State other than Sierra Leone to comply, the language of the rule be amended to use terms evidencing lack of cooperation, rather than lack of compliance.

It is further proposed that non-cooperation with a request for deferral by a State other than Sierra Leone be reported not only to the Management Committee but also to the United Nations and Sierra Leone, as the two parties to the Agreement.

Rule 13

It is proposed that non-compliance or non-cooperation with an order or request seeking a permanent discontinuance of proceedings be reported not only to the Management Committee but also to the United Nations and Sierra Leone, as the two parties to the Agreement.

Part Three

Rule 15

It is proposed that the Rules of Procedure and Evidence of the International Criminal Court (ICC) be examined here with a view to spelling out a procedure by which the Prosecutor and the Registrar could be removed or disqualified from holding their offices, so that there would be a procedure not only for the disqualification of Judges but also the Registrar and Prosecutor.

Specifically with regard to Judges, it is proposed that combined texts of the Statute of the ICC, the Rules of Procedure and Evidence of the ICC, and section 137 of the Sierra Leone Constitution be adopted here as the above provide not only for the discipline of Judges for conduct incompatible with their official functions but also spell out a procedure by which Judges can be removed from office.

Rule 15bis

With respect to Sub-Rule (A), it is proposed that the term short duration be defined for reasons of clarity. It also is proposed that Sub-Rule (A) should be operational only with the consent of the parties, i.e., the Prosecutor and the Defence. Additionally, the Sub-Rule as its stands makes the situation precarious, as the number of Judges would be even. It is also proposed that, for reasons of clarity, factors which the Judges should consider be listed for reasons of clarity as the expression “in the interest of justice” is too vague.

The same considerations listed regarding Sub-Rule (A) apply to Sub-Rule (B).

It is further proposed that the expression “long duration” be defined.
Rule 23

It is proposed that, in order to promote the efficient administration of the Special Court, a rule be inserted established a Coordination Council. The Council could be modelled on the one established under the ICTY Rules. Proposed text follows:

“(A) The Coordination Council shall be composed of the President, Prosecutor, the Registrar and the Association of Defence Counsel.

(B) In order to achieve the mission of the Special Court, as defined in the Agreement and Statute, the Coordination Council ensures, having due regard for the responsibilities and the independence of any member, the coordination of the activities of the organs of the Special Court.

(C) The Coordination Council shall meet once a month at the initiative of the President. A member may at any time request that additional meetings be held. The President shall chair the meetings.”

Rule 28

It is proposed that Rule 28 be amended to reflect the situation of Duty Counsel. To wit, once the Judges have reviewed indictments, they should not sit in the substantive trials.

Rule 33

With regard to Sub-Rule (C), it is proposed that the Prosecutor and the Association of Defence Counsel be consulted as well.
III.

Review of Parts Four (Investigations and Rights of Suspects) and Five (Pre-Trial Proceedings) of the Draft Special Court Rules

Abdulai Charm
Sierra Leone Bar Association

In general, the Rules present a good guarantee in relation to the rights of the accused and how the Prosecutor should go about his job. However, one thing that requires due care and attention is the right to a speedy trial, which could be much improved.

Part Four

Rule 40bis

The provisional detention period of not more than 30 days as stated in Sub-Rule (C) of Rule 40bis is too long. This is a breach of the right to a speedy and fair hearing. The period should be reduced to not more than 20 days so that the total period of provisional detention as stated in Sub-Rule (H) of Rule 40bis should be not more than 60 days.

Rules 44-45

There could be two different relevant experience requirements – 5 years for duty counsel and 8 years for other counsel.

Part Five

Rule 51

There is a problem in relation to the unfettered ability of the Prosecutor to withdraw an indictment, since he could just proffer a new one almost straight away.

Rule 62

It is proposed that in a joint trial where one or more accused persons plead guilty, they should be sentenced immediately before the Trial Chamber proceeds to hear the case against the other persons.

Rule 65bis

The rule should be amended to require regular status conferences, as under the ICTY Rules, although the time limits should be shorter than those contained in the ICTY Rules.

Rule 67

Sub-Rule (C) should be deleted, as this tends to favour the Prosecutor at the expense of the Defence.
IV.
Review of Part Six (Proceedings Before Trial Chambers) of the Draft Special Court Rules

Glenna Thompson
Sierra Leone Bar Association

Rule 73

Bearing in mind the uniqueness of the Special Court as can be found in articles 5, 6 and 19 of the Special Court Statute, and the fact that it is an international court for Sierra Leone, my first recommendation has to do with the terminology used. I am against the use of the term “Motions” in criminal proceedings. In this jurisdiction, based on the English tradition, we are more used to the term in civil proceedings. Here, I believe, it has been imported from the United States and my view is that we should retain as much as we possibly can our common law traditions, and if we are to import anything, then we should try and take examples from those we have more in common with, bearing in mind of course that our own rules committee might well want to look at these sometime in the future. The term “Applications” is preferred.

Rule 73bis and Rule 74ter

These rules deal with what I would say is a very important stage of criminal proceedings, because if it works well it has the effect of simplifying trials, eliminating delays and concentrating the minds of all on the issues. They were, I believe, designed to mandate a sort of case management conference.

My proposed amendment is that the Rule 73ter conference should be held at the same time as the Rule 73bis conference for the sake of simplicity, time management and justice. The Defence then will have an opportunity to prepare its case before the commencement of the trial, saving time and money.

Having a pre-trial conference for the Defence after the close of the prosecution case is wasteful in terms of time, but it also means that defence counsel will have to wait for the conclusion of the prosecution case before deciding how to run their case, what witnesses to call, etc. Although that is not what these rules intend, that will be their effect.

Bearing in mind that full disclosure by the prosecution should have taken place in accordance with Rule 66, then, my suggestion is for a pre-trial hearing or review for both sides to iron out all the issues. The hearing, presided over by a Judge dealing with everything listed in Rule 73, should also include any applications, for example, for video playing facilities, audio playing facilities or screening of witnesses. Any applications by the Defence, for example, for disclosure of evidence or severance of indictment, or with regard to the issues raised in Rule 75, also could be dealt with by a pre-trial review. This is not to say that applications of this nature will not be entertained during the trial. What it will do is make such occasions fewer. The accused should of course be present at these hearings.

It should not be assumed, however, that the amount of disclosure by the Defence as envisaged by the Rules is acceptable. The disclosure called for in the proposed case conference goes against the principle that it is the prosecution which brings its case, and
it is the prosecution which must prove its case. Save for statements of expert witnesses and the defence of alibi, few accused persons, if any, would be happy to reveal their defence at such an early stage. It would give the prosecution an unfair advantage and would be tantamount to asking the accused to prove his or her innocence.

Therefore, whilst any pre-trial review would necessarily involve looking at the defence case, this should be limited to case management, including the issues raised in the preceding paragraphs.

Rule 75

Sub-Rule (B)(i)(b) should be amended to include protection for witnesses as well as victims with regard to non-disclosure to the public of any identifying records. It should read: “Non-disclosure to the public of any records identifying the victim or witness.” The measures contained in the section are after all designed to protect victims and witnesses.

Rules 76

I am of the view that interpreters and witnesses should be given a choice as to the oath they take. A solemn declaration should be in the form of a religious oath, if the person is so inclined, or if not, then an affirmation. I would say the same for Rule 90(B).

Rule 91

For the sake of transparency the Prosecutor should not be asked to investigate his own witness. An amicus curiae should be appointed to carry out any such investigation rather than leave it to the Prosecutor to investigate his own witness. Indeed, this can be found in the rules for the ICTY at Rule 91.

Rule 94bis

I propose that the provisions under this rule include one that would allow the opposing side to instruct their own expert if they so wish. It is vague and seems to me, as it stands now, any such application would have to be at the discretion of the Judges. In order to cross examine an expert witness effectively, counsel must be able to do so from an informed position, one which he will only be able to be in if he has had access to an opposing expert report. I would therefore recommend that the following Sub-Rule (B)(iii) be added:

“It wishes to instruct and serve its own expert witness statement and/or to call that witness to give evidence on its own behalf.”

Rule 95

Definition is needed, e.g., coercion, duress, etc. The present wording leaves it largely to the discretion of the bench, bearing in mind that the bench is comprised of Judges from different jurisdictions.
Rule 98

I would propose that this rule be expunged. Each party should come to court with its available evidence, and the court should make its decision based on the evidence before it.

Rule 98bis

I proposed a change of name to “Submission of No Case to Answer.”

Rule 106

This rule is at variance with the national laws of Sierra Leone. Rule 106(B) appears to be saying that civil action has to be brought by a victim in order to claim compensation from a convicted person. This is at odds with section 54 of the Criminal Procedure Act, 1965, which grants the convicting court the power to make such orders on the application of the prosecution. In addition, section 45 of the Special Court Agreement Ratification Act, 2002, grants the right to compensation using the Criminal Procedure Act. No separate action is therefore needed and I would propose that 106(B) be amended taking into account the Special Court Agreement Ratification Act and the Criminal Procedure Act.
V.
Review of Parts Seven (Appellate Proceedings), Eight (Review Proceedings) and Nine (Pardon and Commutation of Sentence) of the Draft Special Court Rules

A.
Review of Part Seven

Hon. Cecil Osho Williams
Sierra Leone Bar Association

As a brief introduction to the discussion of appellate proceedings, it is important to note that, in the Special Court, article 20 of the Statute contains the grounds for an appeal. In Sierra Leone, appeals from the High Court to the Court of Appeals are governed by the Court of Appeals Rules and section 129 of the Constitution. Prior to 1991, you had to seek leave to appeal. However, section 129 of the Constitution now provides for appeals as of right.

As a general matter, I also would like to recommend that the Sierra Leone Rules Committee and the Judicial and Legal Services Committee be consulted in relation to the rules regarding appeals.

Rule 108

In order to conserve judicial resources, an appellant should clearly identify the decision challenged and specify the alleged error and relief sought. Proposed text in this respect, modelled on the equivalent ICTY Rule and the July 2002 Amendments to the ICTR Rules, follows:

“The Appellant should also identify the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorize a variation of the grounds of appeal.”

The above text could be inserted as the last sentence of Sub-Rule (A).

It also is proposed that the last sentence of Sub-Rule (B) be deleted because there is only one official language.

Rule 108bis

Consideration should be given to the amendments made to the ICTR Rules since the Special Court Agreement entered into force.

Rule 115

In order to conserve judicial resources, a motion to present additional evidence should clearly identify with precision the specific finding of fact made by the Trial Chamber to which additional evidence is directed. This requirement currently exists under the equivalent ICTY Rule.
Rule 116 and 117

Consideration should be given to the amendments made to the ICTR Rules since the Special Court Agreement entered into force.
B. Review of Parts Seven, Eight and Nine

Joseph Konuwa Lansana
Sierra Leone Bar Association

Rules of Procedure and Evidence of the Special Court for Sierra Leone: Any need for amendment? With especial reference to Appellate and Review Proceedings, and Pardon and Commutation of Sentence

Preliminary

Generally, speaking the Rules of Procedure and Evidence of the Special Court for Sierra Leone, like rules of procedure and evidence operating in the courts of Sierra Leone, are not merely “paper rules” but “rules of law,” and therefore have the full force of law.

It is submitted therefore that both for the Prosecutor and the Defence alike the strict compliance and adherence to these Rules cannot be avoided, for without the use of these Rules and the substantive law currently in existence, the Court cannot function.

Rules of procedure and evidence are fundamental aspects of any judicial process.

In the Sierra Leone courts the need for the use of rules of procedure and evidence is desirable in all levels of courts, e.g., the Magistrate Courts, the High Court of Justice (both criminal and civil divisions), the Court of Appeal and the Supreme Court. In all of the above instances, a Rules of Court Committee is appointed by the Lord Chief Justice to draft court rules and procedures for the smooth and efficient running of the courts.

It is submitted that from the foregoing analysis, one could see that the rules of procedure and evidence of any legally constituted court or tribunal are a fundamental aspect of any judicial process, and one of the backbones of the principles of natural justice. An illustrative example is that of the *audi et alteram partem* rule. That is, the requirement to hear the other side. Therefore, in any judicial system the rules of procedure, like that of the *audi et alteram partem* rule, are basic aspects of the principle of the rule of law. For example, an accused charged with an alleged offence before a criminal court or tribunal cannot be properly tried or justice properly dispensed with if that accused cannot either, acting for himself or through counsel of his or her choice, be permitted to be heard regarding his or her own side of the story as per the alleged offence charged. In a nutshell, all of these difficulties are overcome as a result of the rules of procedure and evidence of a particular court – be it a municipal court or one of an international character like the Special Court.

The Special Court for Sierra Leone shall have both national and international character.

The Special Court for Sierra Leone, which came into being on the 12th day of April, 2002, by virtue of an Agreement for the setting-up of the said court in Sierra Leone between the United Nations and the Republic of Sierra Leone, is to try persons who during the 11-year conflict are alleged to have inflicted atrocities on innocent civilians, including murder, rape, amputation, arson, etc.
It is submitted that since the majority of the crimes committed were acts of Sierra Leoneans, and the victims themselves Sierra Leoneans, with the place of the crimes Sierra Leonean soil, it is necessary that the procedure to be adopted by the Special Court with regard to rules of procedure and evidence shall have both a national and international character. That is to say, although generally speaking the Special Court needs to make use of the principles of international criminal and humanitarian law, Sierra Leone’s municipal laws, rules of evidence and procedure shall be used in conjunction with international law mutatis mutandis.

Any need then for amendment of the Rules of Procedure and Evidence of the Special Court for Sierra Leone?

Against the above background that both international and humanitarian law, and the municipal laws of Sierra Leone, shall apply in the Special Court mutatis mutandis, will there be any need for amendment, with special reference to appellate and review proceedings, and pardon and commutation of sentence?

Before one could venture to answer the above question, i.e., issues relating to amendment, it will be necessary to examine carefully appellate and review proceedings, and pardon and commutation of sentence together with their Sierra Leonean counterparts, i.e., the rules of procedure and evidence of our municipal courts, basically the High Court and the Court of Appeal.

Examination of the Rules of Procedure and Evidence relating to appellate and review proceedings, and pardon and commutation of sentence

Part Seven, Rules 107 to 119 of the draft Rules of Procedure and Evidence of the Special Court for Sierra Leone deal basically with appellate proceedings. This relates to the method, nature and procedure, and other rights of the accused persons, to file an appeal against their conviction by the Trial Chamber of the Special Court.

Rule 107 states: “The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply mutatis mutandis to the proceedings in the Appeals Chamber.” That is to say, given the facts and circumstances in each case, the procedure in the Appeals Chamber shall follow that in the Trial Chambers.

So, to my mind, the provisions laid down in Rule 107 need not be altered, modified or amended for there is nothing wrong with their general set up and do not in themselves infringe on our municipal rules.

Rule 108 deals with “Notice of Appeal,” which shall be filed within 30 days from the date of judgement setting forth the grounds of appeal by the accused. Though this rule does not in any way infringe on the rules of its Sierra Leonean counterpart, I will, however, recommend an amendment to Rule 108 to the effect that a schedule be added to it showing the mode and format of appeal as highlighted in our criminal notices of appeal from the Magistrates Court to the High Court, the High Court to the Court of Appeal and the Court of Criminal Appeal to the Supreme Court. This will help to create uniformity with regard to setting forth by way of format the grounds and other reasons of appeal, especially in cases where more than one or more appellant would be involved,
e.g., a joint trial where the accused persons are defended by different and separate counsel.

For all other rules following, i.e., Rules 109 to 119, I see no recommended area for amendment.

Part Eight, Rules 120, 121, 122 and 123 deal with review proceedings. Rule 120 states:

“Where a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Chamber, and could not have been discovered through the exercise of due diligence, the defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber, if it can be reconstituted or, failing that, to the appropriate Chamber of the Special Court for review of the judgement.”

I recommend that Rule 120 of Part Eight be amended to the effect that compensation be ordered by the Presiding Judge of the Chamber or a Judge before whom the said trial was conducted in favour of the accused who may have served a sentence of imprisonment within the one year before the discovery or presentation of new facts and subsequent review of the judgement. This will be proper in the eyes of the law and under the principles of natural justice.

Part Nine, Rules 124, 125 and 126, deal with pardon and commutation of sentence. Rule 124, under the general rubric “Notification by States,” reads: “If, according to the law of a State in which a convicted person is imprisoned, he is eligible for pardon or commutation of sentence, the State shall, in accordance with article 23 of the Statute, notify the Special Court of such eligibility.”

Rule 125, under its general rubric “Determination by the President,” states: “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 interest of justice and the general principles of law.”

Rule 126 sets out the general standards for granting pardon or commutation, i.e., gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly situated prisoners, the prisoner’s demonstration of rehabilitation, as well as substantial cooperation of the prisoner with the Prosecutor.

It is submitted that the only area of recommended amendment is that of Rule 124, where instead of requiring the State of imprisonment to notify the Special Court of an accused’s eligibility for pardon or commutation of sentence, it would be proper for the President of the Special Court to consider in the first instance, i.e., before choosing a particular State as a place of imprisonment, whether or not a convicted prisoner by the law of that State is or could be eligible for pardon or commutation of sentence. This would prevent confusion regarding the grant of pardon to prisoners who may have committed some of the worst, most heinous or atrocious offences against civilians during the 11-year conflict in Sierra Leone.

On the whole, I am of the view that the above analysis addresses the main issues dealing with the draft Rules of Procedure and Evidence of the Special Court for Sierra Leone.
with special reference to appellate and review proceedings, and pardon and commutation of sentence.

These Rules are not ordinary rules, which may have no legal basis, but are pure rules of law that have the full force of law and legal efficacy. With the set up of the Special Court in Sierra Leone and the adoption and implementation of these rules, i.e., the Special Court Rules of Procedure and Evidence, the Rules will essentially form part and parcel of our jurisprudential system.
VI.

Vote of Thanks
(Text as delivered on 3 December 2002)

John F. Stompor
No Peace Without Justice

Judges of the Special Court,

The Registrar of the Special Court,

The Ombudsman of Sierra Leone,

Magistrates and Justices of the Peace of Sierra Leone,

Members of the Sierra Leone Bar Association,

Ladies and Gentlemen,

I am proud to be here in your company for today’s discussion of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

It was in June of 2000 that Sierra Leone requested the assistance of the United Nations to establish a court to try those who committed atrocities during the conflict. Now, after two and a half years of negotiations, fundraising and preparatory work, each of the organs of the Special Court is operational and consideration can be given to how the Special Court will accomplish its mission.

As acknowledged by the United Nations Security Council in Resolution 1315, the long-term goals of the Special Court are to end impunity and contribute to the process of national reconciliation and maintenance of peace through the establishment of a credible system of justice and accountability for the very serious crimes committed in Sierra Leone during the conflict.

The Special Court, however, will not be able to attain these long-term goals in isolation. A key requirement for the achievement of these goals is the engagement of Sierra Leoneans in the system of accountability that the Special Court is mandated to establish. In particular, it is through a process of engagement between the Special Court and the Sierra Leone legal community that the Court can make a sustainable contribution to the rule of law in Sierra Leone.

Today, the Special Court and the Sierra Leone legal community have taken a substantial first step in this process.

For this reason, I would like to thank specifically the Registrar of the Special Court, Robin Vincent, for his keen interest in No Peace Without Justice’s proposal for this event, and for his understanding as to how meaningful this event could be for the Sierra Leone legal community and the Judges of the Special Court. I also would like to thank his staff, especially Mariana Goetz and Beatrice Ureche for their efforts in making this event a reality.
I would like to thank the members of the Sierra Leone Bar Association, in particular, the President of the Bar Association, and our Chairman here today, Oliver Nylander, for his support for this event and his management of our discussion. I also would like to thank the other members of the Executive, especially Claire Carlton-Hanciles and Reginald Fynn, for their invaluable contributions to planning this event.

I would like to thank the discussion leaders – Ibrahim Yilla, Abdulai Charm, Glenna Thompson, the Hon. Osho Williams and J.K. Lansana – for their time and energy these past few weeks that resulted in the insights which they shared with us and which spurred our discussion here today.

And finally I would like to thank the Judges of the Special Court for taking time from their busy schedule to participate in today’s seminar. As all of us are now keenly aware, the Judges have a difficult task ahead of them in adapting the ICTR Rules to the specific circumstances of the Special Court. On behalf of all of us, I wish them well.

Thank you.