

**Security Council**

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Letter dated 6 March 2002 from the Secretary-General addressed to the President of the Security Council

You will recall that in my letter to you of 26 December 2001 I had informed members of the Security Council of my decision to authorize the commencement of the operation of the Special Court for Sierra Leone beginning with the dispatch of a planning mission.

In that letter I had also indicated that upon the return of the planning mission I would report to members of the Council on its recommendations on the organization of the start-up phase and all aspects of the establishment and operation of the Special Court. Please find attached in the annex to the present letter the report of the Planning Mission on the Establishment of the Special Court for Sierra Leone, which took place from 7 to 19 January 2002.

(Signed) Kofi A. Annan



Annex

Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone

I. Introduction

1. In a letter addressed to the President of the Security Council on 26 December 2001, you informed the Council of your decision to authorize the commencement of the operation of the Special Court for Sierra Leone (Special Court) beginning with the dispatch of a planning mission to Sierra Leone.
2. The terms of reference of the Planning Mission approved by you were to discuss with the Government of Sierra Leone the practical arrangements for the establishment and operation of the Special Court, including, inter alia, the question of premises, the provision of local personnel and services, and the launching of the investigative and prosecutorial processes. The specific outcomes of the mission that were envisaged included the signing of the Agreement with the Government of Sierra Leone, laying the framework for the arrival of the members of the administrative and prosecutorial staff of the Special Court, and a report containing detailed recommendations on the organization of the start-up of the Special Court.
3. The Planning Mission, led by Ralph Zacklin, Assistant Secretary-General for Legal Affairs, visited Sierra Leone from 7 to 19 January 2002. The mission was composed of members of the Office of Legal Affairs, a Security Coordinator, a building management expert, an Interim Prosecutor and two investigators, an Interim Registrar, an administrative expert, a representative of the United Nations Office for Project Services (UNOPS) in the region and representatives of Member States who are members of the Management Committee of the Special Court (see paras. 45-47 below). The complete list of members of the Planning Mission is contained in appendix I to the present report. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel, joined the mission on 13 January 2002. The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (see appendix II) was signed on 16 January 2002 by Hans Corell and the Attorney General and Minister of Justice of Sierra Leone, Solomon E. Berewa, in the presence of the President of Sierra Leone, Ahmad Tejan Kabbah.
4. The Planning Mission interfaced with a Government of Sierra Leone task force headed by Solomon E. Berewa and carried out its activities at both the plenary and the working group level.
5. At the plenary level, the Planning Mission met several times with the government task force. The mission visited the High Court and a number of proposed locations for the permanent premises of the Special Court and detention facilities. Meetings were also held with the police and prison authorities, members of the Bar Association and representatives of civil society and human rights non-governmental organizations. The mission also travelled to the provinces and the regional capitals of Bo and Kenema where it met with the Paramount Chiefs, local government officials and NGOs. In Koidu, the capital of Kono District, it met with representatives of the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Movement of Concerned Kono Youth (MOCKY). The mission also met with Traditional Leaders, and on the margins of a tripartite meeting between the United Nations Mission in Sierra Leone (UNAMSIL), RUF and the Government of Sierra Leone, it met with the RUF political leadership to answer questions pertaining to all aspects of the Special Court.
6. At the working group level, the Planning Mission assessed the locally available resources, re-assessed the needs of the Special Court and developed an operational plan for the different organs of the Court. The Interim Prosecutor and two investigators met with members of the police and security forces, the Director of Public Prosecutions, the Director of Prisons, the Chief Justice and members of the Bar Association, human rights organizations and the UNAMSIL Human Rights Section to assess the availability of any information or evidentiary material in their possession. The Interim Registrar and Administrative Officers met with the High Court Registrar and court management officers to review the Registrar's system in place and assess the availability of local staffing resources and the possibility of sharing existing infrastructures. The Registry team met with the UNAMSIL Administration to assess its capacity to assist in the initial stage of the

establishment and operation of the Special Court. The building management expert, along with the Registrar, the Administrative Officers and the Security Coordinator, met with representatives of the Ministry of Lands and the Ministry of Works to discuss the logistical aspects of the temporary and permanent premises of the Special Court and the detention facilities as well as security requirements for the premises, archives, investigations and the staff of the Court.

7. As part of the Secretary-General's statutory responsibilities under the Agreement, the Office of Legal Affairs engaged in consultations with the Attorney General of Sierra Leone on the candidates for judges, the Prosecutor and the Deputy Prosecutor, and discussed the practical implementation of the Agreement in the legal system of Sierra Leone. The Office of Legal Affairs and the Office of the United Nations High Commissioner for Human Rights convened the second session of the Group of Experts on the Relationship between the Truth and Reconciliation Commission and the Special Court and recommended a general framework of principles which might govern the relationship between the two institutions.

8. The present report contains, by way of conclusions, the recommendations of the Planning Mission on the organization of the start-up phase and all aspects of the establishment and operation of the Special Court.

II. General observations

9. Since 14 August 2000, when the Security Council first requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent Special Court and since the first exploratory visit by a United Nations team in September 2000 (S/2000/915), Sierra Leone has undergone a period of difficult post-conflict peacekeeping and peace-building in which UNAMSIL has played a significant role. During the period of the Planning Mission's visit, the successful conclusion of the disarmament programme was celebrated with a symbolic arms destruction ceremony on 17 January 2002, an official declaration ending the war was signed by the Government, RUF and CDF on 18 January 2002, and preparations for national elections to be held on 14 May 2002 commenced. It is important to recognize that the establishment and operation of the Special Court is not taking place as an isolated event,

but rather as part of a complex and multifaceted peace process.

10. In its various formal and informal meetings with government representatives, UNAMSIL staff and military personnel, representatives of civil society and individuals, members of the Planning Mission were able to appreciate the seriousness of the debate on the timing of the establishment of the Special Court; the high level of expectations for the early establishment of the Court combined with fears, concerns and misconceptions in some quarters, as to its role and jurisdictional scope; the availability of local resources; the willingness on the part of the Government to assist, despite its limited ability to do so; and the paramount role that UNAMSIL can play in the initial and subsequent stages of the operation of the Special Court.

11. Along with the high level of expectations among the people of Sierra Leone, concerns were expressed by all sectors of society that the judicial process should be fair, impartial and comprehensive in its temporal and territorial reach, and that the Special Court be, and should be seen to be, independent of both the Government and the United Nations. Since last year, UNAMSIL has been conducting a wide campaign of sensitization both on the Special Court and on the Truth and Reconciliation Commission in collaboration with local and international NGOs. Notwithstanding this laudable effort, concerns and misconceptions persist which must, as a matter of priority, be allayed. It is proposed, therefore, that a dynamic strategy of dissemination of information and education should be developed by the Special Court for the general public. This outreach campaign would explain the nature of the Special Court, its territorial, temporal and personal scope of jurisdiction, and the relationship between the Special Court and the Truth and Reconciliation Commission. The campaign should be multifaceted and adapted to the needs of specific groups, such as victims, ex-combatants and children.

12. In assessing the availability of local resources, the Planning Mission found that in almost all areas of the operation of the Special Court the resources at the national level were either non-existent or extremely scarce. However, an important exception to the scarcity of local resources is the availability of human resources, in particular in the legal profession. Having met with many of the Sierra Leonean members of the legal profession, the Planning Mission is convinced that, while not experienced in the relevant fields of

international criminal law, with the necessary training, they could render an important contribution to the work and success of the Special Court.

13. Given the scarcity of local resources, the ability to rely on the existing administration and infrastructure of UNAMSIL in the initial stage of the operation of the Special Court, indeed for the duration of their simultaneous operations, would ensure a quick and cost-effective start-up of its operation. The sharing of resources is not only justified as a matter of United Nations policy, for both operations represent parts of the overall United Nations involvement in Sierra Leone, but is also administratively sound and financially cost-effective. While noting that the different financial bases of the two United Nations operations make the sharing of administrative resources more complicated than would have otherwise been the case had both operations been established as subsidiary organs of the United Nations, the difficulties are not insurmountable.

14. In developing a road map for the establishment and operation of the Special Court, the Planning Mission revisited the earlier recommendations on the premises, assessed the existing local resources in the different areas of operation of the Special Court, reassessed the needs of the Office of the Prosecutor and the Registry in terms of funds, equipment and personnel, developed an organizational plan for both organs and a plan of operation with a tentative timetable. The following sections describe the selection of the premises, the structure, functions and staffing of the Office of the Prosecutor and the Registry, the role of the Management Committee and the relationship between the Special Court and the Truth and Reconciliation Commission. A comprehensive operational plan for the start-up phase of the operation of the Special Court concludes the recommendations of the Planning Mission.

III. Premises

15. The Secretary-General's report on the establishment of a Special Court for Sierra Leone (S/2000/915) had concluded, on the basis of the assessment made by the United Nations team in September 2000, that none of the facilities and buildings proposed by the Government of Sierra Leone to accommodate the Special Court and its detention facilities were suitable, for reasons of either cost or

security. It was the recommendation of the United Nations team that the option of prefabricated, self-contained structures erected on government land should be adopted. That option, it was argued, would be cost-effective and rapid and would have the additional advantages of an easy expansion paced with the growth of the Special Court and a salvage value at the completion of its activities. It was also the recommendation of the United Nations team that the Central Prison at Pademba Road could not be utilized due to the lack of space and security measures, but that the New England Prison could be utilized if it were renovated and secured. Those recommendations were in part reconsidered by the Planning Mission in the light of changing circumstances.

16. In assessing the availability and suitability of the locations offered by the Government for the premises of the Special Court, the Planning Mission examined both permanent and temporary premises which could be made readily available pending the completion of the permanent site. It determined the requirements of the permanent premises to include, as a minimum, the following:

- **One courtroom and associated support space** such as a public gallery, witness waiting rooms, holding cells for the accused and rooms for interpreters and audio-visual technicians, as well as additional space to accommodate a second Trial Chamber and an Appeals Chamber.
- **Office and other support space** such as ablutions, storage, meeting rooms, LAN/PABX (telephone system) rooms, evidence vaults and law library.

A. Permanent premises

17. The building management expert, together with his government interlocutors, the directors of Public Works, Lands and Prisons, visited a number of government-owned properties. These included the City Hall, the United Nations Building, the Old Election Office and the Brookfields Hotel. All of these structures, however, are in need of substantial repair, some are occupied and others are located in the centre of the Freetown business district and are thus considered too risky for holding high-profile trials. Judging these structures to be unsuitable to accommodate the Special Court, the Planning Mission

requested the Government of Sierra Leone to make available the land adjacent to the New England Prison for the permanent premises of the Special Court. The proximity of the Court to the Detention Facility will have the advantage of reducing the risk of exposing the detainees travelling on the public highway to and from the Court. The cost of construction for the permanent premises on the New England site is estimated at US\$ 4,435,250.00.

18. In reconsidering the previous recommendation for prefabricated structures, the Planning Mission took account of the Government's request that the Court's building should be a permanent structure, and the intention expressed by a number of donor countries that the Court building and other facilities should be turned over to the Government of Sierra Leone at the end of the operation of the Special Court. With no apparent advantage of a salvage value, therefore, the Planning Mission recommended that the courthouse should be constructed as a permanent building and the office facilities accommodated in a prefabricated structure.

19. The advantages of prefabricated structures lie in the speed at which they can be obtained and erected, and in their flexibility of use. As the Special Court evolves through a rapid growth phase, a plateau phase and a downsizing phase, its space needs will change. Unlike a permanent structure, therefore, which imposes severe limitations on the re-allocation of space, particularly between the organs of the Registry, the Chambers and the Office of the Prosecutor, prefabricated modular construction is flexible and office units can be relatively easily added on or moved to where they are most needed.

20. The planning for the construction process should take into account the rainy season, which begins at the end of May and ends sometime in October. Accordingly, concrete elements of the construction, such as the perimeter wall, will have to be substantially completed by then. If the office complex were not to be fully completed beforehand, a contingency plan would have to be developed. It is estimated that if construction of the courthouse begins at the end of the wet season, it will in all likelihood not be completed before April 2003.

B. Temporary premises

21. With the prospects of completing the permanent premises for the Special Court by April 2003 at the earliest, the need for temporary premises is acute. In order to accommodate the start-up teams of the Office of the Prosecutor and the Registry, the Government has offered a building in the compound of the Bank of Sierra Leone complex free of rent, and with few security-related adjustments, ready to use. In addition, the Registrar of the Freetown High Court has offered the use of one of the courtrooms and a small room for closed hearings, should hearings be conducted before April 2003. In such an eventuality, a contingency plan for special security arrangements will have to be put in place.

C. Detention facilities

22. The Planning Mission visited two possible sites for detention facilities: the New England Prison, recommended by the United Nations team following its September 2000 visit, and the demolished Masanki Maximum Security Prison. The latter is a site 40 kilometres south-east of Freetown and is a minimum of 1 hour and 30 minutes away by car. It was the view of the Planning Mission that, as the Court facilities will be located in Freetown, it would not be advisable to have the detention facilities located at a great distance, as the risk exposure in transporting the accused is too great, and the additional costs for armoured vehicles and security forces, too high.

23. The Planning Mission was thus able to confirm the previous finding of the United Nations team that, if renovated to provide for the minimum requirements for detention facilities, the New England Prison could be utilized for the Detention Facility of the Special Court. The renovation of the existing structure, however, is not expected to be completed before the end of September 2002.

D. The role of the United Nations Office for Project Services in the procurement of design and construction services

24. Given its experience and expertise in the region, the Planning Mission recommends that the services of UNOPS be retained for the purpose of procuring design

and construction materials and services on behalf of the Special Court and under its authority.

E. Residential accommodation for international staff

25. The Planning Mission has enquired into the availability of suitable accommodation for the international staff of the Special Court in the more secure area of the western part of the city. The cost varies between \$1,000.00 and \$1,800.00 per month for rent, with the average being \$1,500.00. Availability at this time is poor and is likely to become worse in the period leading up to the elections, but it is anticipated to improve thereafter.

IV. The Office of the Prosecutor

A. Availability of evidentiary material

26. In regard to available evidentiary material on the crimes falling within the jurisdiction of the Special Court, the Interim Prosecutor found that it was of limited utility and that substantial investigations would be required in order to bring indictments. The only reliable material available is held by the Sierra Leonean police. Such material, however, pertains exclusively to the period following the 1999 Lomé Agreement, partly because certain assumptions had been made in implementation of the amnesty provision of that Agreement, and partly because of the decimation of the police force and the destruction of the headquarters of the Criminal Investigation Department by rebel forces in 1999. With few exceptions, therefore, there is virtually no evidentiary material for the bulk of the crimes committed against the people of Sierra Leone in the decade-long conflict. Information of a general nature on crimes committed in Sierra Leone, however, has been collated by the UNAMSIL Human Rights Section, the civilian police and military intelligence, as well as by non-governmental organizations, Traditional Leaders and churches. While not in a form appropriate for use in court, such material may be valuable as a lead for further investigations.

27. In the assessment of the Interim Prosecutor, therefore, the paucity of detailed, reliable evidentiary

material places a significant burden on the investigative functions of the Office of the Prosecutor.

B. Tentative prosecutorial strategy

28. Developing a prosecutorial strategy is in essence the attribution of concrete content to the notion of "those who bear the greatest responsibility" in terms of the numbers and the identity of potential indictees. Based on the concept laid down in the Secretary-General's earlier report as further developed in subsequent discussions with the members of the Security Council and the Government of Sierra Leone, the personal jurisdiction of the Special Court includes primarily those in political and military leadership positions. It would not exclude, however, others in command authority singled out by the gravity of the crime committed, its massive scale or heinous nature. Two other categories of persons, never before prosecuted by an international jurisdiction, also fall within the jurisdiction of the Special Court, namely, peacekeepers and juveniles. However, in both these categories substantial conditions must be fulfilled prior to a possible prosecution by the Special Court. In the case of peacekeepers, the State of nationality must be either unable or unwilling to prosecute, while in the case of juveniles the Prosecutor must show that all alternative options to prosecution, including the Truth and Reconciliation Commission, have been explored, exhausted and rejected for justifiable reasons.

29. The limited duration of the Special Court, its reduced budget and voluntary financing dictate the need for an exceptionally clear and well-defined prosecutorial strategy. It should, nonetheless, be inclusive of persons of all political affiliations and encompass the crimes committed throughout the country during the relevant period. In developing a prosecutorial strategy, the Prosecutor, bearing in mind the limitations of the evidentiary material, will as a first step be required to "map the conflict", reconstruct the history of the hostilities and study the organizational and command structure of the different factions and the means of their financial support. On the basis of this study, an investigation launched into the crimes committed would lead the Prosecutor to "those who bear the greatest responsibility" and enable him or her to establish a limited but comprehensive list of indictees on the basis of the parameters indicated. While the Planning Mission, in fulfilling its terms of

reference has reached certain conclusions as to the tentative prosecutorial strategy, it nevertheless recognizes that the selection for prosecution of those "who bear the greatest responsibility" necessarily entails a measure of discretion on the part of the Prosecutor both as to the identification of individual indictments and to any priority that may be assigned to them.

C. Structure and staffing requirements of the Office of the Prosecutor

30. To ensure the successful implementation of a prosecutorial strategy in the circumstances of Sierra Leone, the Planning Mission recommended the following structure and staffing table for the Office of the Prosecutor.

31. The Office of the Prosecutor should comprise a Trial Section and an Investigations Section, each reporting to the Prosecutor through the Deputy Prosecutor. The two sections would work closely with each other, with investigations conducted on the basis of advice provided by the Trial Section. An Evidence and Analysis Section, headed by a trial lawyer, should serve both the Trial Section and the Investigations Section.

32. With relatively small-scale Trial and Investigations sections, both the Prosecutor and the Deputy Prosecutor will be required to perform court functions. The need for a Chief of Prosecutions could be dispensed with, and only two Senior Trial Attorneys would be necessary. Three Prosecution Teams shall serve in the Trial Section each with a leader (Prosecutor, a Deputy Prosecutor or a Senior Trial Attorney), one Trial Attorney, one Assistant Trial Attorney or Assistant Legal Adviser, and one Case Manager. Under the control of a Chief of Investigations, three Investigation Teams should serve in the Investigations Section, each of which should comprise one Team Leader, two Senior Investigators, six Investigators and two Associate Investigators. Each Investigation Team should be split further into two smaller teams of one Senior Investigator, three Investigators and one Assistant Investigator. The Evidence and Analysis Section should have a Chief and an Evidence Custody Officer, supported by General Service or local staff. This section should be the first to start in order to take possession of, process and assess the available material.

V. The Registry

33. The Registry of the Special Court will be responsible for a broad range of administrative and judicial services to the Court. The administrative or non-judicial aspects of the Registry will entail personnel, finance, procurement, information technology, transportation, buildings management, detention facilities, and security and safety. The judicial services will include court management and responsibility for witness and victims support.

34. With a view to ascertaining the local availability of facilities, personnel and services, the Registry component in the Planning Mission carried out extensive discussions with representatives of government authorities and the administration of justice, on the basis of which it concluded that no such resources could be made available by the Government. The mission was advised, however, that there was a pool of candidates available with expertise in legal and judicial issues who would be interested in opportunities with the Special Court. Moreover, the mission was informed that it might be possible to benefit from the temporary secondment of a number of staff from the High Court in Freetown while the necessary recruitment process is undertaken by the Registry.

Possible relationship with UNAMSIL

1. Administration

35. The Registry component of the Planning Mission held discussions with virtually all facets of the UNAMSIL administration with a view to determining if UNAMSIL, given its administrative capacity, could, in the short and the long run, serve both UNAMSIL and the Special Court, thereby avoiding a duplication of similar if not identical functions. It is understood, however, that the assistance of UNAMSIL in areas of commonalities would be on a reimbursable basis, and provided at no or negligible cost to UNAMSIL.

36. During the discussions it was determined that the key areas where use of existing UNAMSIL infrastructure could eliminate the need for establishing separate administrative services for the Special Court would be in personnel administration, communication, transport, finance and procurement. As a follow-up to meetings with the UNAMSIL administration, two different options were prepared by the Planning

Mission, one to reflect the Special Court with a completely independent administrative infrastructure, and another reflecting a reliance on certain UNAMSIL units, while at the same time providing some support staff to augment these administrative units in UNAMSIL. In comparing the two options, the Planning Mission concluded that even with the additional support staff provided to UNAMSIL, there would be a difference of 12 to 15 fewer international staff, and the cost savings in the administration area alone would be quite significant. Given, in addition, the fact that the banking system in Sierra Leone is practically non-existent, the assistance of UNAMSIL in transferring and safeguarding the funds provided to the Special Court would be crucial.

2. Communications

37. In addition to the administrative functions in UNAMSIL, the Planning Mission took special note of the communications facilities already established for UNAMSIL which could be expanded at marginal costs to provide services to the Special Court. This would eliminate the need for the Court to duplicate the expensive installation of communications satellite equipment. In connection with the above, it should be noted that since the communications infrastructure in Sierra Leone does not meet the necessary reliability requirements of the Special Court, there is no alternative but to set up independent facilities, or to join in the use of UNAMSIL facilities.

3. Transportation

38. Discussions with UNAMSIL confirmed that long-term assistance could be provided, if mandated by the Security Council. Any immediate assistance by the UNAMSIL Transportation Service would be difficult in the period leading to the elections; thereafter, however, maintenance of Special Court vehicles could be carried out by UNAMSIL on a fee-for-service basis, or by providing some additional support staff to UNAMSIL. Moreover, certain other transportation assistance such as travel throughout the country could be considered, subject to availability of space on scheduled UNAMSIL flights. This assistance would be crucial since much of the investigative work undertaken by the Office of the Prosecutor would have to be carried out in the field and the roads in Sierra Leone are practically impassable, especially after the onset of the rainy season.

39. The conclusion reached following the discussions with the UNAMSIL administrative units was that significant economies could be achieved by utilizing the infrastructure already in existence in UNAMSIL if the respective UNAMSIL administrative units were augmented by additional support staff provided by the Court, and on the understanding that the provision of assistance to the Special Court would have to be introduced into the mandate of UNAMSIL.

40. While the interviews with UNAMSIL were primarily with administrative units, the Planning Mission was cognizant of the issue of possible medical support for the officials of the Special Court and for detainees once they arrived. In that regard, it was noted that UNAMSIL has a medical support unit up to level three which would provide psychological comfort to the staff of the Special Court.

41. While members of the Planning Mission were of the view that many aspects of the UNAMSIL operation could support the Special Court on a cost-reimbursable basis or at marginal additional costs, UNAMSIL officials pointed out the possibility that the UNAMSIL mandate might be discontinued prior to the Special Court having completed its work. The implications of this point were clearly understood by the Planning Mission. Nevertheless, it remained the view of the mission that, since significant economies could be achieved by maintaining common administrative processes with UNAMSIL, the UNAMSIL support option should be considered for as long as it was available. In the event that UNAMSIL demobilizes before the completion of the activities of the Special Court, installed equipment and materials could be transferred on a cost-recoverable basis to the Special Court.

VI. Security

42. A Security Office within the Registry will be responsible for monitoring and advising on local security conditions, conducting risk assessments, preparing and maintaining emergency security contingency plans, liaising with local authorities, conducting appropriate investigations of security violations and providing security orientation briefings and training. It shall also be responsible for the security guard force, security control centre and associated security equipment (CCTV/alarms). The Security Office shall be headed by a Chief Security Officer and

Deputy Chief Security Officer. Given the confidential nature of the material processed, a secretary at the international level would be assigned to the Office.

43. Security to the Special Court shall be provided to the premises, the judges and in residential areas.

(a) **External security.** Security outside the perimeters of the entire Special Court complex shall be the responsibility of the Government of Sierra Leone. The Government will pay the salaries and other entitlements of the Security Officers and the Special Court will provide the logistical support required. The number of police officers required will be determined in consultation with the operational staff of the Inspector General of the Sierra Leone Police Force.

(b) **Internal security.** Security within the perimeter of the Special Court (Chambers, Office of the Prosecutor and Registry) will be provided by a locally recruited security force on a 24-hour basis. The force will provide security control centre operation, access control, fire safety and internal security. It will be hired, trained and operated by the Deputy Chief Security Officer and under international supervisors.

(c) **Detention facilities.** The Sierra Leone Prison Service will provide the prison officers required to operate the Detention Facility and pay their salaries and other entitlements. The Special Court will provide an international Corrections Officer and supervisors to provide for 24-hour operation of the Detention Facility. It will provide additional training in the operation of the facility and all special equipment, as may be required.

(d) **Protective detail.** The Chief Security Officer will be responsible for the personal protection of the judges and, if circumstances dictate, the Prosecutor and the Registrar as well. Each judge will be assigned one Security Officer to provide personal protection during working hours. Three Security Officers will be assigned to protective detail in the initial period. With the appointment of additional judges, the number of Security Officers will be adjusted accordingly.

(e) **Residential security.** Currently there are reimbursable residential security measures approved and in effect for all internationally recruited staff in Sierra Leone. Such measures should be provided also to all internationally recruited staff of the Special Court, including judges.

44. It should be noted that in the current security phase in effect, Sierra Leone has been classified as a non-family duty station. If, however, the security situation improves to allow a reclassification of Sierra Leone as a family duty station, a number of additional administrative elements, such as the availability of schools, medical facilities and support, suitable housing and other associated issues, will also have to be examined before such a reclassification becomes possible.

VII. The Management Committee

45. In the course of the discussions held between the Secretariat and Member States regarding the implementation of the Security Council resolution requesting that the Secretary-General enter into an agreement with the Government of Sierra Leone to establish the Special Court, an informal group of interested Member States was formed. The need to ensure the cooperation and assistance of interested States in the establishment and continued operation of the Special Court, as well as the necessity of providing the Court with an oversight mechanism for its non-judicial functions, in turn gave rise to the creation of a Management Committee composed largely of major donors to the Special Court (Canada, Netherlands, Nigeria, Lesotho, United Kingdom of Great Britain and Northern Ireland and United States of America). While not an organ of the Special Court in a formal sense, the Management Committee is nevertheless recognized in the Agreement between the United Nations and the Government of Sierra Leone. According to article 7 of the Agreement, its functions are as follows:

“It is the understanding of the Parties that interested States will establish a management committee to assist the Secretary-General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States. The management committee shall consist of important contributors to the Special Court. The Government of Sierra Leone and the Secretary-General will also participate in the management committee.”

The functions of the Management Committee are more fully elaborated in the terms of reference of the

Management Committee, contained in appendix III to the present report.

46. Representatives of Canada, the Netherlands, Lesotho, the United Kingdom and the United States participated in the Planning Mission in their capacity as members of the Management Committee. They took part in all aspects of the work of the Planning Mission, as well as in the development of the operational plan for the Special Court contained in this report. The presence of the State representatives on the Planning Mission was a physical demonstration to the people of Sierra Leone of the commitment of the international community to the Special Court. For the members of the Management Committee it was an invaluable opportunity to familiarize themselves with the political and legal environment in Sierra Leone, as well as the infrastructure difficulties that the Special Court faces. The opportunity to observe first hand the laying of the foundation of the Special Court will assist the Committee in fulfilling its functions of providing advice, oversight and policy direction on all institutional aspects of the operation of the Special Court.

47. As the operation of the Special Court progresses, the Management Committee will, pursuant to article 7 of the Agreement, review periodically all non-judicial operations of the Court and exercise its oversight role through receipt of regular reports on the operations, financial status and administration of the Court, as well as through meetings with the principal officers of the Court as appropriate. The Management Committee will report to the Group of Interested States at regular intervals. Despite its informal character, as the Special Court evolves it is likely that the Management Committee itself will play an increasingly important role in advising the senior management of the Court with regard to any non-judicial problems that may be brought to its attention.

VIII. Relationship between the Truth and the Special Court

48. As the establishment of the Special Court for Sierra Leone has become imminent, the question of the relationship between the Truth and Reconciliation Commission and the Special Court has become urgent. The Commission, which was established by the Sierra Leone Truth and Reconciliation Act, 2000, and the

Special Court have distinct purposes, and have different legal bases and mandates. Yet their subject matter, and personal and temporal jurisdiction intersect, hence the need to clearly identify the linkages and potential cleavages between them.

49. The earlier report of the Secretary-General recognized the need for the conclusion of cooperative arrangements between the Truth and Reconciliation Commission and the Special Court but left the determination of such arrangements to the two institutions, once they are established. In the period which has ensued, however, the uncertainty as to the scope of amnesty still recognized under the national law of Sierra Leone but which is explicitly excluded by the Statute of the Special Court, the lack of clarity as to their modes of simultaneous operation, and concerns on the part of perpetrators that an appearance before the Truth and Reconciliation Commission could no longer immunize them from prosecution, made necessary a preparatory process designed to elucidate some of these questions.

50. The relationship between the Special Court and the Truth and Reconciliation Commission was discussed in a workshop jointly organized by the Government of Sierra Leone and UNAMSIL in Freetown, in November 2000, and subsequently in a meeting held in May/June 2001 on the protection of children before the Commission. Participants in those meetings included representatives of the various United Nations offices involved in the Special Court, the Truth and Reconciliation Commission and children (the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the Office of the Special Representative of the Secretary-General for Children in Armed Conflict, the Office of Legal Affairs and UNAMSIL), representatives of the Government of Sierra Leone, civil society — both national and international non-governmental organizations — and individual experts.

51. The preparatory process culminated in a two-session meeting of a Group of Experts jointly convened by the Office of the United Nations High Commissioner for Human Rights and the Office of Legal Affairs in New York in December 2001 and in Freetown in January 2002, to discuss the relationship between the Commission and the Special Court. The purpose of the meeting was to identify areas of cooperation and potential conflict between the two institutions and to recommend modalities of

cooperation and means of avoiding conflict. Another purpose was to recommend guidelines for the cooperative arrangements between the Commission and the Special Court for the consideration of the members of the Commission and the Prosecutor, once they are appointed.

52. The Group of Experts analysed the different legal bases for the establishment of the two institutions, their respective mandates and jurisdictional scope, and their implications for the relationship between the two institutions. It discussed a range of issues pertaining to information-sharing between the Truth and Reconciliation Commission and the Special Court, their respective powers to compel the appearance of witnesses and accused and the submission of evidentiary material, the treatment of juveniles and a public information campaign.

53. There was a general agreement that the following principles should guide the two institutions in developing their modalities of cooperation:

(a) **The principle of complementarity.** The Special Court and the Truth and Reconciliation Commission perform complementary roles in achieving accountability, deterrence, story-telling and national reconciliation;

(b) **Independent nature of both institutions.** The Special Court and the Commission should operate in a complementary and mutually supportive manner and in full respect for each other's mandate, independence and their distinct but related functions;

(c) **Setting of priorities.** While respectful of each other's mandate, an agreed set of priorities for each institution in clearly defined areas, circumstances and conditions is a means to ensure cooperation in areas of potential conflict.

54. In recommending guidelines for the relationship between the Truth and Reconciliation Commission and the Special Court, a distinction was drawn between areas conducive to cooperation and areas of potential conflict. In areas conducive to cooperation, it was recommended that sharing of resources, services, knowledge and expertise should be considered in matters of commonality between the two institutions, such as protection of victims and witnesses, including children, rehabilitation and reintegration programmes, joint training programmes, where appropriate, and a coordinated public awareness and education campaign

on the roles of the two institutions in general, and the relationship between the Commission and the Special Court in particular.

55. In the areas of potential conflict, such as information-sharing or the exercise of competing powers, the Expert Group made the following recommendations. When information received in confidence by the Truth and Reconciliation Commission is required by the Special Court in a case of an accused "who bears the greatest responsibility", such information should be shared with the Special Court on the following conditions: (a) the information or evidentiary material sought can only be obtained from the Commission, and (b) the evidentiary material requested is essential for the conviction or acquittal of the accused. Similarly, if both institutions exercise their powers to compel the production of the same document or evidentiary material, the person, entity or government authority faced with the competing request should inform both institutions of the fact of the competing request and seek their agreement as to which request should take precedence. If the Prosecutor has convinced the Commission that the evidentiary material sought is required and essential in the case of any one accused of bearing the greatest responsibility, the Special Court shall have priority.

56. The Group of Experts also recommended that a process of consultation should take place between the two institutions on a regular or as-needed basis, it being understood that in the final analysis it will be for the two institutions to decide on their relationship.

IX. Operational plan for the start-up phase of the Special Court

57. The signing of the Agreement between the United Nations and the Government of Sierra Leone for the Establishment of the Special Court for Sierra Leone on 16 January 2002 marks the end of one stage of the process and the beginning of a new stage of implementation and operation. As indicated at the beginning of the present report, expectations run high among all sections of Sierra Leone society that justice as well as reconciliation will be served by the Special Court and that, together with the national Truth and Reconciliation Commission, some measure of accountability and deterrence will at long last be achieved. The signing of the Agreement, therefore,

places the onus on the parties, the United Nations and the Government of Sierra Leone to bring the Special Court into operation as soon as possible.

58. The Planning Mission believes that urgent attention must be given to the fundamental issues of governance and administration of the Special Court, as well as the role of the parties, the United Nations and the Government of Sierra Leone, and of the Management Committee. In that connection, the legal nature of the Special Court as a sui generis, treaty-based organ, independent in its judicial functions of both the United Nations and the Government of Sierra Leone, will have to be given concrete legal content. The Special Court, the United Nations and the Government of Sierra Leone, as well as members of the Management Committee, will have to develop the legal regime applicable to the financial and administrative aspects of its operation as well as to the process of recruitment and the terms and conditions of its employees. In so doing, they should take into account the fact that while the United Nations is not, strictly speaking, the parent organ of the Special Court, it is a founding party. They should also be mindful of the fact that while the financing of the Special Court is based on voluntary contributions and not the United Nations regular budget, funds held in a United Nations trust fund are subject to the applicability of the Financial Regulations and Rules of the United Nations, with regard, in particular, to the disbursement of such funds and the activities financed therefrom. The legal implications of the relationship between the United Nations and the Special Court and the extent of the use of rules of the Organization to the non-judicial aspects of its operation will have to be resolved urgently as a prerequisite to the rapid, timely and efficient start-up of the Court.

59. The visit of the Planning Mission to Sierra Leone and its broad interaction with all segments of Sierra Leone society through public and private meetings and outreach through the radio and press created a momentum that must not be lost. The mission has thus envisaged a start-up phase of the Special Court with identifiable and achievable objectives. The gradual and sequenced implementation of these objectives together with appropriate public information dissemination will give concrete form to the Agreement as the Special Court slowly takes shape.

60. In the start-up phase of the operational plan, which should be completed by 31 May 2002, the

following actions should be taken simultaneously with regard to the premises, both temporary and permanent, the staffing of the Registry and the Office of the Prosecutor, the appointment of the judges, the Prosecutor and the Registrar, and the activities of the Chambers:

(a) Premises

- (i) An agreement should be signed between the Special Court, represented by the Interim Registrar, and UNOPS, authorizing UNOPS to procure design and construction services on behalf of the Special Court and under its authority;
- (ii) An agreement should be concluded between the Special Court, represented by the Registrar, and the Government of Sierra Leone for the grant of land and the construction of permanent premises;
- (iii) While temporary premises are readily available, minor adjustments, such as changing the locks and installing document safes, would be required before the start-up teams could occupy the premises;
- (iv) Prior to the start-up of the construction works in the New England site, the Government will have to relocate a number of civil defence forces, ex-combatants and their families currently occupying a former hotel site approximately 500 metres from the site;
- (v) The construction of the permanent premises should start with design work undertaken for the New England site, a perimeter fence erected around it and the laying of a foundation for the office accommodation;
- (vi) The start-up of the renovation works of the detention facilities should be undertaken, with a view to their completion by September 2002;

(b) Office of the Prosecutor

- (i) An advance team of the Office of the Prosecutor should be deployed in Sierra Leone to launch the investigative and prosecutorial process. It should be composed of the Prosecutor, two Trial Attorneys, the Chief of Investigations, the Chief of Evidence, the Evidence Custody Officer, one researcher, three investigators and

four support staff. To ensure a rapid deployment, the advance team should include either staff on loan from the two ad hoc Tribunals, or personnel contributed by Governments;

(ii) The advance team should initiate the research on the history of the conflict (“map the conflict”), take into possession existing evidence from the Sierra Leone Police, UNAMSIL and NGOs, and establish an evidentiary basis from which investigations could be launched;

(c) Registry

(i) An administrative infrastructure should be developed as a matter of priority to ensure the self-sufficiency of the Special Court in all its aspects. Given the reliance of the Registry on the United Nations Administration, it is essential that a core unit of Registry personnel — composed of the Interim Registrar, a Deputy Registrar, whose functions would comprise those of the Chief of Administration as well, and a buildings management expert — should be assembled first at United Nations Headquarters for a short initial period prior to deploying to Freetown in support of the Trial Chambers and the Office of the Prosecutor;

(ii) At United Nations Headquarters, the core unit of the Registry will liaise with the appropriate offices in the Department of Management to establish the budgetary requirements, the staffing table and account structures for the Special Court, the status of personnel, and a recruitment and appointment strategy. In conjunction with the above, the appropriate administrative procedures will be established and approved. In matters related to procurement, the start-up team would have to be equipped with the necessary modalities for approving contracts and general procurement;

(iii) In addition, the core Registry unit at Headquarters would have to carry out work related to the establishment of premises for the Special Court, including preparation of a Statement of Work for a land survey and site plan, preparation of terms of reference for architectural services for the court building and procurement of design and construction services;

(iv) Once the basic administrative operating parameters have been defined and established at Headquarters, the core Registry would have to be established in Sierra Leone. The Registry advance team would include, in addition to the core Registry personnel assembled in New York, financial and personnel officers to manage and disburse the funds and establish information technology and other support systems. An Interim Chief Security Officer or Deputy Chief Security Officer would also have to be included in the Registry advance team to address all security matters arising in the start-up phase of the operation of the Court and provide support to the Prosecutor and the Interim Registrar, once in Freetown;

(d) Appointment of judges, the Prosecutor, the Deputy Prosecutor and the Registrar

(i) After having consulted with the Government of Sierra Leone on the appointment of the judges — both international and Sierra Leone nominees — the Prosecutor and the Deputy Prosecutor, the Secretary-General should, as a matter of priority, appoint the Prosecutor. Once appointed, the Prosecutor and the Government of Sierra Leone should, according to article 3 (2) of the Agreement, consult on the appointment of a Deputy Prosecutor. A Deputy Prosecutor should thereafter be appointed;

(ii) The Secretary-General should, in accordance with article 2 (2) of the Statute, appoint the international judges, two of whom should be appointed to the Trial Chamber and three to the Appeals Chamber. At the same time, the Government of Sierra Leone should appoint one judge to the Trial Chamber and two to the Appeals Chamber;

(iii) In appointing the Registrar, the Secretary-General, according to article 4 of the Agreement, should consult with the President of the Special Court. Pending the election of the President by the judges of the Court, the Interim Registrar should continue to perform his functions;

(e) Chambers

(i) The Agreement on the Establishment of the Special Court adopts a phased-in approach to the

establishment of the Special Court in accordance with the chronological order of the legal process. Accordingly, judges of the Trial Chamber shall take permanent office shortly before the investigative process has been completed, and judges of the Appeals Chamber shall take permanent office when the first trial process has been completed (article 19 (4) of the Agreement);

(ii) While it is not expected that judges would take up their judicial functions in the first phase of the operation of the Court, it is nonetheless envisaged that during that period, and shortly after their appointment, judges of both Chambers shall meet in Sierra Leone for an organizational meeting, or as may be required. The purpose of these meetings should be to elect the President of the Court and adopt the Rules of Procedure and Evidence of the Special Court. It is also recommended that a "familiarization trip" should be organized for judges of both Chambers to the International Tribunals in The Hague and in Arusha;

(iii) When convened on the business of the Court before taking permanent office, judges shall be paid on an ad hoc basis.

61. Adherence to this schedule would mean that by the third quarter of 2002, the judges will have been appointed, the Offices of the Prosecutor and the Registry will be functioning in their temporary premises in Freetown and the construction of the permanent premises will be substantially under way. In other words, the machinery of the Special Court will be in place to enable it to function in accordance with its Statute. The first indictments and trials could be envisaged by the end of the first year of operation, which is well within the parameters of the practice of international criminal tribunals.

Appendix I

Members of the Planning Mission

List of participants

<i>Name</i>	<i>Title</i>
Mr. Hans Corell	Under-Secretary-General, The Legal Counsel
Mr. Ralph Zacklin	Assistant Secretary-General for Legal Affairs
Ms. Daphna Shraga	Senior Legal Officer, Office of Legal Affairs
Mr. Ken Lasiuk	Executive Officer, Office of Legal Affairs
Mr. Kenneth Flemming	Senior Trial Attorney, International Tribunal for Rwanda
Mr. Alfred A. Kwende	Commander of Investigations, International Tribunal for Rwanda
Mr. Marcel Savard	Chief, Division of Administration International Tribunal for Rwanda
Mr. Gerald Ganz	Office of the United Nations Security Coordinator
Mr. Robert Kirkwood	Head of Facilities Management, International Tribunal for the Former Yugoslavia
Mr. Robin Vincent	Interim Registrar (Consultant)
Sgt. Sid Gray	(Expert on Mission)
Mr. Doudou Mbye	Senior Portfolio Manager, United Nations Office for Project Services

Representatives of States

Mr. Andras Vamos-Goldman, Counsellor, Permanent Mission of Canada to the United Nations

Mr. Phakiso Mochochoko, Counsellor, Permanent Mission of Lesotho to the United Nations

Mr. Carl Peersman, First Secretary, Permanent Mission of the Netherlands to the United Nations

Ms. Alice Burnett, First Secretary, Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations

Mr. Richard Mills, Permanent Mission of the United States of America to the United Nations

Col. Mike Newton, Senior Adviser to the Ambassador-at-Large for War Crimes
Issues, United States Department of State

Permanent Mission of Sierra Leone to the United Nations

Ambassador Allieu Ibrahim Kanu

Ms. Giorgia Tortora

Appendix II

Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone

WHEREAS the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity;

WHEREAS by the said resolution, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law;

WHEREAS the Secretary-General of the United Nations (hereinafter "the Secretary-General") and the Government of Sierra Leone (hereinafter "the Government") have held such negotiations for the establishment of a Special Court for Sierra Leone (hereinafter "the Special Court");

NOW THEREFORE the United Nations and the Government of Sierra Leone have agreed as follows:

Article 1

Establishment of the Special Court

1. There is hereby established a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

Article 2

Composition of the Special Court and appointment of judges

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Court, the Secretary-General or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.

2. The Chambers shall be composed of no fewer than eight independent judges and no more than eleven such judges who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber where one shall be appointed by the Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;

(b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;

(c) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General.

3. The Government of Sierra Leone and the Secretary-General shall consult on the appointment of judges.

4. Judges shall be appointed for a three-year term and shall be eligible for re-appointment.

5. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 3

Appointment of a Prosecutor and a Deputy Prosecutor

1. The Secretary-General, after consultation with the Government of Sierra Leone, shall appoint a Prosecutor for a three-year term. The Prosecutor shall be eligible for reappointment.

2. The Government of Sierra Leone, in consultation with the Secretary-General and the Prosecutor, shall appoint a Sierra Leonean Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.

3. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. The Prosecutor shall be assisted by such Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4
Appointment of a Registrar

1. The Secretary-General, in consultation with the President of the Special Court, shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Court.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a three-year term and shall be eligible for re-appointment.

Article 5
Premises

The Government shall assist in the provision of premises for the Special Court and such utilities, facilities and other services as may be necessary for its operation.

Article 6
Expenses of the Special Court

The expenses of the Special Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court.

Article 7
Management Committee

It is the understanding of the Parties that interested States will establish a management committee to assist the Secretary-General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States. The management committee shall consist of important contributors to the Special Court. The Government of Sierra Leone and the Secretary-General will also participate in the management committee.

Article 8
Inviolability of premises, archives and all other documents

1. The premises of the Special Court shall be inviolable. The competent authorities shall take appropriate action that may be necessary to ensure that the Special Court shall not be dispossessed of all or any part of the premises of the Court without its express consent.

2. The property, funds and assets of the Special Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of the Court, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable.

Article 9
Funds, assets and other property

1. The Special Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process,

except insofar as in any particular case the Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Without being restricted by financial controls, regulations or moratoriums of any kind, the Special Court:

- (a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;
- (b) Shall be free to transfer its funds, gold or currency from one country to another, or within Sierra Leone, to the United Nations or any other agency.

Article 10
Seat of the Special Court

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.

Article 11
Juridical capacity

The Special Court shall possess the juridical capacity necessary to:

- (a) Contract;
- (b) Acquire and dispose of movable and immovable property;
- (c) Institute legal proceedings;

- (d) Enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Court.

Article 12

Privileges and immunities of the judges, the Prosecutor and the Registrar

1. The judges, the Prosecutor and the Registrar, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

- (a) Personal inviolability, including immunity from arrest or detention;
- (b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
- (c) Inviolability for all papers and documents;
- (d) Exemption, as appropriate, from immigration restrictions and other alien registrations;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents by the Vienna Convention;
- (f) Exemption from taxation in Sierra Leone on their salaries, emoluments and allowances.

2. Privileges and immunities are accorded to the judges, the Prosecutor and the Registrar in the interest of the Special Court and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President.

Article 13

Privileges and immunities of international and Sierra Leonean personnel

1. Sierra Leonean and international personnel of the Special Court shall be accorded:
 - (a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Special Court;
 - (b) Immunity from taxation on salaries, allowances and emoluments paid to them.
2. International personnel shall, in addition thereto, be accorded:
 - (a) Immunity from immigration restriction;
 - (b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Sierra Leone.
3. The privileges and immunities are granted to the officials of the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Court.

Article 14

Counsel

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Court shall not be subjected to any measure which may affect the free and independent exercise of his or her functions.

2. In particular, the counsel shall be accorded:
- (a) Immunity from personal arrest or detention and from seizure of personal baggage;
 - (b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;
 - (c) Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunity shall continue to be accorded after termination of his or her functions as a counsel of a suspect or accused.
 - (d) Immunity from any immigration restrictions during his or her stay as well as during his or her journey to the Court and back.

Article 15
Witnesses and experts

Witnesses and experts appearing from outside Sierra Leone on a summons or a request of the judges or the Prosecutor shall not be prosecuted, detained or subjected to any restriction on their liberty by the Sierra Leonean authorities. They shall not be subjected to any measure which may affect the free and independent exercise of their functions. The provisions of article 14, paragraph 2(a) and (d), shall apply to them.

Article 16
Security, safety and protection of persons referred to in this Agreement

Recognizing the responsibility of the Government under international law to ensure the security, safety and protection of persons referred to in this Agreement and its present incapacity to do so pending the restructuring and rebuilding of its security forces, it is agreed that the United Nations Mission in Sierra Leone shall provide the necessary security to premises and personnel of the Special Court, subject to an appropriate mandate by the Security Council and within its capabilities.

Article 17
Cooperation with the Special Court

1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:

- (a) Identification and location of persons;
- (b) Service of documents;
- (c) Arrest or detention of persons;
- (d) Transfer of an indictee to the Court.

Article 18
Working language

The official working language of the Special Court shall be English.

Article 19
Practical arrangements

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Special Court, a phased-in approach shall be adopted for its establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Special Court, judges, the Prosecutor and the Registrar will be appointed along with investigative and

prosecutorial staff. The process of investigations and prosecutions of those already in custody shall be initiated.

3. In the initial phase, judges of the Trial Chamber and the Appeals Chamber shall be convened on an ad hoc basis for dealing with organizational matters, and serving when required to perform their duties.

4. Judges of the Trial Chamber shall take permanent office shortly before the investigation process has been completed. Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed.

Article 20
Settlement of Disputes

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation, or by any other mutually agreed-upon mode of settlement.

Article 21
Entry into force

The present Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

Article 22
Amendment

This Agreement may be amended by written agreement between the Parties.

Article 23
Termination

This Agreement shall be terminated by agreement of the Parties upon completion of the judicial activities of the Special Court.

IN WITNESS WHEREOF, the following duly authorized representatives of the United Nations and of the Government of Sierra Leone have signed this Agreement.

Done at Freetown, on 16 January 2002 in two originals in the English language.

Hans Corell

Solomon E. Berewa

For the United Nations

For the Government of Sierra Leone



Attachment

Statute of the Special Court for Sierra Leone

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter "the Special Court") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the Special Court

1. The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

2. Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.

3. In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

Article 2
Crimes against humanity

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
- (h) Persecution on political, racial, ethnic or religious grounds;
- (i) Other inhumane acts.

Article 3
Violations of article 3 common to the Geneva
Conventions and of Additional Protocol II

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;

- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 4

Other serious violations of international humanitarian law

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

- (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (b) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (c) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

Article 5

Crimes under Sierra Leonean law

The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law:

- (a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):

- (i) Abusing a girl under 13 years of age, contrary to section 6;
 - (ii) Abusing a girl between 13 and 14 years of age, contrary to section 7;
 - (iii) Abduction of a girl for immoral purposes, contrary to section 12.
- (b) Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861:
- (i) Setting fire to dwelling - houses, any person being therein, contrary to section 2;
 - (ii) Setting fire to public buildings, contrary to sections 5 and 6;
 - (iii) Setting fire to other buildings, contrary to section 6.

Article 6
Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.

5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

Article 7

Jurisdiction over persons of 15 years of age

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8

Concurrent jurisdiction

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.

2. The Special Court shall have primacy over the national courts of Sierra Leone. At any stage of the procedure, the Special Court may formally request a national court to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

Article 9
Non bis in idem

1. No person shall be tried before a national court of Sierra Leone for acts for which he or she has already been tried by the Special Court.

2. A person who has been tried by a national court for the acts referred to in articles 2 to 4 of the present Statute may be subsequently tried by the Special Court if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Special Court shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10
Amnesty

An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution.

Article 11
Organization of the Special Court

The Special Court shall consist of the following organs:

- (a) The Chambers, comprising one or more Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor; and
- (c) The Registry.

Article 12

Composition of the Chambers

1. The Chambers shall be composed of not less than eight (8) or more than eleven (11) independent judges, who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber, of whom one shall be a judge appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General of the United Nations (hereinafter “the Secretary-General”);

(b) Five judges shall serve in the Appeals Chamber, of whom two shall be judges appointed by the Government of Sierra Leone, and three judges appointed by the Secretary-General.

2. Each judge shall serve only in the Chamber to which he or she has been appointed.

3. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Court.

4. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 13

Qualification and appointment of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.
2. In the overall composition of the Chambers, due account shall be taken of the experience of the judges in international law, including international humanitarian law and human rights law, criminal law and juvenile justice.
3. The judges shall be appointed for a three-year period and shall be eligible for reappointment.

Article 14

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court.
2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where the applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.

Article 15
The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

2. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned.

3. The Prosecutor shall be appointed by the Secretary-General for a three-year term and shall be eligible for re-appointment. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Sierra Leonean Deputy Prosecutor, and by such other Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently. Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

5. In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Article 16
The Registry

1. The Registry shall be responsible for the administration and servicing of the Special Court.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the Special Court and shall be a staff member of the United Nations. He or she shall serve for a three-year term and be eligible for re-appointment.
4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

Article 17
Rights of the accused

1. All accused shall be equal before the Special Court.
2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
- (g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 18 **Judgement**

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 19
Penalties

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Article 20
Appellate proceedings

1. 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 of law invalidating the decision;
- (c) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the Former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

Article 21
Review proceedings

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the 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 review of the judgement.

2. 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:

- (a) Reconvene the Trial Chamber;
- (b) Retain jurisdiction over the matter.

Article 22
Enforcement of sentences

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

Article 23

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Court accordingly. 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.

Article 24

Working language

The working language of the Special Court shall be English.

Article 25

Annual Report

The President of the Special Court shall submit an annual report on the operation and activities of the Court to the Secretary-General and to the Government of Sierra Leone.

Appendix III

Terms of reference for the Management Committee for the Special Court for Sierra Leone

I. Mandate of the Management Committee

1. Pursuant to the letter of the President of the Security Council (paragraph 2 of S/2000/1234 of 22 December 2000), a Management Committee for the Special Court will be established.

II. Composition of the Management Committee

2. The Management Committee will be an informal arrangement open to important contributors to the Special Court willing to assume the functions referred to in section III of these terms of reference. The Government of Sierra Leone and the Secretary-General will also participate in the Management Committee.

III. Functions of the Management Committee

3. The Management Committee for the Special Court will, inter alia:

(a) Assist in the establishment of the Special Court, including in the identification of nominees for the positions of Registrar, Prosecutor and judges, for appointment by the Secretary-General;

(b) Consider reports of the Special Court and provide advice and policy direction on all non-judicial aspects of its operations, including questions of efficiency;

(c) Oversee the Special Court's annual budget and other financially related reports, and advise the Secretary-General on these matters;

(d) Assist the Secretary-General in ensuring that adequate funds are available for the operation of the Special Court;

(e) Encourage all States to cooperate with the Special Court;

(f) Report, on a regular basis, to the Group of Interested States for the Special Court.

IV. Secretariat services

4. The Secretary-General will provide the Management Committee with secretariat services, if required.