Sierra Leone (44)

98

Human Rights Watch September 2004, Vol.16, No. 8(A)

Bringing Justice: the Special Court for Sierra Leone
Accomplishments, Shortcomings, and Needed Support

29/9-04

I. Introduction

The devastating eleven year civil war in Sierra Leone, which lasted from 1991 until 2002, was characterized by unspeakable brutality and serious crimes. Forces failed to distinguish between civilians and combatants. Families were gunned down in the street, children and adults had their limbs hacked off with machetes, and girls and women were taken to rebel bases and subjected to sexual violence. The civil war was notable for the systematic use of mutilation, abduction, sexual violence, and murder of civilians. Tens of thousands of civilians were killed and up to one-quarter of the population was displaced. The majority of crimes were perpetrated by rebels from the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC). However, government forces and their allies, including the Civil Defense Forces (CDF), also committed serious crimes, albeit on a smaller scale and of a different nature than those by the rebel alliance.

Accountability for serious human rights crimes, like those committed during Sierra Leone's war, is essential for several reasons: to bring justice to the victims, to punish the perpetrators, and to lay the foundation for building respect for the rule of law in post-conflict societies. Since 1998, Human Rights Watch has monitored the conflict in Sierra Leone, documented human rights crimes, and pressed for justice for these crimes.[1] Human Rights Watch maintained a field office in Sierra Leone from 1999 to 2002.

Following the end of the conflict, the Sierra Leone justice system lacked the capacity to hold perpetrators of the crimes accountable. Corruption and political manipulation plagued the judiciary. Hundreds of criminal suspects suffered from extended and unlawful detention, many without the due process guarantees stipulated in the constitution. The numbers of judges, magistrates, and prosecutors were inadequate and numerous courtrooms and police stations were destroyed during the war. Prompted by a request from Sierra Leone President Tejan Kabbah to the United Nations, a national-international court, the Special Court for Sierra Leone (Special Court or SCSL), was established in 2002 by agreement between the Sierra Leone government and the United Nations to prosecute serious crimes committed during the war.

The Special Court presents an important opportunity to help bring a measure of accountability in Sierra Leone and indeed to allow the victims of horrific atrocities and their families to know that justice has been done. The Special Court also represents a significant new model of international justice, often referred to as a "mixed" or "hybrid" tribunal. It differs from the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), the so-called ad hoc tribunals, in a number of significant ways. The Special Court is staffed by internationals and Sierra Leoneans, rather than by an entirely international staff. The Special Court's statute includes both domestic and international crimes as opposed to only international

[1] See, for example, Human Rights Watch, "Sowing Terror: Atrocities against Civilians in Sierra Leone," *A Human Rights Watch Report*, vol. 10, no. 3 (A), July 1998; Human Rights Watch, "Getting Away with Murder, Mutilation and Rape," *A Human Rights Watch Report*, vol. 11, no. 3 (A), June 1999.

crimes. The seat of the Special Court is in the capital of Sierra Leone, rather than outside the country where the crimes occurred. Other hybrid models that are staffed by internationals and nationals, and are located on the territory where the crimes occurred, exist. However, these mechanisms, namely the Special Panels for Serious Crimes in East Timor and Regulation 64 Panels in Kosovo, constitute part of a domestic justice system as opposed to an independent institution. The Special Court for Sierra Leone is the first stand alone hybrid justice mechanism with primacy over the domestic courts.

Each of the existing international justice mechanisms has been tailored to a particular situation and is defined by the historical circumstances, negotiations, and compromises under which it was created. Each model also has advantages and challenges. The Special Court model provides the potential benefits of enabling the accountability process to be accessible to the population most affected by the crimes and leaving a legacy with this population, while remaining insulated from the deficiencies which may characterize a local justice system.

The Special Court is also set up to be "leaner and meaner" than the ICTY and ICTR, in significant part as a response to criticisms that the ad hoc tribunals are too costly and slow. The Special Court is expected to operate at a lesser expense for three years of operations than the cost of one year of operations at the ICTY and the ICTR in recent years.[2] The Special Court was also set up to be dependent on voluntary contributions, instead of on funding through U.N. assessed contributions.[3] The Special Court is expected to function for approximately three years, while the ad hoc tribunals were not created with any predetermined expectations with regard to their length. The ICTR and ICTY have functioned for eight and ten years respectively, and only in the past few years have they developed a "completion strategy" that provides for phasing out operations by 2010.[4]

The Special Court's mandate is limited to prosecuting those who "bear the greatest responsibility" as opposed to those "who bear responsibility."[5] The Special Court's authority is also restricted to prosecuting crimes committed during less than half of the conflict. Whereas the Special Court has so far indicted thirteen individuals and is not expected to issue more than a few additional indictments at most, the ICTR has indicted over seventy individuals, while the list of indictees at the ICTY tops one hundred.[6] The Special Court's limited mandate and time period for which it has authority, along with the small number of indictees, raise concerns that the Special Court will not be able to bring a measure of accountability for the crimes that matches the level of the human

---

[2] ICTY, "General Information: Regular Budget," n.d. [online], http://www.un.org/icty/glance/index.htm (retrieved August 5, 2004); ICTR, "General Information: Budget and Staff," n.d. [online], http://www.ictr.org/default.htm (retrieved August 5, 2004).

[3] United Nations, Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2000), Annex S/2000/915.

[4] See United Nations Security Council, Resolution 1503 (2003), S/Res/1503.

[5] Statute of the Special Court for Sierra Leone (hereinafter SCSL Statute), Art. 1; Statute of the International Criminal Tribunal for Rwanda, Art. 1; Statute of the International Criminal Tribunal for the former Yugoslavia, Art. 1.

[6] ICTY, "Indictment and Proceedings," n.d. [online], http://www.un.org/icty/cases/indictindex-e.htm (retrieved August 4, 2004); ICTR, "General Information: Achievements of the ICTR," n.d. [online], http://www.ictr.org/default.htm (retrieved August 4, 2004).

rights catastrophe that occurred, that the people of Sierra Leone need, and that the victims deserve.

Human Rights Watch has actively supported the efforts of the Special Court. We have encouraged governments to cooperate with the Special Court to ensure that suspects do not escape its jurisdiction and have urged the international community to provide adequate financial support for the court. Human Rights Watch has also provided recommendations to ensure that trials are conducted fairly and efficiently, that the Special Court operates independently and impartially, and that investigations and prosecutions effectively bring to justice those who bear the greatest responsibility for crimes committed in Sierra Leone.[7]

This report evaluates the Special Court's efficacy around a series of benchmarks that are crucial to its success: 1) adherence to international fair trial standards; 2) effectiveness in achieving its mandate; 3) efficiency; 4) protection of witnesses; 5) accessibility to Sierra Leoneans; 6) leaving behind a legacy; and 7) providing security. The report seeks to identify accomplishments and make recommendations where we believe the Special Court should improve operations. Some of these recommendations can be implemented without increased funding for the court, while others require the Registry to recommend additional funding for particular areas, for the Special Court Management Committee to support these allocations, and for donors to fund them. The report also makes recommendations on the crucial importance of financial and political support by key governments.

The report is largely based on a mission Human Rights Watch conducted to Freetown in March 2004, during which we conducted interviews with some twenty Special Court staff, including within the Office of the Prosecutor, the Defense Office, the Chambers, the Registry, the Outreach Section, the Witnesses and Victims Support Unit, and those responsible for security and detention of suspects. We also met with defense counsel representing indictees at the Special Court, persons working with the Truth and Reconciliation Commission, members of civil society, and diplomats. Additional interviews with Special Court staff, defense counsel, and diplomats were conducted by telephone and in person in New York and Freetown between April and August 2004. Many of the individuals we interviewed wished to speak candidly but did not wish to be cited by name. We have cited the majority of sources with only generic references, such as "Special Court staff" or "defense counsel."

The establishment of the Special Court represents a tremendous effort by many extremely dedicated staff members operating under difficult conditions and with scarce resources. In 2002, the staff of the Registry and the Office of the Prosecutor (OTP) created a court from the ground up in war-ravaged Freetown. As no suitable facilities existed, the registrar, Robin Vincent, worked to establish a courthouse and court infrastructure. At first, until offices were constructed, the OTP operated out of the

[7] See Human Rights Watch, "Recommendations for the Sierra Leone Special Court: Letter to legal advisors of UN Security Council member states and interested states," March 7, 2002 [online], http://hrw.org/press/2002/03/sleone0307-ltr.htm (retrieved August 11, 2004).

home of the prosecutor, David Crane, working day and night to conduct investigations and to build cases.

The Special Court has made significant accomplishments to date that reflect meaningful progress to ensure a measure of accountability in Sierra Leone, all the more so considering the limited resources available to this institution. These include: completing investigations; indicting suspects from all warring factions; charging all indictees with child recruitment and most indictees with gender based crimes, in addition to other substantive crimes; establishing a defense office to represent issues of common interest relating to defense and to ensure protection of the rights of the accused; issuing precedent-setting decisions on international jurisprudence and disposing of more than one hundred and fifty pre-trial motions; conducting outreach to the local population; employing Sierra Leoneans to work in every organ of the Special Court, including as trial attorneys, investigators, defense counsel, and judges; and completing the courthouse, which will be donated to the Sierra Leone government. The Special Court commenced trials on June 3, 2004, with the trial of Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa, who are affiliated with the CDF. On July 5, 2004, the Special Court commenced the trial of Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, who are affiliated with the RUF.

Nevertheless, Human Rights Watch has concerns about aspects of the Special Court's operations that are hampering its work, many of which directly relate to inadequate funding of the court by donors. The most serious of these include: an inappropriately narrow interpretation of the Special Court's mandate to prosecute those "bearing the greatest responsibility;" inadequate logistical support and lump sum payment structure for defense counsel; inadequate witness protection; and the lack of establishment of the second Trial Chamber. Nigeria's failure to surrender Charles Taylor is also undermining the court's ability to achieve its mandate.

Insecure and Inadequate Funding by Donors

One of the most serious challenges facing the court is insufficient and insecure funding by donors. This has put an enormous strain on the court's operations. Key areas of the Special Court have been under funded, namely the Defense Office, the Witness and Victim Support Unit, the Chambers, and the Outreach Section. Under funding could undermine the Special Court's accomplishments and, indeed, its work to protect witnesses and ensure the rights of the accused.

The initial proposed budget for the court was approximately $114.6 million over three years.[8] However, even this relatively tight budget was cut to approximately $57 million due to difficulties in securing funding, although the total estimated budget had increased to about $76 million for three years as of March 2004.[9] Despite relentless efforts to obtain funding by the registrar and initiatives by contributing states, including members of the Special Court Management Committee, voluntary contributions total only $49.3 million, and, as of July 2004, were expected to last the court only through the beginning

[8] "Annan Authorizes Tribunal Despite Funding Shortfall," U.N. Wire, January 4, 2002 [online], http://www.unwire.org/unwire/20020104/22831_story.asp (retrieved August 11, 2004).
[9] Ibid.; Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004.

of its third year of operations.[10] Even with a much needed grant from the United Nations in April 2004 in the amount of $16.7 million, $23.3 million in anticipated costs over the next year and a half currently are unfunded.

Moreover, a condition of this U.N. grant is that it will be reduced in the amount of any additional voluntary contributions.[11] Additionally, long-term funding must be secured for certain residual mechanisms to function beyond the Special Court's existence, specifically for witness protection and for the maintenance of detention facilities in accordance with international standards. Human Rights Watch urges the U.N. secretary-general to request and the U.N. Advisory Committee on Administrative and Budgetary Questions to recommend that the General Assembly remove the restriction on the U.N. grant immediately and authorize the remaining $23.3 million of the secretary-general's request to fund the court through December 2005.

We further urge the Registry to support additional allocations for under funded areas, and for the Management Committee to advocate strongly on behalf of such funding. We urge governments to provide additional voluntary contributions and the U.N. secretary-general and General Assembly to intervene as necessary to address outstanding shortfalls.

Interpretation of "Those Who Bear the Greatest Responsibility"

The OTP has taken important steps to ensure justice for serious crimes in Sierra Leone by investigating and prosecuting individuals associated with all sides of the conflict and charging accused with gender based crimes and child recruitment. However, Human Rights Watch believes that the existing indictments reflect an inappropriately narrow interpretation of the court's mandate.

The individuals currently indicted could be characterized as the highest-level commanders in the CDF, the AFRC, or the RUF who were the "kingpins" or "masterminds" of the war, or their financial backers. These indictees allegedly "knew or had reason to know" about the commission of the crimes and may have also participated in directly committing atrocities. Human Rights Watch believes that the mandate should be interpreted to also include other perpetrators who, while not at the top of the chain of command, were regional or mid-level commanders who stood out above similarly ranking colleagues for the exceedingly brutal nature of the crimes they committed. The failure to indict such persons is of particular concern as the court has indicted only thirteen suspects, nine indictees are facing trial, and there are unlikely to be more than a couple of additional indictments.

This sentiment was echoed by members of local civil society groups interviewed by Human Rights Watch, who expressed frustration that a limited number of regional or mid-level commanders known for their notorious behavior, some of whom physically

---

[10] U.N. General Assembly, Request for a subvention to the Special Court for Sierra Leone, Report of the Secretary-General (hereinafter U.N. Secretary-General Request for Subvention), March 15, 2004, A/58/733, para. 4; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.

[11] United Nations General Assembly, Resolution adopted by the General Assembly on the report of the Fifth Committee (A/58/573/Add.1) (Special Court for Sierra Leone), April 26, 2004, A/RES/58/284, para. 2.

carried out the crimes, have escaped indictment by the Special Court. Three such commanders noted by civil society members include AFRC commanders Savage and Al Hadji Bayoh, and CDF commander Musa Junisa.

However, Special Court staff were resistant to interpreting the court's mandate to include regional or mid-level commanders who distinguished themselves by their brutality, citing time and resource constraints and the difficulty of identifying a small number of alleged perpetrators who would fall under this interpretation.[12] Nevertheless, the research of Human Rights Watch and others suggests that there are, in fact, a very limited number of individuals who fall into this category. We also suggest that sufficient evidence to prosecute them would have been obtained in the process of building cases against top commanders who have already been indicted. In light of the small number of indictees and the resources invested in this mechanism, interpreting the mandate to include regional or mid-level commanders who are notorious for the brutal crimes they allegedly committed would provide an important opportunity to ensure that the possibilities for justice are maximized through prosecutions at the Special Court. Human Rights Watch urges the OTP to review prior investigative work to assess whether several of these persons should be further investigated or indicted, and if so, to pursue prosecution of such cases.

Logistical Support and Lump Sum Payment Structure for Defense Counsel

The establishment of the Defense Office represents an important innovation that is helping to ensure that defendants receive a fair trial at the Special Court. However, the lack of resources available to defense teams paid for by the court, which relates at least in part to under funding of the court more generally by donors, could constrain their ability to mount a defense. While fairness does not require a dollar for dollar match between resources available to the OTP and the defense, the extent of disproportionate allocation of such resources at the Special Court could contribute to a perception that trials are unfair and that equality of arms is not upheld.

The facilities provided by the Defense Office for defense teams have suffered from a lack of resources, which have hampered case preparation. As of March 2004, nine defense teams, including more than twenty defense attorneys, were provided with only three rooms in which to work, which limited their ability to conduct confidential meetings.[13] Although in recent months increased space has been made available and additional offices are under construction, storage and access to fax and photocopiers remain ongoing problems, and teams must share limited access to computers and vehicles.[14] This is contrasted with resources available to the OTP. Human Rights Watch was told that OTP office space consists of five containers, each OTP staff member has access to a computer, and storage includes filing cabinets, along with a

[12] Human Rights Watch interviews with Special Court staff, Freetown, March 3, 4, and 6, 2004.
[13] Human Rights Watch interviews with two defense counsel, Freetown, March 4 and 5, 2004; template of "Legal Service Contract No 2000/3" between the principal defender, Defense Office of the Special Court for Sierra Leone, and the contracting counsel (hereinafter "Legal Service Contract"), Annex Two, on file with Human Rights Watch.
[14] Human Rights Watch interview with defense counsel, Freetown, March 4, 2004; Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Legal Service Contract, Annex Two.

separate location for storing evidence.[15] OTP staff also had availability to vehicles during crucial stages of investigations, although at the beginning of 2004, this was considerably cut back as well.

The trials at the Special Court involve complex issues; they are expected to include testimony of more than one hundred witnesses and last many months.[16] It is essential that defense teams have appropriate facilities to prepare and present their cases. Human Rights Watch recommends that the Registry immediately take additional action to ensure that defense teams have adequate facilities, including sufficient space to store documents and access to fax, photocopy, Internet, and computers, recommending additional funding as necessary for this purpose. Human Rights Watch further urges the Management Committee to support these allocations and for governments or the United Nations to fund them.

The payment structure for defense counsel also raises serious concerns; it could create an incentive for counsel to work less even when case preparation and presentation require additional work. In an effort to keep costs low and to avoid problems such as overpayment of defense counsel and fee splitting, the Special Court Defense Office will pay each defense team a lump sum for compensation and all expenses for the duration of representation of each accused. Contracting counsel may request payment beyond the lump sum amount at the end of the trial for "Special Considerations" that may include "payments for additional professional fees arising out of the continuation of the trial of the Accused" past a pre-determined date or "the provision of services of an exceptional nature."[17] However, this arrangement apparently establishes a cap regardless of the complexity of the case, the amount of witnesses involved, and the number of hours counsel will appear in court, unless these issues result in continuation of the trial beyond a pre-determined date or constitute services "of an exceptional nature," which are not defined. Human Rights Watch was told that this arrangement may have undermined representation in some instances, in that some international defense counsel have left matters involving international law to local counsel who do not have experience with these issues rather than make additional trips to Freetown.[18]

The need to keep costs low and to avoid overpayment of defense counsel can not be accomplished at the expense of the defendant's right to a fair trial. Human Rights Watch recommends that the Defense Office amend legal services contracts to allow defense teams to petition for compensation beyond the lump sum cap if the team can demonstrate a serious need for hours of work and other expenses to prepare and present the case that exceed the cap. Human Rights Watch further recommends deletion of the requirement that services be of an "exceptional nature" to obtain additional funds. We urge the Registry to recommend making additional funds available to the Defense Office for this purpose, for the Management Committee to support this provision, and for the United Nations and donor countries to fund it.

---

[15] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[16] See "Sierra Leone war crimes prosecutors gather witnesses ahead of trials," Agence France-Presse, May 5, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[17] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004; Legal Service Contract, Section 4.
[18] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.

Witness Protection

Locating the Special Court in Sierra Leone – along with the court's tight budget – present challenges for the protection of witnesses not faced by the ICTY and the ICTR. The Witness and Victim Support Unit (Protection Unit) is employing a number of initiatives to ensure protection for witnesses, including using "safe houses" for protected witnesses. However, we are concerned that the Protection Unit lacks sufficient resources and skilled staff to ensure that witnesses receive "relevant support, counseling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault, and crimes against children" as required under Rule 34 of the Special Court Rules of Procedure and Evidence (SCSL Rules). Human Rights Watch was told that Protection Unit staff have behaved in a manner that has undermined protection in some instances, including by failing to follow-up when a witness raised concerns that the witness was being followed.[19] Special Court staff also raised concerns about the ability of the Protection Unit to handle what was expected to be a growing number of witnesses needing protection during trial.[20] Special Court staff commented that the unit is "doing okay, for [the] money," but that it was not quite prepared.[21]

Human Rights Watch urges the Registry to work with the Protection Unit to identify where lack of resources of the Protection Unit may be compromising its ability to work effectively and to recommend funding of these resources. Human Rights Watch further urges the Management Committee to support these allocations and for donors to fund them. We also urge donors to provide funding to ensure witness protection after the court ceases operations, through adequate support for materials and logistical equipment for a domestic witness protection unit. Additionally, Human Rights Watch urges the Registry to coordinate training of Protection Unit staff to ensure that protection is adequate, with a specific focus on providing sufficient information to witnesses, following through on witness concerns, and operating in a way that does not betray the identity of witnesses.

The Second Trial Chamber

Within the constraints of barebones resources and staff support, the Chambers have successfully moved the majority of cases from indictments to trial, ruling on more than one hundred and fifty pre-trial motions along the way, including on jurisdictional motions involving precedent-setting issues under international law.[22] However, the lack of establishment of the second Trial Chamber threatens to seriously undermine the court's capacity to complete operations efficiently.

The existing Trial Chamber is currently holding two trials – those of the CDF and RUF – on a rotating basis, hearing each case for approximately one month at a time. Additional Trial Chambers are permissible under Article 11 the SCSL Statute and a second Trial Chamber is envisioned, but has not been established as of this writing.

---

[19] Human Rights Watch interview with Special Court staff, Freetown, August 4, 2004.
[20] Human Rights Watch interview with Special Court staff, Freetown, March 6, 2004.
[21] Ibid.; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[22] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.

Human Rights Watch was told that the second Trial Chamber was included in the budget for the second year of operations, but that a variety of factors contributed to delay in its establishment, including the prospect that all AFRC and RUF cases might be consolidated into one trial based on a motion for joinder by the OTP.[23] In January 2004, the Trial Chamber ruled on the joinder motion holding that the indictees (excluding Charles Taylor) would be tried in three groups, the RUF, the AFRC, and the CDF trials.[24] However, as of August 2004, judges to serve on the second Trial Chamber have still not been appointed.[25]

Establishment of the second Trial Chamber would contribute significantly to ensuring that the Special Court completes its operations efficiently by allowing for the AFRC trial to be conducted at the same time as the RUF and CDF cases, and, should he be surrendered to the court, also the case of Charles Taylor. The limited duration of the court underscores the importance of establishing the second Trial Chamber as quickly as possible and consistently resolving issues that undermine such efforts. Human Rights Watch strongly urges both the Sierra Leone government and the U.N. secretary-general to immediately complete appointments of qualified judges to the second Trial Chamber, and for the Registry to address any and all matters necessary to ensure that the second Trial Chamber commences work as soon as possible.

Lack of Cooperation regarding Charles Taylor

Lack of cooperation by Nigeria with the Special Court through its continued shielding of Charles Taylor threatens to undermine the court's work to bring justice for the most serious crimes. Former Liberian President Charles Taylor was indicted by the Special Court on seventeen counts of crimes against humanity and other serious violations of international humanitarian law. Taylor was given asylum in Nigeria in August 2003, after he was forced from power in Liberia. Nigeria's harboring of Taylor goes against international law, undercuts the investment made by the international community to combat impunity in Sierra Leone, and is an affront to victims of the crimes committed in Sierra Leone.

Nigeria should immediately surrender Taylor to the Special Court to face trial for the crimes he is accused of committing. Human Rights Watch urges the United Nations and its member states who have failed to call for President Olusegun Obasanjo to surrender Charles Taylor to the Special Court to raise this issue both publicly and privately with the Nigerian president. The inadequate response by the international community is inconsistent with international efforts, particularly U.N. Security Council resolutions, calling for indictees to be brought before the ICTR and ICTY.[26]

---

[23] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.

[24] See "Trial Chamber Joinder Decision: Accused to be Tried in Three Groups," Special Court for Sierra Leone Press and Public Affairs Office, January 27, 2004 [online], http://www.sc-sl.org/ (retrieved August 11, 2004).

[25] Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.

[26] See, for example, United Nations Security Council, Resolution 1503.

To ensure that the Special Court achieves its objectives, these concerns must be addressed by the United Nations and its member states, the Special Court Management Committee, and the appropriate organs and units of the Special Court. In particular, the registrar should recommend that adequate funds be provided to support under funded areas described above so that the court is properly budgeted to operate consistently with its objectives to bring justice fairly and effectively. The Management Committee should support these allocations and the United Nations and governments should fund them. The victims of the brutal crimes committed in Sierra Leone deserve nothing less.

In addition to the concerns outlined above, we provide background on the establishment of the court below in Section II, followed by an area by area assessment of the court's operations in which we detail positive developments as well as additional concerns and make recommendations to improve court operations. The areas are discussed in the following order: Chambers, Office of the Prosecutor, Defense, Witness Protection, Security, Accessibility, and Legacy. We conclude with a section on the need for international cooperation and financial support for the Special Court.

II. Brief Overview of the Establishment of the Special Court

The Special Court came out of an initiative by President Ahmad Tejan Kabbah, who, following the collapse of the peace process in May 2000, asked for U.N. assistance in establishing a mixed national and international court in Sierra Leone to try "members of the RUF and their accomplices."[27] In August 2000, the Security Council adopted a resolution authorizing the U.N. secretary-general to enter into negotiations with the Sierra Leonean government to establish such a court.[28] On January 16, 2002, after more than a year of negotiations, the United Nations and the Sierra Leone government signed an agreement which created the legal framework for the court.[29]

The Special Court is charged with bringing to justice those who bear the greatest responsibility for war crimes, crimes against humanity, other serious violations of international humanitarian law, and certain violations of Sierra Leonean law committed during the civil war in Sierra Leone since November 1996.[30] As the civil war began in 1991, the period for which the court has jurisdiction is limited to less than half of the civil war. Human Rights Watch had previously urged the U.N. Security Council to extend the temporal jurisdiction of the Special Court to cover the entirety of the war.[31]

To date, the Special Court has indicted thirteen individuals from three warring factions – the government-backed CDF and the rebel forces, the RUF and the AFRC. The indictees are charged with war crimes, crimes against humanity, and other serious violations of humanitarian law for crimes including murder, rape, extermination, acts of terror, enslavement, looting and burning, sexual slavery, conscription of children into an

[27] United Nations, Letter from President of Sierra Leone to the Secretary-General (2000), Annex S/2000/786.
[28] United Nations Security Council, Resolution 1315 (2000), S/RES/1315.
[29] United Nations, Agreement between the United Nations and the Government of Sierra Leone.
[30] SCSL Statute, Art. 1.1.
[31] Human Rights Watch, "The Jury is Still Out," *A Human Rights Watch Briefing Paper on Sierra Leone*, July 11, 2002 [online], http://hrw.org/backgrounder/africa/sl-bck0711.htm (retrieved August 11, 2004).

armed force, and attacks on peacekeepers and humanitarian assistance workers. Nine accused are currently in custody at the Special Court detention facilities facing trial. The four other indictees – considered to represent some of the "biggest fish" – are dead, missing, or shielded from facing the court. Foday Sankoh and Sam "Mosquito" Bockarie died in 2003, after which the court withdrew their indictments.[32] Charles Taylor is in exile in Nigeria and Johnny Paul Koroma is believed to be either dead or missing.

The Special Court lacks U.N. Chapter VII powers that obligate governments to cooperate with the court. This makes the Special Court, unlike the ICTR or the ICTY, dependent on the timely cooperation and compliance of member states with its requests and orders in all areas, including the production of witness testimony or other evidence, the service of warrants, and the search, arrest, and surrender of suspects to the Special Court. Human Rights Watch has previously urged the United Nations to grant the Special Court Chapter VII powers.[33]

In another difference from the ad hoc tribunals, the agreement establishing the Special Court provides for the court to have a Management Committee. The Management Committee's mandate is 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."[34] Its terms of reference provide that the committee is responsible for a number of important functions, including: identification of nominees for the positions of registrar, prosecutor, and judges appointed by the secretary-general; providing guidance on non-judicial aspects of Special Court operations; overseeing the Special Court's annual budget and other financially related reports, and advising the secretary-general on these; assisting the secretary-general on ensuring adequate funding for the court; encouraging cooperation by states; and reporting regularly to interested states.[35] The committee is made up of important financial contributors and other supporters of the Special Court and comprises representatives from Canada, the Netherlands, Nigeria, Lesotho, the United Kingdom, and the United States.[36]

III. Chambers

An impartial, independent, and competent bench is essential to ensuring the fairness of proceedings before the Special Court.[37] It is also crucial that the Chambers treat

---

[32] Sankoh reportedly died from a long-term illness while Bockarie died from gunshot wounds in Liberia. "Prosecutor Withdraws Indictments Against Sankoh and Bockarie," Special Court for Sierra Leone Press Release, December 5, 2003 [online], http://www.sc-sl.org/ (retrieved August 11, 2004).
[33] See Human Rights Watch, "The Jury is Still Out."
[34] United Nations, Agreement between the United Nations and the Government of Sierra Leone.
[35] "Terms of Reference for the Management Committee for the Special Court for Sierra Leone," August 8, 2002, Art. IV-4.
[36] United Nations Security Council, Thirteenth report of the Secretary-General on the United Nations Mission in Sierra Leone (2002), S/2002/246, para. 45.
[37] Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) requires that "everyone shall be entitled to a fair and public hearing by a *competent, independent and impartial* tribunal established by law." (emphasis added) Article 13(1) of the SCSL Statute provides that: "The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for

witnesses properly and operate efficiently. Efficiency is important to protect the right of the accused under international law to a trial without unreasonable delay and to avoid undue waste of limited financial resources available to the Special Court, particularly given the expected limited duration of the court. Of all the court organs, the Special Court's overall efficiency is likely to be most heavily dependent on the Chambers' ability to keep the trials moving expeditiously. However, efficiency must never be provided at the expense of ensuring a fair trial.

The Chambers include a mix of international and local judges, with a majority of appointments made by the U.N. secretary-general and a minority of appointments made by the Sierra Leone government.[38] The Chambers have faced predictable difficulties in bringing together judges from varying legal traditions to adjudicate cases and have worked with barebones resources and staff support. Within these constraints, the Chambers have successfully moved the majority of cases from indictments to trial, ruling on more than one hundred and fifty pre-trial motions along the way, including on jurisdictional motions involving precedent-setting issues under international law.[39]

However, as discussed above, the lack of establishment of the second Trial Chamber threatens to seriously undermine the court's capacity to complete operations efficiently. Human Rights Watch also has concerns over delays in the issuance of rulings in a number of instances, which we believe is related in part to inadequate funding of the court by donors, and treatment of witnesses and courtroom management. Below we elaborate on these concerns and provide recommendations to address them.

A. Establishment of the Second Trial Chamber

The establishment of the second Trial Chamber would contribute significantly to ensuring that the Special Court completes its operations efficiently by allowing for the AFRC trial to be conducted at the same time as the RUF and CDF cases, and, should he be surrendered to the court, also the case of Charles Taylor. The expected limited duration of the court underscores the importance of establishing the second Trial Chamber as quickly as possible and consistently resolving issues that undermine such efforts.

At present, there are four cases: the defendants are members of the RUF, the AFRC, the CDF, and Charles Taylor. The existing Trial Chamber is currently holding two trials – those of the CDF and RUF – on a rotating basis, hearing each case for approximately one month at a time. Additional Trial Chambers are permissible under Article 11 of the

---

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."

[38] This is different from the ICTY and ICTR, in which all of the judges are international judges appointed by the United Nations. The judges appointed by the U.N. secretary-general to the Special Court Appeals Chamber are: Emmanuel Olayinka Ayoola from Nigeria, Renate Winter from Austria, and A. Raja N. Fernando from Sri Lanka. The U.N. secretary-general appointees to the Trial Chamber are: Benjamin Mutanga Itoe from Cameroon and Pierre G. Boutet from Canada. Although the Sierra Leone government is entitled to make three appointments, only two Sierra Leone judges are currently appointed to the Chambers. These are Gelaga King in the Appeals Chamber and Rosolu John Bankole Thompson in the Trial Chamber. The Sierra Leone government made a British national, Geoffrey Robertson, its second appointment to the Appeals Chamber. SCSL, "Chambers," n.d. [online], http://www.sc-sl.org (retrieved August 11, 2004).

[39] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.

SCSL Statute and a second Trial Chamber is envisioned, but has not been established as of this writing. Human Rights Watch was told that the second Trial Chamber was included in the budget for the second year of operations, but that a variety of factors contributed to the delay in its establishment, including the prospect that all AFRC and RUF cases might be consolidated into one trial based on a motion for joinder by the OTP.[40] In January 2004, the Trial Chamber ruled on the joinder motion holding that the indictees (excluding Charles Taylor) would be tried in three groups, the RUF, the AFRC and the CDF trials.[41] However, as of July 2004, judges to serve on the second Trial Chamber have still not been appointed.[42]

Human Rights Watch strongly urges both the Sierra Leone government and the U.N. secretary-general to immediately complete appointments of qualified judges to the second Trial Chamber, and for the Registry to address any and all matters necessary to ensure that the second Trial Chamber commences work as soon as possible.

B. Timeliness of Rulings on Motions

While numerous rulings on motions have been issued on a timely basis at the Special Court, substantial delays have also occurred. Some of these are problematic as they relate to rights of the accused or witness protection. Others raise concerns simply by the extended period between the time the motion was filed and the decision was issued. Delay in one ruling can, in some instances, create a domino effect, pushing back other rulings that cannot be issued without the decision, and slowing down proceedings overall. Human Rights Watch has prepared a chart that details the approximate time from the filing of a motion to issuance of a ruling for a number of motions, namely those whose decisions were available on the court website between May 23, 2003, and July 30, 2004, that took more than two months to be issued.[43] This chart is attached as the appendix to this report.

In one example, a decision denying bail to a defendant was handed down almost four months after the initial application for bail.[44] A decision on a request to modify the conditions of detention also took approximately four months to resolve, apparently due in part to the August 2003 recess and confusion over whether to treat it as a request for bail or modification of conditions of detention.[45]

---

[40] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.
[41] See "Trial Chamber Joinder Decision: Accused to be Tried in Three Groups," Special Court for Sierra Leone Press and Public Affairs Office, January 27, 2004 [online], http://www.sc-sl.org/ (retrieved August 11, 2004).
[42] Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.
[43] Many decisions were issued in less than two months following the filing of the motion. However, it was not possible to quantify the number of such decisions with any precision based on our review of the website of the Special Court for Sierra Leone.
[44] Decision on the Motion by Morris Kallon for Bail (Sesay, Kallon, Gbao) (Trial Chamber), February 24, 2004 (see Appendix, Entry 22).
[45] Decision on Motion for Modification of the Conditions of Detention (Norman) (Trial Chamber), November 26, 2004 (see Appendix, Entry 18).

In another example, the Trial Chamber took approximately three and one half months to rule on two motions by the prosecutor to combine nine individual cases into two trials, an RUF/AFRC trial and a CDF trial.[46] In part, the delays may have resulted from wide variation in how quickly defense counsel responded to the prosecutor's motion. However, even accounting for such delays, the Trial Chamber considered these motions for almost two months before ruling on them.

While the Trial Chamber typically determined motions concerning the protection of witnesses within one and a half months of their filing,[47] in the case of Augustine Gbao the Trial Chamber took approximately five months to rule on a motion for protection of witnesses, although Gbao's counsel apparently made more extensive legal claims in the Response to the Motion for Protective Measures.[48]

In the Appeals Chamber, the judges took between eight and nine months from June 2003 to March 2004 to rule on three motions challenging the court's jurisdiction on the basis of the Lomé Accord, lack of judicial independence, and lack of constitutionality.[49] Two additional motions that challenged the court's jurisdiction to try the crime of child recruitment and to prosecute Charles Taylor were decided between ten and eleven months after they were filed on May 31, 2004.[50] Several factors may partially explain the delay. First, there was a change in SCSL Rule 72 in August 2003.[51] The effect of this change was that the Trial Chamber referred these motions to the Appeals Chamber for initial and final adjudication approximately three months after the motions were first filed.[52] Second, some of the motions were the subject of numerous *amicus curiae* submissions. However, even after the last submissions and arguments were made, the

---

[46] Decision and Order on Prosecution Motions for Joinder (Kondewa, Fofana, Norman) (Trial Chamber), January 27, 2004 (see Appendix, Entry 23); Decision and Order on Prosecution Motions for Joinder (Kamara, Gbao, Kallon, Brima, Sesay, Kanu) (Trial Chamber), January 27, 2004 (see Appendix, Entry 24).

[47] See, for example, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (Sankoh) (Trial Chamber), May 23, 2003; Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (Sesay) (Trial Chamber), May 23, 2003.

[48] Decision on the Prosecution Motion for Immediate Protective Measures For Witnesses and Victims and for Non-Public Disclosure (Gbao) (Trial Chamber), October 10, 2004 (see Appendix, Entry 13).

[49] Decision on Constitutionality and Lack of Jurisdiction (Kallon, Norman, Kamara) (Appeals Chamber), March 13, 2004 (see Appendix, Entry 4); Decision on Challenge to Jurisdiction: Lomé Accord Amnesty (Kallon, Kamara) (Appeals Chamber), March 13, 2004 (see Appendix, Entry 3); Decision on Preliminary Motion Based on Lack of Jurisdiction (Judicial Independence) (Norman) (Appeals Chamber), March 13, 2004 (see Appendix, Entry 5).

[50] Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) (Norman) (Appeals Chamber), May 31, 2004 (see Appendix, Entry 1); Rendering of Decision on Motion Made Under Protest and Without Waiving Immunity Accorded to a Head of State Requesting the Trial Chamber to Quash the Indictment and Declare Null and Void the Warrant of Arrest and Order for Transfer of Detention 23 July 2003 (Immunity Motion) (Taylor) (Appeals Chamber), May 31, 2004 (see Appendix, Entry 2).

[51] SCSL Rule 72 was changed to eliminate review by the Trial Chamber for certain preliminary motions, namely those made prior to the prosecutor's opening statement, which raise a serious issue relating to jurisdiction or an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial. The revised rule also provided that such motions will be referred to a bench of Appeals Chamber judges, where they will proceed to a determination as soon as practicable. Decision on the Applications for a Stay of Proceedings and Denial of Right to Appeal (Norman, Kallon, and Gbao), November 4, 2003.

[52] Prior to the rule change, the Trial Chamber would have rendered decisions on these motions before any review by the Appeals Chamber, but following the rule change, the motions were to be referred directly to the Appeals Chamber. See "The Court Trials Should be Held Without Undue Delay," Special Court for Sierra Leone Press and Public Affairs Office Press Release, November 5, 2003 [online], http://www.sc-sl.org (retrieved August 11, 2004).

Appeals Chamber took between three and five months to resolve these claims.[53] This is particularly troubling as one of the justifications made by the judges for the change of Rule 72 was indeed to avoid delays that would undermine detainees' rights to be tried fairly, effectively, and expeditiously.[54] The Appeals Chamber also took between six and seven months to rule on a number of other jurisdictional motions.[55]

Human Rights Watch believes that at least two issues, which are discussed in depth below and are in part related to under funding of the court by donors, have hindered efficiency in rendering decisions: 1) an inadequate number of legal advisors assigned to the Chambers; and 2) the extent of availability of the Appeals Chamber.

1. Legal Support

Legal officers provide important support to judges by assessing research needs and conducting substantive research on legal issues arising out of proceedings, preparing and drafting legal documents, including written judicial decisions, and managing files. Human Rights Watch believes that the limited number of legal officers assigned to the Chambers is hampering the capacity of the Chambers to consistently issue quality decisions as efficiently as possible.

In theory, four legal officers, including one senior legal officer, were allocated to support the Appeals and the Trial Chamber.[56] In practice, the first legal officer did not commence working at the Special Court until October 2003, more than six months after indictments were issued, and only two legal officers supported the Chambers until June 2004.[57] Two additional legal officers were assigned to the Trial Chamber in June 2004, one covering each trial, and recruitment was underway for two associate legal officers to further support the Trial Chamber as of this writing.[58] However, there is no allocation in the existing budget to hire additional legal officers once the second Trial Chamber is established.[59] Thus, the Chambers are likely to suffer again from significantly limited support once the second Trial Chamber commences functioning.[60]

---

[53] Note also that the Trial Chamber took approximately three and one half months to resolve a jurisdictional challenge that was *not* delayed by referral to the Appeals Chamber. See Decision on the Defense Preliminary Motion Based on Lack of Jurisdiction: Command Responsibility (Norman) (Trial Chamber), October 15, 2003 (see Appendix, Entry 25).

[54] "The Court Trials Should be Held Without Undue Delay," Special Court for Sierra Leone Press and Public Affairs Office.

[55] See Appendix, Entries 6-12.

[56] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.

[57] Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004; Human Rights Watch interview with two Special Court staff members, Freetown, March 4, 2004.

[58] E-mail message from Special Court staff to Human Rights Watch, Freetown, May 21, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004.

[59] Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004.

[60] Taking into account that the Special Court is supposed to operate on a smaller budget than the ad hoc tribunals, and that trials did not commence until June 2004, it still bears mentioning that at the ICTY, for example, each trial is supported by six staff providing full-time or part-time support: one legal officer and three associate legal officers dedicated to each trial, and an additional associate legal officer and senior legal officer who are assigned to support each Trial Chamber as a whole. See ICTY, "Tenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991," 2003 [online], http://www.un.org/icty/rappannu-e/2003/index.htm (retrieved August 11, 2004), paras. 316-319.

Human Rights Watch was told that the small number of advisors allocated to the Chambers is related to the need to keep costs low.[61] However, by providing Chambers with adequate legal support, efficiency will be enhanced, thereby ultimately reducing the overall length and cost of the proceedings. In this regard, Human Rights Watch urges the registrar to recommend an increase in the budget to provide for the hiring of additional legal officers to be assigned to the Chambers, specifically to provide a total of three legal advisors for each Trial Chamber and the Appeals Chamber. Human Rights Watch further urges the Management Committee to support this increase and for governments and the United Nations to provide funding for these additional advisors.

2. *Availability of the Appeals Chamber*

The slowness in rulings on major jurisdictional challenges by the Appeals Chamber raises concerns that the Appeals Chamber judges are not convening enough to ensure that decisions are issued efficiently. The Appeals Chamber functions on an ad hoc basis and convenes as necessary, in some cases by phone. We understand that this arrangement is in part due to budgetary constraints and that under this arrangement Appeals Chamber judges are compensated for the hours that they work, rather than being salaried.[62] As a result, judges who are not otherwise retired have continued to maintain other professional commitments while they serve in the Appeals Chamber.[63]

Special Court staff characterized the work of the Appeals Chamber judges as consisting of work for about one to two days a month or work for concentrated periods at different points since September 2003, including during a week of hearings in November 2003, a week of deliberations in December 2003, and a week each in March and in May 2004, along with time spent preparing before and after hearings and meetings.[64] Regardless of whether the Appeals Chamber works on a full-time or ad hoc basis, Human Rights Watch urges Appeals Chamber judges to make themselves available when motions are before the Appeals Chamber so that rulings are rendered as expeditiously as possible.

C. Treatment of Witnesses and Courtroom Management

It is absolutely necessary that when witnesses come forward to testify, often at great risk to themselves and their families, that they are treated with dignity and respect. This is a matter of principle and also pragmatic, as ill-treatment of witnesses will have a chilling effect on witness cooperation with the court and undermines the very principles on which the court is founded. In the two months since trials began, some concerns have been raised regarding the treatment of witnesses. Human Rights Watch was told that judges have reportedly referred to the "degree of intelligence of a witness" in reference to a witness' lack of education, laughed concerning the illiteracy of a witness, requested

[61] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[62] E-mail to Human Rights Watch from Special Court staff, New York, August 17, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[63] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004.
[64] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004.

that a witness whose arms were obviously amputated raise hands to demonstrate this, and, in at least one instance, stated the name of a child witness in open court.[65] At the same time, Human Rights Watch was told that judges have demonstrated sensitivity in other instances to witnesses, particularly with rape victims, by allowing breaks whenever a witness breaks down, psychosocial support staff to sit close to the witness when the witness gives testimony if the witness prefers this, and comprehensive measures for protection of identity, including use of voice distortion, closed circuit television, and a screen during testimony.[66] The judges have also worked with the Witnesses and Victims Support Unit to ensure proper treatment of witnesses.[67]

Concerns have also been raised regarding inefficient courtroom management. Human Rights Watch understands that there have been missed opportunities to have trial sessions. Trials are in session between twenty and twenty-five hours a week, with five and a half hours scheduled three days a week, a half day session one day each week, and one day reserved for the hearing of motions or arguments as necessary with trial otherwise in session.[68] Human Rights Watch was told that in one instance, a hearing on a motion was scheduled on the day reserved for the hearing of motions, but it was set for the afternoon and no other proceedings took place the rest of the day.[69]

Additionally, the Trial Chamber is on judicial recess three out of four weeks in August 2004 and is expected to be on judicial recess during most of December 2004.[70] Human Rights Watch urges the Trial Chamber to utilize days reserved for motions for trial sessions when motions are not being heard, and to assess whether maintaining efficiency requires that daily trial sessions be longer and judicial recesses be more limited. As discussed above, however, measures to increase efficiency must not be implemented in ways that would undermine protection of the rights of the accused.

In June 2004 there was a first ever exchange between Special Court judges and ICTY and ICC judges on procedural and substantive matters, including courtroom and case management, elements of crimes, theories of liability, and witness issues.[71] In particular, Special Court staff reported a noticeable improvement in the treatment of witnesses

---

[65] Human Rights Watch interview with Special Court staff, New York, August 3, 2004; Human Rights Watch telephone conversation with Anthony Triolo, consultant to the International Center for Transitional Justice (ICTJ), Freetown, August 2, 2004; Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Human Rights Watch interview with three Special Court staff members, Freetown, July 27, 2004.
[66] Human Rights Watch interview with three Special Court staff members, Freetown, July 27, 2004; Human Rights Watch interview with Special Court staff, New York, August 3, 2004.
[67] Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004.
[68] The afternoons on the half day (Wednesdays) are utilized for deliberations, drafting, meetings, etc. E-mail correspondence with Special Court staff, Freetown, June 16, 2004; Order Detailing Judicial Calendar for the Upcoming Trial Sessions (Sesay, Kallon, and Gbao) (Trial Chamber), May 26, 2004; SCSL "Judicial Calendar for Trial Chamber I," n.d. [online], http://www.sc-sl.org (retrieved July 28, 2004).
[69] Human Rights Watch interview with three Special Court staff members, Freetown, July 27, 2004.
[70] "Judicial Calendar for Trial Chamber I," n.d. [online], http://www.sc-sl.org (retrieved August 11, 2004); Human Rights Watch interview with three Special Court staff members, Freetown, July 27, 2004.
[71] The session, which was held in The Hague, was organized and supported by the War Crimes Studies Center and Human Rights Center, University of California, Berkeley, which is supported by the Wang Family Foundation and the International Center for Transitional Justice, in association with the ICTY Outreach Program. E-mail to Human Rights Watch from Marieke Wierda, Senior Associate, International Center for Transitional Justice, New York, June 15, 2004.

following this session, underscoring the importance of such initiatives.[72] Human Rights Watch urges the Registry to continue to organize these types of sessions on a regular basis, focusing them on:

- courtroom management and criminal trial procedure, including on the Special Court Rules of Procedure and Evidence, particularly for new appointees;
- substantive issues of international criminal, human rights, and humanitarian law; and
- maintaining sensitivity to victims and witnesses (including victims of gender based crimes, child witnesses, and particular groups that, due to poor education and/or illiteracy, may have difficulty understanding court procedures).

Videotapes of sessions should be made so that when there is turnover, new personnel can view the videotapes.

Human Rights Watch further urges, as it has previously, that future judicial appointees be required to have criminal trial experience.[73] While all the judges have served as judges previously, we understand that not all of the current appointees have criminal trial experience, which the SCSL Statute fails to explicitly require.[74] Requiring this experience would contribute to enhancing courtroom management. Recognizing that the majority of appointments have already been made, we urge the Sierra Leone government and the U.N. secretary-general to require that all future judicial appointees, particularly those to the second Trial Chamber, have experience in criminal trials.

IV. The Office of the Prosecutor

An effective strategy for investigations and prosecutions is essential for the court to fulfill its mandate of bringing to justice those who bear the greatest responsibility for serious violations of international and Sierra Leonean law. The Special Court's investigation and indictment of alleged perpetrators from all warring factions to the conflict, particularly those associated with the government-backed CDF militias, sends a strong message that the court operates impartially and independently to prosecute serious crimes. It reinforces the principles that the tribunal applies the law equally and operates free from political influence by the Sierra Leone government. Civil society members report that the indictment of Sam Hinga Norman in particular, who was the leader of the Civil Defense Forces and deputy minister of defense during the period for which the court has jurisdiction and minister of the interior at the time he was indicted, enhanced local understanding of the court's mandate, and established the court as

[72] Human Rights Watch interview with three Special Court staff members, Freetown, July 27, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004.
[73] See Human Rights Watch, "Recommendations for the Sierra Leone Special Court."
[74] Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2004; SCSL Statute, Article 13(3) ("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.")

qualitatively different from "business as usual" in Sierra Leone, where judicial matters have been characterized by pervasive corruption.[75]

The Special Court has made significant strides in investigating and charging defendants with gender based crimes and child recruitment. This is important because of the far reaching impact of these crimes on the lives of children and women which were committed by all sides. Prosecuting child recruitment is especially significant following an historic ruling on May 31, 2004, that child recruitment constituted a war crime at least since 1996, when the court's authority began, rejecting a challenge that it was not a crime under international law during the period for which the court has jurisdiction.[76] The majority of indictees are also charged with gender based crimes, although it is unfortunate that the CDF indictees will not be prosecuted for these crimes despite the fact that the OTP has sufficient evidence to indict them on these charges.[77] This is particularly significant in light of the importance of prosecuting these crimes and the limited or nonexistent opportunity to prosecute them domestically.

Despite these accomplishments and as discussed in the introduction, Human Rights Watch believes that the existing indictments reflect an inappropriately narrow interpretation of the court's mandate. The current indictments neglect certain perpetrators who, while perhaps not in top positions of responsibility, were regional or mid-level commanders who are distinguished by the extent of their brutality in terrorizing the civilian population during the period for which the court has jurisdiction. This is of particular concern as the court has indicted only thirteen suspects and there are unlikely to be more than a couple of additional indictments. We urge the OTP to address this issue immediately.

A. *Limited Interpretation of "Those Who Bear the Greatest Responsibility"*

The indictments issued to date reflect an inappropriately narrow interpretation of the court's limited mandate. Under Article 6, the SCSL Statute provides that individuals may be found responsible for crimes under the authority of the court where they either:

---

[75] Civil society members explained that the court "gained credibility with the indictments of Sam Hinga Norman" and that "no one was ever thinking Sam Hinga Norman would ever be indicted. We thought [he] would have [been spared by] intervention by Kabbah." Human Rights Watch interview with members of Sierra Leone civil society groups, Freetown, March 4, 2004.

[76] Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) (Norman) (Appeals Chamber), May 31, 2004.

[77] The Special Court rejected a motion by the OTP to amend indictments of accused associated with the CDF to include charges of gender based crimes, including forced marriage, rape, sexual slavery, and outrages against personal dignity, on the grounds that doing so would prejudice the rights of the accused to be tried expeditiously. The prosecution filed leave to appeal, but the Trial Chamber rejected the motion holding that the required "exceptional circumstances" did not exist for leave to appeal on the basis that: 1) a dissent in the initial decision does not in itself warrant exceptional circumstances; and 2) neither the burden to prosecute to the full extent of the law nor the nature of gender based crimes can be solely determinative of whether exceptional circumstances exist. The court also cited that delay caused by amending the indictment would unfairly prejudice the defense while rejecting the amendment would not prejudice the prosecution. Decision on prosecution request for leave to amend the indictment (Norman, Fofana, Kondewa) (Trial Chamber), May 20, 2004; Majority Decision on the Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision of the Prosecution's Request for Leave to Amend the Indictment (Trial Chamber) August 2, 2004, paras. 27-29.

1) "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime" or 2) "knew or had reason to know that a 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." The latter of these is known as command responsibility. However, persons who are individually responsible may only be prosecuted by the Special Court if they also "bear the greatest responsibility" for the crimes pursuant to Article 1(1) of the SCSL Statute.

The individuals currently indicted could be characterized as the highest-level commanders in the CDF, the AFRC, or the RUF who were the "kingpins" or "masterminds" of the war, or their financial backers. These indictees allegedly "knew or had reason to know" about the commission of the crimes and may have also participated in directly committing atrocities. However, Human Rights Watch believes that these indictments reflect an excessively narrow interpretation of the mandate to prosecute "those who bear the greatest responsibility." Human Rights Watch believes that the mandate should be interpreted to include other perpetrators who, while not at the top of the chain of command, were regional or mid-level commanders who stood out above similarly ranking colleagues for the exceedingly brutal nature of the crimes they committed that terrorized civilians.

This sentiment was echoed by members of local civil society groups interviewed by Human Rights Watch, who expressed frustration that a limited number of regional or mid-level commanders known for their notorious behavior, some of whom physically carried out the crimes, have escaped indictment by the Special Court. Three such commanders noted by civil society members include AFRC commanders Savage and Al Hadji Bayoh, and CDF commander Musa Junisa. It will be interesting to note if the final report of the Truth and Reconciliation Commission (TRC), which was expected to be released in May, but has yet to be issued as of this writing, identifies particular individuals as bearing particular responsibility for crimes under the Special Court's authority.

Special Court staff were resistant to interpreting the court's mandate to prosecute regional or mid-level commanders who distinguished themselves by their brutality, citing time and resource constraints and the difficulty of identifying a small number of alleged perpetrators who would fall under this interpretation.[78] Nevertheless, the research of Human Rights Watch and others suggests that there are, in fact, a very limited number of individuals who fall into this category. We also suggest that sufficient evidence to prosecute them would have been obtained in the process of building cases against top commanders who have already been indicted.

Prior to commencement of operations, it was generally understood that the Special Court would try no more than twenty to thirty persons.[79] Nevertheless, only thirteen

[78] Human Rights Watch interviews with Special Court staff, Freetown, March 3, 4, and 6, 2004.
[79] The SCSL has shied away from officially stating the number of persons it intends to indict. However, one U.N. official estimated in 2000 that the court would have a "pool of accused, probably in the order of twenty-five or thirty" and the international community has generally understood that indictments would be within this range.

indictments have been issued, and as discussed in Section II, four of these indictees, who are considered to be several of the "biggest fish," are dead, missing, or are being shielded from the court.[80] Human Rights Watch was also told that no more additional indictments are expected unless Charles Taylor is taken into custody, in which case a few other individuals might be indicted.[81] In light of the small number of indictees and the resources invested in this mechanism, interpreting the mandate to include regional or mid-level commanders who are notorious for the brutal crimes they allegedly committed would provide an important opportunity to ensure that the possibilities for rendering justice are maximized through prosecutions at the Special Court. Human Rights Watch urges the OTP to review prior investigative work to assess whether several of these persons should be further investigated or indicted, and if so, to pursue prosecution of such cases.

V. Defense

The trials at the Special Court for Sierra Leone must respect the highest standards of international fair trial rights. The highly charged nature of the trials – particularly for indictees from the CDF who were widely perceived to have played a key role in defending the nation from rebel attacks – underscores the importance of effective safeguards to ensure respect for the rights of the accused. These rights, as enshrined in the International Covenant on Civil and Political Rights (ICCPR), are included in the SCSL Statute and Rules under Article 17 and Rules 33 to 46, respectively. Justice must be done and be seen to be done through comprehensive application of these provisions.

By operating in accordance with international fair trial standards, the Special Court also can provide a model that the domestic justice system can look to as it rebuilds and reforms following the end of the civil war. The Sierra Leone justice system, which was dysfunctional prior to the civil war and all but collapsed during it, has suffered from numerous problems. Political manipulation and corruption have undermined the impartiality and independence of the courts. Extended and unlawful detentions have taken place without due process. Additionally, local courts presided over by traditional leaders or their officials that apply customary law, and are the only form of legal system accessible to an estimated 70 percent of the population, have also been characterized by serious abuses of due process. These include discriminatory application of the law against women, illegal detentions, and excessively high fines for minor offences.[82]

"Press Briefing by U.N. Assistant Secretary-General, Office of Legal Affairs, Ralph Zacklin," September 25, 2000 [online], http://www.sierra-leone.org/specialcourt0900.html (retrieved August 11, 2004). See also ICTJ, "The Special Court for Sierra Leone: The First Eighteen Months," March 2004 [online], http://www.ictj.org/downloads/SC_SL_Case_Study_designed.pdf (retrieved August 11, 2004), p. 4; International Crisis Group, "The Special Court for Sierra Leone: Promises and Pitfalls of a 'New Model', Africa Briefing," August 4, 2003 [online], http://www.crisisweb.org/home/index.cfm?id=1803&l=1 (retrieved August 11, 2004), p. 3.

[80] As described above in Section II, Foday Sankoh and Sam Bockarie are dead, Charles Taylor remains in exile in Nigeria, and Johnny Paul Koroma is either missing or dead.

[81] Interviews with three Special Court staff members, Freetown, July 27, 2004; interviews with Special Court staff, Freetown, March 1 and 2, 2004.

[82] For a more detailed discussion of problems with the Sierra Leone justice system, see Human Rights Watch, "The Jury is Still Out."

One of the most significant innovations in international justice at the Special Court, and one that can provide a major contribution to ensuring that the rights of the accused are upheld, is the establishment of the Defense Office.[83] The Defense Office, particularly the principal defender, provides an important voice regarding issues of common interest to defense with other organs and units of the Special Court and the outside world. The principal defender has advocated for amendments of the SCSL Rules with the judges and for additional resources for the Defense Office with the Registry. The principal defender has spoken with accused in instances where conflicts regarding representation exist and communicated with governments and other parties to encourage them to respond to requests for cooperation by defense counsel.[84] Additionally, the Defense Office has conducted outreach through meetings and radio interviews, in conjunction with the Outreach Section and independently, to inform the local population about the court and fair trial issues.[85]

Currently, all indictees who are in custody are being represented by defense teams paid for by the Defense Office. Defense teams enter a legal services contract with the principal defender and the Defense Office that requires defense teams to submit an overall case plan that includes a description of the work to be undertaken and a proposal of stages into which the case should be divided. Subsequently, the teams must submit "stage plans" that describe work to be completed and the anticipated number of hours to be worked during each stage. The payment for all expenses, including travel, is a set lump sum and the arrangement provides that up to 50 percent of the total amount available for a particular "stage plan" can be released to defense counsel prior to receipts being submitted.[86] The release of funds at various junctures helps to ensure that defense counsel have access to some needed funds at appropriate moments.[87]

We believe that the Defense Office represents a deepening of practical experience drawn from the work of the ad hoc tribunals, all the more so in the case of extremely limited resources. However, Human Rights Watch is concerned that several aspects related to defense – some of which are discussed in the introduction and relate at least in part to

---

[83] This office was created in part as a result of difficulties in handling defense issues at the ad hoc tribunals, including criticisms of overpayment of defense counsel and fee splitting between accused and defense counsel. Human Rights Watch interview with defense counsel, Freetown, March 4, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004. Under Rule 45 of the Special Court Rules of Procedure and Evidence, a Defense Office is established within the Registry "for the purpose of ensuring the rights of suspects and accused," and is headed by a principal defender. The Defense Office performs a variety of functions, including providing initial legal advice by duty counsel, legal assistance if the accused does not have sufficient means to pay for it or as the interest of justice may so require, and adequate facilities for counsel in the preparation of the defense pursuant to Rule 45. There are three people who serve as duty counsel at the Special Court. In providing initial legal advice, duty counsel employed by the Defense Office are assigned to represent detainees from the time they are arrested, making sure that detainees understand their legal rights, until counsel is chosen by the detainee. Once detainees have counsel, duty counsel continue to provide assistance to defense teams through general legal research and by taking positions on behalf of all detainees, such as on conditions of detention. Human Rights Watch interview with two Special Court staff members, Freetown, March 3 and 4, 2004.

[84] Human Rights Watch interview with defense counsel, Freetown, March 4, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.

[85] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.

[86] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004; Legal Service Contract, Section 4.

[87] This also reflects an improvement over the ICTR, where delays for payment have existed.

under funding of the court by donors – are undermining the Special Court's ability to uphold fair trial rights. These are:

- inadequate logistical support available to defense teams;
- lump sum payment structure for defense teams;
- lack of suitable candidates to serve as investigators and delays in their appointment;
- insufficient training of defense counsel and investigators; and
- inconsistent translation.

We believe that these issues could contribute to a perception that rights of the accused are not protected and equality of arms is not adhered to by the Special Court. We have below outlined our concerns in more detail.

A. Logistical Support

The lack of resources available to defense teams could constrain their ability to mount a vigorous defense. The trials at the Special Court involve complex issues; they are expected to include testimony of more than one hundred witnesses and last many months, if not more than a year.[88] It is essential that defense teams have appropriate facilities to prepare and present their cases.

SCSL Rule 45 provides that the "Defence Office shall fulfill its functions by providing, *inter alia*:...(iii) adequate facilities for counsel in the preparation of the defence." The Special Court's Directive on the Assignment of Counsel further states that under Article 26 such facilities are to be provided by the Defense Office, and that failure of defense teams to utilize these facilities may result in a rejection of a claim for payment of outside resources in the preparation of the defense.[89]

The facilities provided by the Defense Office for defense teams have suffered from a lack of resources, which have hampered case preparation. For example, as of March 2004, nine defense teams, including more than twenty defense attorneys, were provided with only three rooms in one "container"[90] in which to work. The Defense Office includes two additional rooms, but they are designated for duty counsel and U.N. personnel.[91] This set-up limits the ability of defense teams to conduct confidential meetings. While the Special Court will try nine defendants in three groups, the CDF, the

[88] "Sierra Leone war crimes prosecutors gather witnesses ahead of trials," Agence France-Presse, May 5, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[89] Article 26 of the SCSL Rules states: "(A) Assigned Counsel and members of the Defence Team who do not have professional facilities close to the seat of the Special Court shall be provided with reasonable facilities and equipment such as access to photocopiers, computer equipment, various types of office equipment, and telephone lines... (D) Assigned Counsel shall make all reasonable efforts to use the personnel and facilities of the Defense Office in the preparation of a Suspect or Accused's case. (E) The Principal defender may refuse to approve a claim for remuneration or portion thereof where Assigned Counsel fails to make such reasonable efforts to use the personnel and facilities of the Defense Office...."
[90] Offices in the Special Court, regardless of the unit, tend to consist of rooms within what are essentially pre-fabricated temporary structures roughly the size of two mobile home trailers that are referred to as "containers."
[91] Human Rights Watch interviews with two defense counsel, Freetown, March 4 and 5, 2004; Legal Service Contract, Annex Two, on file with Human Rights Watch.

RUF, and the AFRC cases, in addition to a possible trial of Charles Taylor, some defense strategies will undoubtedly involve implicating other defendants they are tried with, making the three room work space arrangement particularly problematic. In recent months, the situation has improved, with increased space made available for defense teams. As of this writing, an additional container was under construction in which defense teams will have access to half the container, including at least three offices (or as many as six if these rooms are split to increase their number).[92]

Storage and access to fax and photocopiers remains an ongoing problem. Each team is provided with one medium-sized filing cabinet to store all documents for their case and no shelving to store materials.[93] Although a template for the legal services contract defense teams enter into with the principal defender and the Defense Office provides that defense counsel will be given "access to fax machines, photocopy machine, ink for printer, for the exclusive benefit of the Defence Teams," defense counsel in fact share use of one photocopier with other units of the court and there is no access to a fax machine.[94] Defense counsel are provided with three computers per room to share among each other and, for a period of time around March 2004, there was no Internet access during business hours. Additionally, all defense teams are provided with only one vehicle to share among each other.[95]

This is contrasted with resources available to the OTP. Human Rights Watch was told, for example, that OTP office space consists of five containers, each OTP staff member has access to a computer, and storage includes filing cabinets, along with a separate location for storing evidence.[96] During crucial stages of investigations, OTP staff had availability to vehicles, although at the beginning of 2004, due to budgetary restrictions, this was considerably cut back as well. One Special Court staff member argued that because the Defense Office is located within the Registry, it "does not have the same voice as [the] OTP in requesting [the] budget" and explained that "maybe the [Defense Office] is not considered as seriously as the OTP because [the] standard of proof is different."[97] One defense counsel suggested that there has been "no real consideration of [defense]; OTP got all the money, defence was an afterthought."[98]

Human Rights Watch recommends that the Registry immediately take additional action to ensure such adequate facilities, including by ensuring that defense teams are provided with adequate space to store documents and access to fax, photocopy, Internet, and computers. Human Rights Watch urges that the registrar recommend additional funding as necessary to ensure that adequate resources are made available for defense teams.

---

[92] Human Rights Watch telephone interviews with defense counsel, Freetown, May 17 and July 30, 2004.
[93] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004; Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Human Rights Watch interview with defense counsel, Freetown, March 4, 2004; see also Legal Service Contract, Annex Two.
[94] Human Rights Watch interviews with three defense counsel, Freetown, March 4 and 5, 2004; Human Rights Watch telephone interview, defense counsel, Freetown, July 30, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004. See also Legal Service Contract, Annex Two.
[95] Human Rights Watch interview with defense counsel, Freetown, March 4, 2004; Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Legal Service Contract, Annex Two.
[96] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[97] Human Rights Watch telephone interview with Special Court staff, Freetown, March 4, 2004.
[98] Human Rights Watch interview with two defense counsel, Freetown, March 5, 2004.

Human Rights Watch further urges the Management Committee to support these allocations, and for governments or the United Nations to fund the provision of such resources.

B. Lump Sum Payment

The existing payment structure for defense counsel could create an incentive for counsel to work less even when case preparation and presentation require additional work. In an effort to keep costs low and to avoid problems such as overpayment of defense counsel and fee splitting, the Special Court Defense Office will pay each defense team a lump sum for compensation and all expenses for the duration of representation of each accused. This includes travel of international defense counsel between Freetown and their country of residence.[99] The contract provides proposed hourly rates for members of the defense team, such as legal assistants and counsel, but there is a cap on the total amount of funds available to the team irrespective of these rates.[100] Duty counsel, who represent the accused in the period between arrest and the assignment of permanent counsel and provide general legal research throughout the proceedings, are employed and paid directly by the Registry, as are team investigators.

The legal services contract stipulates that contracting counsel may request payment beyond the lump sum amount at the end of the trial for "Special Considerations" that may include "payments for additional professional fees arising out of the continuation of the trial of the Accused" past a pre-determined date or "the provision of services of an exceptional nature," which are not defined.[101] According to Special Court staff, "if [counsel] can demonstrate that [proceedings are] going on longer, [counsel] can get additional funds.[102] However, the payment arrangement apparently establishes a cap on compensation regardless of the complexity of the case, the number of witnesses involved, and the number of hours counsel will appear in court unless the trial continues longer than the allotted period or services of an "exceptional nature" are provided. Moreover, while it is conceivable that services of an "exceptional nature" could be interpreted broadly by the Defense Office to enable allocating additional funds to defense teams where the amount of necessary work to mount a vigorous defense exceeds the lump sum cap on compensation, the extent of resources available for this purpose remains unclear.[103]

The limited opportunity for receiving additional compensation for work that is necessary to mount an adequate defense if the cap on compensation has been reached could undermine quality representation. For example, Human Rights Watch was told that some international defense counsel have left matters involving international law to local

---

[99] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004; Human Rights Watch interview with defense counsel, Freetown, March 4, 2004.
[100] Legal Service Contract, Annex One, on file with Human Rights Watch ("These rates are only indicative. It is the responsibility of the Contracting Counsel to ensure that the allocation of work between members of the Defence Team is efficient and that rates paid and allocation of work to members of the Defence Team ensures compliance with the maximum amount for payments under each Stage Plan.")
[101] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004; Legal Service Contract, Section 4.
[102] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004.
[103] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.

counsel who do not have experience with these issues rather than make additional trips to Freetown.[104] Human Rights Watch was also told that defense teams have allowed interns to conduct meetings with clients without supervision in some instances.[105]

The need to keep costs low and to avoid overpayment of defense counsel can not be accomplished at the expense of the defendant's right to a fair trial. Human Rights Watch recommends that the principal defender and the Defense Office amend legal services contracts to allow defense teams to petition for compensation beyond the lump sum cap if the team can demonstrate a serious need for hours of work and other expenses to prepare and present the case that exceed the cap. Human Rights Watch further recommends deletion of the requirement of "exceptional circumstances" to obtain additional funds. We urge the Registry to recommend making additional funds available to the Defense Office for this purpose, for the Management Committee to support this provision, and the United Nations and donor countries to fund it.

C. Appointment of Investigators

The lack of suitable candidates to serve as defense investigators and delays in their appointment raise serious concerns, as investigators are key to preparing a defense. Defense teams are given the services of one full-time investigator from Sierra Leone who is drawn from members of the Sierra Leonean police.[106] This is different from the Investigations Unit of the OTP, which includes both international and national investigators.

There have been significant delays in the appointment of investigators to defense teams by the Defense Office.[107] In some cases, investigators were only appointed in November 2003, despite efforts to secure an investigator since April of that year, and as of this writing, some defense teams still lacked investigators.[108] If defense teams can make a showing that the failure or delay in the appointment of investigators has prejudiced the accused's preparation of a defense, the accused should receive additional time to do so.

One of the challenges that has arisen in making appointments is that some accused do not want investigators assigned to their teams who have worked in the Sierra Leone police.[109] In light of the affiliations of the accused, the connection of the Sierra Leone police to the government, and the history of warring factions targeting Sierra Leone police during the conflict,[110] this is an understandable position. At the same time, there is a need for investigators to have law enforcement or other relevant experience, particularly due to the interaction that investigators will have with witnesses and victims.

---

[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] Human Rights Watch interviews with defense counsel, Freetown, March 4 and 5, 2004.
[108] Defense teams can, in theory, hire investigators outside of this process, but doing so requires that they pay the investigator out of their lump sum compensation. Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[109] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[110] See Human Rights Watch, "Getting Away with Murder, Mutilation and Rape."

Balancing these issues, the Defense Office has permitted some exceptions to the requirement that investigators have law enforcement experience by hiring investigators selected independently by the accused on short-term contracts, on the condition of extensive supervision.[111]

Considering the difficulties in identifying suitable local candidates, Human Rights Watch believes that it is essential that the Defense Office be permitted to hire one international investigator for each defense team. We believe that a separate international investigator is needed for each accused's defense team so that confidentiality in preparation of a defense by each accused is maintained. Human Rights Watch urges the Registry to recommend that the budget provide for the Defense Office to appoint one international investigator for each accused's defense team, for the Management Committee to support this allocation, and for the United Nations and donor countries to fund it. We further urge the Defense Office to take action to immediately address any outstanding requests for local investigators, and to develop procedures to expedite processing of future requests.

An additional concern is that appointments of investigators were expected to last six months during the second year of operations and three months during the trial.[112] This is insufficient considering that many of the names of witnesses are not disclosed until six weeks before being called to testify during trial and that the OTP has had access to investigations throughout its operations over the past two years and during trial. We are aware that it is now understood that some budgetary allocations for the Defense Office can be re-allocated as necessary to extend contracts of investigators.[113] Human Rights Watch urges the Defense Office to make such extensions as necessary, and for additional funding to be made available for this purpose.

D. Training

As the experience of the ad hoc tribunals has demonstrated, investigating, prosecuting, and defending cases involving serious crimes present significant challenges due to the complex issues involved, the evolving nature of international criminal law and trial practice, the need for appropriate treatment of witnesses and victims, and the emotionally charged nature of the proceedings. At the Special Court, the required structure of defense teams paid for by the court, in which some members may not have any experience in international criminal law, creates additional challenges.[114] Under these circumstances, training for defense counsel and investigators is vital to ensuring quality representation.

---

[111] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[112] Ibid.
[113] Ibid.
[114] Each defense team paid for by the Defense Office is required to include persons with sufficient experience in international criminal law, criminal trial law, including on serious crimes, and Sierra Leonean criminal law. See Legal Service Contract, Annex Two, on file with Human Rights Watch, para. 21. This requirement may contribute to ensuring quality representation, due to the requirement that at least one person on each team has criminal trial experience, although it may also mean that not all defense counsel have experience defending cases involving crimes under international law. As noted in the legacy section below, this arrangement also contributes to the Special Court leaving a lasting impact in Sierra Leone.

As of March 2004 defense counsel had received only one training, which was provided by the United Kingdom Bar Committee, although the Defense Office is reportedly in the process of trying to set up an additional training for defense counsel.[115] We recommend that the Defense Office hold trainings regularly for defense counsel on issues including substantive international law and treatment of witnesses and victims. These trainings should be mandatory for all defense counsel, including international counsel that are in Sierra Leone when trainings occur.

Human Rights Watch was told that investigators appointed to defense teams have received no training, although the Defense Office is reportedly working to organize one training.[116] Particularly due to the sensitive nature of many of the crimes alleged, including gender based crimes and crimes against children, investigators should receive training in conducting investigations on these types of crimes. While we recognize that many investigations by defense teams are complete or in advanced stages, Human Rights Watch recommends that the Defense Office organize regular training for investigators working on behalf of defense teams. We believe that this will help to enhance any future investigations, particularly for the AFRC trial that has yet to commence as of this writing, and additional investigations that may be needed during the RUF and CDF trials.

E. Translation

Adequate translation is an important aspect of ensuring the rights of the accused.[117] While Special Court proceedings are conducted in English, translation into local languages, Krio and Mende among others, is made available.[118] Initially, translation was provided in the form of continuous translation, whereby a person states several sentences and then the translator provides translation into a different language. Prior to commencement of trials, translators were trained in simultaneous translation, whereby translation is provided – at the same time a person is speaking – into different languages to people wearing headphones. Simultaneous translation is now utilized to provide translation during trial.[119]

Special Court staff characterized the quality of continuous translation during pre-trial proceedings as "iffy," "poor," "inconsistent," and a "big problem," although it reportedly improved over time.[120] Since the start of trials, the quality of simultaneous translation has been described by some sources as quite good, while other sources report that it is "variable" and "not verbatim."[121] To ensure accurate translation, Human Rights

---

[115] Human Rights Watch interview with defense counsel, Freetown, March 4, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004; Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[116] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004; Human Rights Watch interview with defense counsel, Freetown, March 5, 2004.
[117] ICCPR, Art. 14(3)(f); see also SCSL Statute, Art. 17(4)(f).
[118] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[119] Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Human Rights Watch telephone interview with Special Court staff, July 29, 2004.
[120] Human Rights Watch interviews with four Special Court staff members, Freetown, March 2 and 4, 2004.
[121] Human Rights Watch telephone interview with defense counsel, Freetown, July 30, 2004; Human Rights Watch telephone interview with Special Court staff, July 30, 2004.

Watch recommends that translators undergo ongoing intensive training in simultaneous translation. It was suggested that an aspect of the poor quality of translations prior to the switch to simultaneous translation was the failure to utilize a standard lexicon for Krio and English, resulting in Krio being incorrectly translated into English, often through mistranslation of Krio words that are also English words, but have a different meaning.[122] Efforts to address this issue would be an added component of training.

VI. Witness Protection

Experience from the ICTR and ICTY strongly suggests that witnesses, both victim and non-victim, face serious security, psychological, and physical challenges related to their appearance in court. Child witnesses and victims of gender based crimes require especially sensitive treatment due to the particular trauma and alienation that they may have suffered. Basic support and counseling services and protective measures, from the commencement of an investigation through trial and post-trial, are necessary to ensure effective participation and the physical and psychological well-being of witnesses.

Locating the Special Court in Sierra Leone – along with the court's tight budget – present challenges for the protection of witnesses not faced by the ICTY and the ICTR. The threat of being identified and/or located is obviously much greater. According to Special Court staff, witnesses also have expressed greater concerns that family and dependents will be at risk due to their testimony than as compared to witnesses at the ICTR.[123]

The Witness and Victims Support Unit is implementing measures described below to ensure witness protection. Nevertheless, as discussed in the introduction, Human Rights Watch is concerned that the Protection Unit lacks sufficient resources and skilled staff to ensure that witnesses receive "relevant support, counseling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault, and crimes against children" as required under SCSL Rule 34. Measures are also needed to ensure witness protection after the court ceases operations.

A. The Protection Unit

Pursuant to Article 16 of the SCSL Statute, the registrar has set up the Witnesses and Victims Support Unit (Protection Unit) to provide "protective measures and security arrangements, counseling 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 Protection Unit is employing a variety of initiatives to implement protection. It has relocated a small number of witnesses outside the country and is also providing protection to witnesses internally at "safe houses." Additionally, the unit keeps a

[122] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[123] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.

psychologist on staff and Special Court staff report that more than a hundred witnesses are seeking this support.[124]

However, Human Rights Watch was told that Protection Unit staff have behaved in a manner that has undermined protection in some instances, including by failing to follow-up when a witness raised concerns that the witness was being followed.[125] Special Court staff also raised concerns about the ability of the Protection Unit to handle what was expected to be a growing number of witnesses needing protection during trial.[126] Special Court staff commented that the unit is "doing okay, for [the] money,"[127] but that it was not quite prepared.[128]

Additionally, the physical layout of the court raises concerns, as the Special Court premises which house the court building, the detention facility, the OTP, the Registry, and the Defense Office has one single entrance through which all visitors, including witnesses and persons visiting the accused, must pass.[129] As such, those visiting an accused, an OTP investigator, or the press unit wait to be cleared by security in a single waiting room. This arrangement clearly undermines protection and should be addressed immediately. We understand that a new entrance for the court premises is in the process of being constructed.[130] We urge that a separate entrance for persons visiting the accused be immediately set up to avoid potential trauma or security threats resulting from direct contact by family and visitors of the accused with prosecution witnesses.

Human Rights Watch urges the Registry to work with the Protection Unit to identify where lack of resources for the Protection Unit may be compromising its ability to effectively attain its mandate and to advocate for funding of these resources. Human Rights Watch further urges the Management Committee to support these allocations and for donors to fund them. Human Rights Watch also urges the Registry to coordinate training of Protection Unit staff to ensure that protection is adequate, specifically on providing sufficient information to witnesses, following through on witness concerns, and operating in a way that does not betray the identity of witnesses.

B. The Witness Management Unit

The OTP has established a Witness Management Unit within its office that can help contribute to protection of witnesses through enhanced coordination between the OTP and the Protection Unit on witness treatment. We understand that the unit was established in part over concerns about the effectiveness of the Protection Unit, but also due to a desire to ensure that witnesses experienced a "seamless transition" between contact with the OTP during an investigation and receiving assistance from the Protection Unit.[131] The Witness Management Unit undertook a confirmation process

---

[124] Ibid.
[125] Human Rights Watch interview with Special Court staff, Freetown, August 4, 2004.
[126] Human Rights Watch interview with Special Court staff, Freetown, March 6, 2004.
[127] Ibid.
[128] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[129] Human Rights Watch interview with Special Court staff, Freetown, March 6, 2004.
[130] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[131] Human Rights Watch interview with two Special Court staff members, Freetown, March 6, 2004.

prior to the commencement of trials in which they contacted the majority of witnesses to confirm their testimony, assess possible security threats, and identify witnesses in need of protection. The Management Unit conducted the confirmation exercise in conjunction with the Protection Unit, including staff to provide psychosocial support.[132]

C. Protection Post-trial

The Special Court will have a very limited duration, and the need for witness protection will far outlast its existence. A key contribution to ensuring witness protection long-term would be through the establishment of a domestic witness protection unit to oversee protection of Special Court witnesses once the court completes operations.[133]

In addition to the crucial need for witnesses to enjoy long-term protection, there are concerns regarding the ability to resettle and otherwise adequately protect several "insider" witnesses for the prosecution who have themselves committed war crimes. An incident in the early half of 2004, in which a key "insider" witness in the case against the AFRC was nearly beaten to death, illustrates the risks these individuals will face following trial.[134] The incident occurred after the witness ignored admonishments to stay inside his safe house by Protection Unit staff.[135] These risks to witnesses are of particular concern given Sierra Leone's history of political instability and the current deficiencies of both the Sierra Leonean police and Republic of Sierra Leone Armed Forces, noted in the March 2004 assessment report by the U.N. Security Council.[136]

Efforts to establish a domestic witness protection unit to provide long-term protection are underway. The Protection Unit is already training Sierra Leonean police working in the Protection Unit, and there are plans to train additional Sierra Leonean police to work in a domestic protection unit.[137] We urge donors to provide funding to make this initiative operational, through adequate support for materials and logistical equipment.

VII. Security

The sensitive and highly charged nature of proceedings underscores the importance of adequate security for both the facilities and the staff, particularly judges and prosecutors, at the Special Court. The location of the court in Sierra Leone poses new challenges not present at either the ICTR or the ICTY due to the court's proximity to the population most closely tied to the court's work. Given existing inadequacies within the Sierra Leonean security sector, the country's history of political instability, and current regional dynamics, we believe that the continued engagement of an international force able to provide security for the court is indispensable.

---

[132] Human Rights Watch interview with two Special Court staff members, Freetown, March 2 and 6, 2004.
[133] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[134] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[135] Ibid.
[136] United Nations Security Council, Twenty-first report of the Secretary-General on the United Nations Mission in Sierra Leone (2004), S/2004/228.
[137] Human Rights Watch interview with Special Court staff, Freetown, March 6, 2004.

The use of an international peacekeeping mission, the U.N. peacekeeping force in Sierra Leone (UNAMSIL), to provide security for the court facilities has heretofore helped ensure adequate security.[138] Indeed, concerns have been raised that the Sierra Leonean army continues to be "in no position" to ensure security.[139] In March 2004 a Western diplomat pointed out that, "the army is having problems handling basic functions," and Special Court staff explained that "the Court is not viable for security without an international military presence."[140]

With the impending drawdown of UNAMSIL, Security Council Resolution 1537 was passed, allowing a needed extension of UNAMSIL's mandate and continued provision of security to the Special Court by this force. The resolution provides that: 1) the mandate of UNAMSIL will be extended through September 30, 2004; 2) the U.N. secretary-general will adjust the timetable for UNAMSIL's drawdown, "to ensure a more gradual reduction in its military strength;" and 3) a "residual UNAMSIL presence" of up to 3,250 troops will remain for an initial six-month period commencing on January 1, 2005.[141] The tasks of the residual force will be determined on September 30, 2004, although the U.N. secretary-general's report on this issue suggests that security for the Special Court is foreseen.[142] Human Rights Watch urges the Security Council to continue to extend the mandate of UNAMSIL, or create some other residual international force, to provide security for the Special Court throughout the entirety of its operations.

VIII. Accessibility and Legacy

It is vital for the people of Sierra Leone to understand the purpose and operations of the Special Court and the principles by which it operates. We also believe that the people of Sierra Leone should be left with a legacy of the court's work that goes beyond the decisions it issues or the new courthouse it has constructed. It is hoped that the Special Court will contribute to revitalizing Sierra Leoneans' belief in the rule of law – that, in the face of future crimes, they will turn to the judicial system for recourse instead of either seeking revenge or fatalistically accepting what happened as "the way it is." This is necessary to meaningfully combat the culture of impunity that has prevailed in Sierra Leone, to build respect for the rule of law, and to bring a sense of justice for the horrific crimes committed.

The Special Court's location in Freetown and the mixed nature of the court – including both international and Sierra Leonean staff – provide increased opportunities for making the court accessible to the people of Sierra Leone and leaving a lasting legacy of the court's work. The Special Court is conducting an array of important efforts in this

[138] Special Court security personnel also provide judges and some prosecutors with constant armed protection.
[139] Human Rights Watch telephone interview with Special Court staff, Freetown, March 3, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 5, 2004.
[140] Human Rights Watch interview with diplomat, Freetown, March 2, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004.
[141] United Nations Security Council, Resolution 1537 (2004), S/RES/1537.
[142] United Nations Security Council, Twenty-first report of the Secretary-General on the United Nations Mission in Sierra Leone, S/2004/228.

regard. Below we describe these efforts, along with providing several recommendations to further enhance them.

A. Outreach

Outreach at the Special Court consists of an impressive and diverse set of initiatives that represent a marked improvement over outreach efforts by the ad hoc tribunals, which have been criticized as inadequately tailored to the target population and too limited, in part due to inadequate funding.[143] Continued outreach will be essential to the court's overall impact on the people of Sierra Leone and should receive adequate support.

1. Outreach Programming

Shortly after establishing themselves in Sierra Leone in July 2002, the prosecutor, David Crane, along with other OTP staff and the registrar, Robin Vincent, began to conduct "town hall" meetings countrywide to explain their mandate and answer questions about the court.[144] In addition to the "town hall" meetings, the Special Court has conducted activities including: producing explanatory booklets with posters describing the court and principles that guide its operations; participating in radio programs on the court; holding "train-the-trainer" outreach seminars of 1,500 Sierra Leoneans in collaboration with No Peace Without Justice; videotaping and condensing pre-trial hearings on jurisdiction motions before the Appeals Chamber into a short film with narration that simplifies complex issues; and inviting civil society groups to observe pre-trial proceedings.[145]

The registrar has also regularly interacted with civil society since July 2002.[146] As noted above, the Defense Office has more recently begun conducting outreach about defense of the accused through radio programs and meetings with the local population in Sierra Leone and Liberia.[147] Interaction between the local population and the Chambers has been more limited, in part for security reasons, but has included several meetings with Sierra Leone judges and visits by Special Court judges to observe domestic trials.[148] Additionally, the local bar association has also interacted with the court through trainings and workshops, such as a workshop held on the SCSL Rules, and giving input on certain legal issues, such as by commenting on a draft code of conduct for counsel at the Special Court.[149]

---

[143] For example, Human Rights Watch is aware that outreach materials provided at a Kigali office for the ICTR were not found useful by many Rwandans as they consisted primarily of materials written in French, or visual materials that required equipment to which they had no access.
[144] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004; "Prosecutor for the Special Court Begins Holding 'Town Hall' Meetings, Press Release," September 27, 2002 [online], http://www.sc-sl.org/ (retrieved August 11, 2004).
[145] Human Rights Watch interview with two members of Sierra Leone civil society groups, Freetown, March 4, 2004; Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[146] For example, he holds a monthly meeting with a variety of Sierra Leonean organizations, known as the Special Court Interaction Forum, to hear and respond to their concerns and expectations relating to the court. Two persons from this forum are expected to monitor the proceedings on a rotating basis and to report back on the trials. Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004.
[147] Human Rights Watch telephone interview with Special Court staff, Freetown, July 30, 2004.
[148] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[149] Human Rights Watch interview with two Special Court staff members, Freetown, March 2 and 4, 2004; Human Rights Watch interview with member of Sierra Leone civil society group, Freetown, March 4, 2004.

While Human Rights Watch researchers did not travel outside the capital nor survey Sierra Leoneans extensively about the court, we note that the Special Court has very much entered the public debate in Freetown. From being covered in the newspapers to being discussed on the radio, the Special Court's work is integrated into daily public life. Civil society groups report that there is some awareness of the Special Court around the country, although confusion about the court's mandate and its difference from the Truth and Reconciliation Commission also exists.[150] It will be important that the Outreach Section assess the effectiveness of its efforts and refine its activities over time accordingly.

2. Cuts to Funding for Outreach

Outreach has suffered from a lack of support by the Management Committee and, indeed, cuts to its budget proposals of outreach activities. We understand that in 2003, the Management Committee cut essentially the entire budget for outreach – totaling some $600,000 for the second year of the court's operations[151] – due to a perception that outreach was not an essential component of the Special Court and on the basis that funding for these activities would be sought from outside sources.[152] During this period, the section received incremental ad hoc funding from the registrar, but Human Rights Watch was told that these amounts were not sufficient to fully sustain the program's activities.[153] The European Union Trust Fund stepped in to fill the shortfall with a donation of 500,000 Euros to support outreach programming. We understand that this contribution was received toward the end of the second year of the court's operations, but is to be applied to cover outreach activities for the second year.[154]

For year three of the court's operations, the Outreach Section intends to implement a set of initiatives that build upon its earlier activities, particularly targeting the majority of Sierra Leoneans who are illiterate, to make the trials now underway accessible. These initiatives include: 1) dissemination around the country of the explanatory booklets; 2) frequent radio programs providing updates on the court; 3) canvassing the country with 50,000 posters (some billboard size) that describe the court pictorially; 4) making the film of the appeals hearing available by placing a television, video cassette recorder, and small generator in each of the country's 14 districts; 5) making additional videos of court proceedings similar to that of the hearings on jurisdiction motions; 6) continuing "train-the-trainers" seminars of community organizations; and 7) rotating various segments of Sierra Leone society to observe proceedings, such as paramount chiefs and civil society groups who can report back to their local communities.[155]

---

[150] Human Rights Watch interview with members of Sierra Leone civil society groups, Freetown, March 4, 2004.
[151] Human Rights Watch interview with Special Court staff, Freetown, March 6, 2004.
[152] Human Rights Watch interview with diplomat, New York, April 19, 2004; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.
[153] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[154] Human Rights Watch interview with Special Court staff, New York, July 22, 2004.
[155] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.

Human Rights Watch urges that these efforts receive adequate funding, if necessary through the registrar recommending additional funding for outreach, the Management Committee supporting this allocation, and the United Nations and donors supporting it.

3. *Increasing Accessibility of the Court's Work*

In addition to outreach programming to date, increased initiatives, including efforts to enable Sierra Leoneans to attend proceedings and additional radio broadcasts about key developments in the proceedings, would help to ensure that the court is accessible to the local population.

As part of the implementation of these programs and in conjunction with the commencement of trials, the Press and Public Affairs Office is producing weekly audio summaries of the proceedings that air on radio stations, including a station run by the UNAMSIL and the government broadcasting service.[156] The Press and Public Affairs Office is also preparing weekly video summaries that the Special Court is showing in locations throughout the country through the use of the mobile video units, with plans to show future videos in the same locations to establish a routine with villagers to view the proceedings.[157]

Human Rights Watch believes that the audio summaries – which are key to reaching a largely illiterate population that lacks access to television or video – should be produced on a more regular basis. Ideally, this would include producing radio segments whenever there are decisive or key moments in the trials or other moments that best illustrate the judicial process at the court, in addition to weekly summaries. Particularly in light of the fact that the proceedings are not aired in full, Human Rights Watch urges the court to produce radio segments to cover all important moments in the trial on a timely basis, by hiring additional staff to undertake this task if necessary.

Human Rights Watch was told that the public gallery is far from full on many days in which trial is in session.[158] In addition to the outreach activities described above, Human Rights Watch recommends that the Outreach Section increase its efforts to facilitate attendance by Sierra Leoneans at the proceedings. This includes by intensifying initiatives to coordinate observation of proceedings by individuals from throughout the country when testimony relevant to the area they are from takes place. It also includes publicizing information around Freetown about how to attend proceedings and providing orientation sessions to all individuals interested in observing trials that contextualize what is happening on a given day in the larger judicial process. Human Rights Watch further recommends that the Outreach Section make copies of SCSL rulings and the schedule of proceedings available at the law library and other public venues in Freetown to help increase the accessibility of the court's work.

---

[156] The Special Court is not able to broadcast the full proceedings as it lacks the proper equipment to enable a needed delay to edit out sensitive information, such as that which might identify a witness. While it may not be feasible to obtain the equipment due to its expense, summaries may also be preferable to keep the attention of the listeners.

[157] Human Rights Watch telephone interview with Special Court staff, Freetown, July 28, 2004.

[158] Human Rights Watch telephone interview with Anthony Triolo, consultant to ICTJ, Freetown, August 2, 2004; Human Rights Watch interview with Special Court staff, New York, August 3, 2004.

B. Legacy

By enhancing the skills of Sierra Leoneans in the justice and police sectors, contributing to shifting local attitudes about justice, and donating a courthouse, the Special Court has made important steps toward leaving a meaningful legacy in Sierra Leone.[159] Recognizing the budgetary constraints, Human Rights Watch urges the Special Court, through an initiative led by the Registry, to take this effort even further by working with Sierra Leonean civil society and the local government to enhance accountability through domestic prosecutions for serious crimes committed in Sierra Leone.

1. Capacity Building

The Special Court is helping to build the professional capacity of Sierra Leoneans. Sierra Leoneans work in every organ of the Special Court, in both professional and administrative positions. Sierra Leoneans comprise forty percent of staff holding professional, non-administrative positions, such as trial attorneys, and fifty percent of all staff.[160] Sierra Leonean lawyers serve as judges in both the Trial and Appeals Chamber, work as trial attorneys in the OTP, and serve as duty counsel in the Defense Office.[161] Sierra Leonean lawyers have also worked on all defense teams, in part due to the innovative requirement, as discussed above in the Defense section, that at least one person on each defense team paid for by the Special Court have experience with Sierra Leonean law, international law, and criminal law.[162]

Sierra Leoneans also work as investigators, outreach associates, and security and witness protection officers, in addition to working in administrative positions.[163] As discussed in the witness protection section, there are also plans to train local police not employed at the court in witness protection and to create a domestic witness protection unit to provide protection to witnesses who testified at the SCSL once the court completes operations.[164] This domestic unit will require funding to operate, particularly for vehicles and technical equipment, and we urge the international community to ensure that this initiative receives such funding.[165]

Some Sierra Leone officials have expressed the desire to see Sierra Leoneans play a more senior role at the Special Court.[166] Members of civil society have also expressed frustration at the extent of participation by Sierra Leonean lawyers, stating that, as compared to the degree of participation anticipated, "one would have expected more."[167] The extent of participation by Sierra Leoneans in all aspects of the court operations,

---

[159] For a more in depth discussion of legacy at the Special Court, including initiatives underway and expectations of sectors of Sierra Leonean society, see the International Center for Transitional Justice, "The 'Legacy' of the Special Court for Sierra Leone," September 29, 2003 [online], http://www.ictj.org/downloads/LegacyReport.pdf (retrieved August 11, 2004).
[160] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004.
[161] Human Rights Watch interview with three Special Court staff members, Freetown, March 3 and 6, 2004.
[162] Human Rights Watch interview with two Special Court staff members, Freetown, March 2 and 4, 2004.
[163] Human Rights Watch interview with two Special Court staff members, Freetown, March 3 and 6, 2004.
[164] Human Rights Watch interview with Special Court staff, Freetown, March 4, 2004.
[165] Human Rights Watch interview with Special Court staff, Freetown, March 6, 2004.
[166] Human Rights Watch interview with diplomat, New York, April 26, 2004.
[167] Human Rights Watch interview with member of civil society group, Freetown, March 4, 2004.

including in management positions, will undoubtedly affect the court's legacy in Sierra Leone.

The OTP provides in-house training to investigators and trial attorneys. Over the last year, OTP staff have received on-the-job training in major case management, including using computers and electronic databases, and conducting investigations including witness sensitization.[168] As noted in the section above on defense, there has been more limited training available to defense counsel and their investigators, although this should be increased. The OTP and Defense Office are also setting up internship programs for Sierra Leonean students or young lawyers to work in their units.[169]

2. *Raising Expectations*

While Human Rights Watch did not survey Sierra Leoneans extensively about the Special Court and it would be premature to attempt to evaluate the impact of its work at this juncture, there are important indications that the Special Court is contributing to raising people's perceptions about justice.

In addition to discussion about the impact of the indictment of former government minister Sam Hinga Norman described in the OTP section above, members of Sierra Leone civil society noted that there was initially a great sense that the court was a waste of money and that money should instead be invested in the Truth and Reconciliation Commission. However, people's perceptions shifted over time toward a sense that the court is a "good thing."[170] In a meeting of civil society groups in March 2004, representatives stated "we believe that the SCSL is helping change the views and perceptions of justice in Sierra Leone society in a good, healthy way."[171] One Western diplomat explained that civil society groups were originally suspicious of the court, but now are very supportive.[172]

3. *Domestic Prosecutions*

An important legacy of the Special Court would be for the local courts to provide some additional measure of accountability beyond SCSL prosecutions. Due to its limited mandate, the Special Court for Sierra Leone will prosecute only a small number of perpetrators and, indeed, the Special Court may prosecute a mere nine individuals. At the same time, Sierra Leoneans have expressed frustration that the people who physically carried out the crimes are not being held accountable by the Special Court. Prosecutions of every level of perpetrator for serious crimes committed during the conflict in Sierra Leone may not be feasible, and there are serious and ongoing problems with the local

[168] Human Rights Watch interview with three Special Court staff members, Freetown, March 3 and 6, 2004.
[169] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004; Human Rights Watch telephone interview with Special Court staff, July 30, 2004.
[170] Human Rights Watch interview with two members of Sierra Leone civil society groups, Freetown, March 4, 2004.
[171] Representative of Sierra Leone civil society organization at a meeting held by the Special Court attended by Human Rights Watch, Freetown, March 5, 2004.
[172] Human Rights Watch interview with diplomat, Freetown, March 2, 2004.

justice system.[173] However, at the very least, the local courts would be able to pick up where the SCSL leaves off to prosecute some of those falling just below the threshold of "those who bear the greatest responsibility." Such prosecutions, if conducted in accordance with international standards, would provide greater accountability for the depth and breadth of crimes committed.

Al White, head of the Investigations Unit in the OTP, told Human Rights Watch that he intends to provide local justice officials with investigative reports about individuals who the Special Court decided not to pursue, as they were found to be just under the threshold for prosecution within the mandate of the court.[174] Additionally, Sierra Leonean staff that have worked as investigators, judges, prosecutors, and defense counsel, in addition to those who have worked in the Protection Unit and as security personnel at the Special Court, will have gained significant skills that would be applicable to local prosecutions of serious crimes.

To date, there are only a few cases in the local justice system involving crimes related to the conflict. For the cases that have been initiated, the charges are almost without exception for treason, as opposed to serious human rights crimes. At least three major obstacles exist to prosecutions for serious crimes committed during the conflict in the local justice system: a provision of the Lomé Peace Accord Act of 1999 that granted amnesty to all warring parties; deficiencies in the local justice system; and domestic laws that are inconsistent with international standards.

The Special Court does not have the mandate or the resources to become extensively involved in possible prosecutions in the local courts. However, before the court completes operations and the international experts leave Sierra Leone, Human Rights Watch urges the Registry to draw on relevant expertise within the OTP, the Defense Office, the Chambers, the Protection Unit, the Witness Management Unit, and the Security Office to coordinate a series of meetings with Sierra Leone civil society and justice officials on two substantive areas: 1) identifying minimum legal reforms that would be necessary to prosecute the crimes in local courts, *i.e.* prohibiting the death penalty and enacting laws on the relevant substantive crimes to the extent not currently contained in the penal code; and 2) identifying the minimum infrastructure that would be required, *i.e.* domestic witness protection unit, detention facilities in accordance with international standards, to prosecute such cases. Through such initiatives, the Special Court could make significant strides to leaving a greater legacy in Sierra Leone by advancing the possibility of prosecutions through the domestic justice system.

IX. International Cooperation and Financial Support

The success or failure of the Special Court will depend in significant part on the international cooperation and financial support it receives from the international

[173] See brief discussion on problems with the local justice system above in the Defense section of this report. For a more in depth discussion and recommended reforms, see Human Rights Watch, "The Jury is Still Out."
[174] Human Rights Watch telephone interview with Al White, Head of the Investigations Unit in the OTP, Special Court, Freetown, March 6, 2004.

community. As discussed in the introduction, former Liberian President Charles Taylor's continued exile in Nigeria in the face of his indictment at the Special Court threatens to undermine the court's ability to complete its work effectively. Lack of adequate funding will also undermine the court's ability to continue and complete operations on a sound basis. Funds must further be provided to ensure that certain residual mechanisms, including witness protection and detention in accordance with international standards, function after the court formally ceases operations.

A. Cooperation

Lack of cooperation by Nigeria with the Special Court through its continued shielding of Charles Taylor from facing trial threatens to significantly undermine the court's work to combat impunity. Charles Taylor is indicted on seventeen counts of war crimes and crimes against humanity for his role in contributing to the deaths, rape, abduction, and mutilation of thousands of civilians during Sierra Leone's civil war. Nigeria's harboring of Taylor goes against international law, undercuts the investment made by the international community to combat impunity in Sierra Leone, and is an affront to victims of the crimes committed in Sierra Leone.

As expressed by a representative from Sierra Leonean civil society during a meeting about the court in March 2004, "Charles Taylor promised us we'd taste the bitterness of war and we got it. The international community promised us we'd see justice but this won't happen fully until Charles Taylor is brought before the Court."[175] A member of Sierra Leonean civil society also stated that Charles Taylor's absence from the court "has created a crisis of relevance for the Special Court."[176]

A recent ruling by the Special Court also removes any legal basis for Nigeria continuing to harbor Taylor. On May 31, 2004, the Appeals Chamber ruled that Charles Taylor is not immune from prosecution before the Special Court, rejecting arguments by his lawyers that he is immune because he was a sitting head of state at the time of indictment.[177] This is a landmark ruling that strengthens the principle that no one should be above the law when it comes to the most serious crimes, regardless of position, and removes any legal basis for Nigeria to harbor Taylor. It would be a tragedy if this ruling were ignored and the Special Court's work undermined by Nigeria's continued shielding of Charles Taylor. While the Special Court does not have U.N. Chapter VII authority to compel cooperation, the Security Council under Resolution 1478 has explicitly requested that states cooperate with the Sierra Leone Special Court.

Human Rights Watch has received credible information from sources inside Liberia that Taylor's continued presence in Nigeria poses a risk to stability in West Africa. Human Rights Watch was told that Taylor not only remains in frequent contact with members of his former government, but also that he may be supporting an insurgency composed of

---

[175] Representative of Sierra Leone civil society organization at a meeting held by the Special Court attended by Human Rights Watch, Freetown, March 5, 2004.
[176] Ibid.
[177] Rendering of Decision on Motion Made under Protest and Without Waiving Immunity Accorded to a Head of State Requesting the Trial Chamber to Quash the Indictment and Declare Null and Void the Warrant of Arrest and Order for Transfer of Detention (Taylor) (Appeals Chamber), May 31, 2004.

fighters loyal to him, including combatants from the former RUF, the Anti Terrorist Unit (ATU), and the Special Security Service (SSS), as well as numerous Guinean dissidents.[178] Our sources indicate that the insurgency's activities may include destabilizing Guinea, mostly likely in retaliation for the logistical support that Guinea gave to rebels from the Liberians United for Reconciliation and Democracy.[179] Our sources tell us that recruitment is actively going on in Monrovia and other areas in Liberia, although no direct link between Taylor and this recruitment has been established.[180] In addition to the crucial importance of affirming the rule of law in West Africa, Charles Taylor's appearance before the Special Court could make an important contribution to helping to ensure stability in the region.

President Obasanjo has indicated that he might be willing to reconsider Taylor's asylum in Nigeria once a Liberian government is democratically elected.[181] However, elections are not anticipated in Liberia for at least a year[182] and sectors of Liberian and Nigerian society have already made known their strong sentiment that Charles Taylor should be handed over to the Special Court. A number of Liberian organizations officially embarked on a three month anti-impunity campaign on May 28, 2004. According to communications from the campaign to Human Rights Watch, the campaign's "firm message is that Liberians want Taylor to face a court of law for the horrific crimes he has been accused of, and specifically the Special Court of Sierra Leone as he is currently indicted there."[183]

Nigerians have equally emphasized their desire to see Charles Taylor appear before the Special Court. The Nigerian law firm Aluko & Oebode recently filed petitions on behalf of two Nigerian businessmen requesting that the Nigerian High Court strip Charles Taylor's asylum status in Nigeria. These businessmen were reportedly tortured in 1999 by rebel groups in Sierra Leone supported by Taylor. On June 3, 2004, the Nigerian High Court agreed to review Charles Taylor's asylum status on the basis of this request.[184] Following proceedings over service of court papers, the Nigerian High Court has now set September 15, 2004, as the date to commence hearing the case.[185]

In the face of the legal, policy, and pragmatic necessity of Taylor facing trial before the Special Court, President Obasanjo has given no indication that he will deliver Taylor to the court. We understand that the Economic Community of West African States, the African Union, the United Nations, the United States, and South Africa were involved in

---

[178] Human Rights Watch interview with official with the National Transitional Government of Liberia, Monrovia, March 10, 2004, and August 9, 2004.
[179] Ibid.
[180] Ibid.; Human Rights Watch interviews with former fighters, Monrovia, August 9-13, 2004.
[181] See House Committee on International Relations, House of Representatives, Subcommittee on Africa, *Confronting War Crimes in Africa,* 108th Cong., 2nd Sess., June 24, 2004, p. 13; "Nigeria sets date for Taylor asylum challenge," Reuters, July 26, 2004; "Bryant says he wants Taylor to stay in Nigeria," IRIN, August 16, 2004.
[182] See "Chairman of Transitional Government Asks Security Council to Lift Sanctions on Liberia," United Nations Security Council Press Release, June 3, 2004, SC/8110.
[183] E-mail to Human Rights Watch from J. Aloysius Toe, Chairman, Steering Committee, Liberia Civil Society Anti-Impunity Campaign, Monrovia, May 21, 2004.
[184] "Nigerian High Court Agrees to Review Charles Taylor Asylum," Justice Initiative, June 3, 2004.
[185] The plaintiffs were unable to serve him directly due to security around his residence in Calabar. "Nigeria sets date for Taylor asylum challenge," Reuters, July 26, 2004.

the negotiations that led to former President Taylor leaving power in Liberia and obtaining asylum in Nigeria and failed to stipulate that the offer of asylum should be a temporary one to resolve the crisis at hand.[186] We understand President Obasanjo now feels bound by a sense of honor because he gave his word to Taylor that he would not turn him over to the court. However, we firmly believe there are larger issues at stake: stopping the vicious and destructive cycle of impunity in Africa and bringing a sense of justice to the countless victims of the crimes Taylor is accused of. We urge Nigeria, particularly as a member of the Special Court Management Committee, to hand Taylor over to the Special Court. We further urge other governments, including other members of the Management Committee, the U.N. secretary-general, and the Security Council to take up this issue publicly and privately with Nigeria.

B. Financial Support and Budgeting

As discussed in the introduction and throughout this report, the Special Court has struggled to secure adequate funding. Increased funding for key areas of operations, including the Defense Office, the Protection Unit, the Chambers, and the Outreach Section, is needed to enable the court to complete its work effectively. The condition on the April 2004 United Nations grant to the court that the grant will be reduced in the amount of any additional voluntary contributions should be removed to enable increased funding to be secured.

Disregarding the recommendation of the U.N. secretary-general, the agreement between the United Nations and the Special Court provides that the court will be funded through voluntary contributions.[187] Moreover, the initial proposed budget – which was approximately $114.6 million for three years and equaled less than the average cost of just one year of operations at the ICTY for the years 2002 and 2003 – was cut to approximately $57 million due to difficulties in securing funding, although the total estimated budget had increased to about $76 million for three years as of March 2004.[188] Voluntary contributions made to the Special Court total some $49.3 million.[189]

Insufficient and insecure funding has undermined the court's operations. Court officials have needed to devote extensive time to raising funds and needed staff could not be hired because of uncertainty about whether the court would continue to have sufficient funds to operate.[190] These problems underscore that funding a court through voluntary contributions is extremely problematic. Special Court staff expressed frustration that the Management Committee has tended to focus its attention more on where to cut budgets proposed by the Registry than on zealously advocating with governments and the United Nations as to why additional funding is necessary to ensure that the court can function fairly and effectively.[191]

---

[186] Interview with Special Court staff, Freetown, March 3, 2004.
[187] United Nations, Agreement between the United Nations and the Government of Sierra Leone. See also United Nations Security Council, Resolution 1315; United Nations, Security Council, Report of the Secretary-General on the Establishment of the Special Court for Sierra Leone, October 4, 2000, S/2000/915, para. 71.
[188] "Annan Authorizes Tribunal Despite Funding Shortfall," U.N. Wire, January 4, 2002; ICTR, "General Information: Budget and Staff;" ICTY, "General Information: Regular Budget."
[189] U.N. Secretary-General Request for Subvention, para. 4.
[190] Human Rights Watch interview with Special Court staff, Freetown, March 3, 2004.
[191] Human Rights Watch interview with Special Court staff, New York, July 22, 2004.

As of July 2004, voluntary contributions were expected to last the court only through the beginning of its third year of operations.[192] In March 2004 the U.N. secretary-general requested that the United Nations provide crucial assistance for the Special Court to respond to the financial crisis in the amount of $40 million.[193] Based on this request, the General Assembly authorized $16.7 million for the Special Court to fund operations from July 1, 2004, to December 2004.[194] However, the condition placed on this grant – that any additional voluntary contributions made will reduce the grant in the amount of the contribution – makes it impossible for the court to secure adequate funding to ensure fair and effective operations. Human Rights Watch urges the U.N. secretary-general to request and the Advisory Committee on Administrative and Budgetary Questions to recommend that the General Assembly remove this restriction immediately and authorize the remaining $23.3 million of the request to fund the court through December 2005.

The Special Court is an historic initiative, which has made tremendous advances in a short time frame and on a tight budget. It is essential that the Special Court receive adequate funding to make improvements in the areas detailed in this report. We urge the Registry to support additional allocations for these areas, and for the Management Committee to advocate strongly on behalf of such funding. We further urge governments to provide additional voluntary contributions and the U.N. secretary-general and General Assembly to intervene as necessary to address outstanding shortfalls. To do otherwise would undermine the considerable investment of governments and the United Nations in this mechanism by weakening the court's capacity to complete its work effectively.

X. Recommendations

To the United Nations

To the Security Council

- Include in a Security Council resolution an explicit call for Nigeria to surrender Charles Taylor to the Special Court for Sierra Leone.
- Continue to extend the mandate of UNAMSIL, or create some residual force to provide security for the Special Court throughout the entirety of its operations.

---

[192] Secretary-General Request for Subvention, para. 4; Human Rights Watch interview with Special Court staff, New York, July 22, 2004.
[193] U.N. Secretary-General Request for Subvention.
[194] We note that the Advisory Committee on Administrative and Budgetary Questions recommended that the General Assembly authorize a grant not exceeding $16.7 million and that the committee would then provide a detailed recommendation on future assistance. United Nations General Assembly, Request for a subvention to the Special Court for Sierra Leone: Thirty First report of the Advisory Committee on Administrative and Budgetary Questions (2004), A/587/Add.30 (2004); United Nations General Assembly, Resolution adopted by the General Assembly on the report of the Fifth Committee (A/58/573/Add.1) (Special Court for Sierra Leone), April 26, 2004, A/RES/58/284, Art. 2.

To the U.N. Secretary-General

- Explicitly call on Nigeria to surrender Charles Taylor to the Special Court for Sierra Leone.
- Without delay appoint qualified judges to serve on the second Trial Chamber to enable its establishment.
- Ensure that all judges appointed to the second Trial Chamber and any additional judges you appoint to the first Trial Chamber and the Appeals Chamber have criminal trial experience.
- Request that the General Assembly fund the remaining $23.3 million necessary to operate the court through December 2005 as detailed in your March 2004 subvention.
- Request that the General Assembly remove the condition on funding provided by the United Nations to the Special Court that any subsequent additional voluntary contributions received by the court will result in a reduction of U.N. funding in the same amount.
- Advocate for additional funding as necessary to ensure that the Special Court is able to bring justice fairly and effectively. This includes advocating for increased funds as necessary to ensure adequate facilities for the Defense Office, sufficient payment of defense counsel, and appointment of one international investigator to each defense team. It also includes advocating for increased funds as necessary to ensure additional legal officers to support the Chambers, protection of witnesses, and effective outreach programming.
- Advocate for funding for residual mechanisms, including witness protection programs and detention facilities in accordance with international standards, to operate after the court ceases operations.

To the U.N. Advisory Committee on Administrative and Budgetary Questions

- Recommend that the General Assembly fund the remaining $23.3 million necessary to operate the court through December 2005 as detailed in the March 2004 subvention by the U.N. secretary-general.
- Request that the General Assembly remove the condition on funding provided to the Special Court that any subsequent additional voluntary contributions received by the court will result in a reduction of U.N. funding in the same amount.
- Recommend that the General Assembly ensure that the Special Court has funding to bring justice fairly and effectively and that after the court ceases operations, witness protection programs and detention facilities in accordance with international standards function.

To Nigeria

- Immediately surrender Charles Taylor to the Special Court for Sierra Leone to face trial for his alleged crimes.

To the government of Sierra Leone

- Without delay, appoint qualified judges to serve on the second Trial Chamber to enable its establishment.
- Ensure that judges appointed to the second Trial Chamber and any additional judges appointed by your government to the first Trial Chamber and the Appeals Chamber have criminal trial experience.
- Pass a parliamentary resolution calling on Nigeria to surrender Charles Taylor to the Special Court for Sierra Leone.

To donors, including the United States and the United Kingdom

- Ensure that the Special Court has funding to bring justice fairly and effectively, including by providing increased funds for the Special Court to ensure adequate facilities for the Defense Office, sufficient payment of defense counsel, appointment of one international investigator to each defense team, additional legal officers assigned to support the Chambers, protection of witnesses, and effective outreach programming.
- Fund residual mechanisms, including a domestic witness protection program and detention facilities in accordance with international standards, to operate after the court ceases operations.
- Call on Nigeria to hand Charles Taylor over to the Special Court.

To the members of the Management Committee of the Special Court

- Support and advocate for additional funding for the Special Court to ensure adequate facilities for the Defense Office, sufficient payment of defense counsel, appointment of one international investigator to each defense team, additional legal officers assigned to support the Chambers, protection of witnesses, and effective outreach programming.
- Formally request that Charles Taylor be delivered to the Special Court for Sierra Leone.

To the Special Court for Sierra Leone

To the Registry

- Coordinate ongoing sessions, including through exchanges with the ICTR and ICTY, for judges on courtroom management, criminal trial procedure, substantive international law, and treatment of witnesses and victims.
- Coordinate ongoing intensive training for translators.
- Coordinate ongoing training for staff in the Witness and Victim Support Unit, including on providing quality pre-trial briefings to witnesses, protecting the identity of witnesses, and responding to concerns by witnesses.
- Coordinate meetings – drawing on Special Court staff expertise – with Sierra Leone civil society and professionals in the local justice system on identifying minimum legal reforms and infrastructure that would be necessary to prosecute serious crimes in the local justice system.

- Immediately create temporary separate entrances to the SCSL facility so that individuals visiting defendants do not enter in the same gate and wait in a common room as prosecution witnesses, and prioritize completion of construction of permanent separate entrances.
- Complete all preparation necessary for the second Trial Chamber to function once the judges are appointed.
- Recommend additional funding for:
    - Chambers to allow for assignment of additional legal officers for a total of three per Chamber.
    - Defense to enable defense teams to have:
        - improved facilities through greater access to logistical support (fax machines and photocopiers, Internet access, cabinet space, etc.);
        - additional compensation if they can demonstrate that preparing and presenting the case effectively required hours of work and expenses that exceeded the lump sum cap on compensation; and
        - one international investigator appointed to each defense team.
    - Witness protection by working with the Protection Unit to identify where a lack of resources may be compromising its ability to provide adequate protection to witnesses.
    - Outreach to support adequate programming.

To the Chambers

- Appeals Chamber: Resolve motions on a more timely basis, in part by allocating adequate time for Special Court work each month, as necessary.
- Trial Chamber:
    - Rule on motions and conduct trials more efficiently.
    - Treat witnesses consistently with respect and dignity and due regard for protection of identity where needed.
    - Participate in ongoing sessions on criminal procedure, substantive law, courtroom management, and treatment of witnesses.

To the Office of the Prosecutor

- Review prior investigative work to assess whether a few regional or mid-level commanders who stood out against similarly ranking colleagues for their particularly brutal crimes against civilians should be further investigated or indicted, and if so, to pursue prosecution of these cases.

To the Defense Office

- Advocate for an amendment to contracts with defense teams to ensure that additional compensation is available for defense counsel where additional work is required to mount a vigorous defense, in part by deleting the "exceptional circumstances" requirement for additional compensation.

- Address outstanding requests for local investigators and develop procedures to expedite addressing future requests.
- Advocate for the appointment of one international investigator to each defense team.
- Organize ongoing trainings for defense counsel and investigators.

To the Witness and Victim Support Unit

- Identify where a lack of resources may be compromising your ability to provide adequate protection to witnesses and advocate for such assistance with the Registry.
- Participate in training to enhance protection, including by improving pre-trial briefings, protection of identity of witnesses, and responding to witness' concerns.

To the Outreach Section

- Coordinate production of audio segments on all key or decisive moments that best illustrate the judicial process at the Special Court, in addition to weekly audio summaries.
- Increase initiatives to coordinate observation of proceedings by individuals from throughout the country when testimony relevant to the area they are from takes place.
- Publicize information around Freetown about how to attend proceedings and provide orientation sessions to all individuals interested in observing trials that contextualize what is happening on a given day in the larger judicial process.
- Make copies of rulings and the schedule of proceedings available at the law library and other public venues in Freetown.

Appendix

Special Court for Sierra Leone – Time from motions to rulings for decisions listed on the Special Court website between May 23, 2003, and July 30, 2004, where the approximate duration was more than two months.[195]

	Decision Title	Motion/Application History	Decision Date	Duration (approx.)
1.	Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) (Norman) (Appeals Chamber), SCSL-04-14-Ar72(E)-131	26 June 2003 (D Motion) 7 July 2003 (P Response) 17 September 2003 (Appeals Chamber Referral) 3 November 2003 (Amicus Submissions – University of Toronto) 6 November 2003 (Oral Arguments) 24 November 2003 (Post-Hearing Submissions) 3 November 2003 (Amicus Submissions – UNICEF) 3 November 2003 (Written Submissions)	31 May 2004	**11 months**
2.	Rendering of Decision on Motion Made Under Protest and Without Waiving Immunity Accorded to a Head of State Requesting the Trial Chamber to Quash the Indictment and Declare Null and Void the Warrant of Arrest and Order for Transfer of Detention 23 July 2003 (Immunity Motion) (Taylor) (Appeals Chamber), SCSL-03-01-I-059	23 July 2003 (Applicant's Motion) 28 July 2003 (P Response) 19 September 2003 (Appeals Chamber Referral) 1 October 2003 (D Additional Submissions) 14 October 2003 (P Response) 11 November 2003 (D Reply) 23 October 2003 (Amicus Submissions – Orentlicher/Sands) 28 November 2003 (African Bar Association) 31 October, 1 November 2003 (Oral Arguments) 12 November 2003 (D Post Hearing-Submissions) 21 November 2003 (P Post Hearing-Submissions)	31 May 2004	**10 months**

[195] As noted in the report, many decisions were issued in less than two months following the filing of the motion. It was not possible to quantify the number of such decisions with any precision based on our review of the website of the Special Court for Sierra Leone. This chart, however, provides a detailing of decisions that took more than two months to be decided after the motion was filed.

3.	Decision on Challenge to Jurisdiction: Lomé Accord Amnesty (Kallon, Kamara) (Appeals Chamber), SCSL-04-16-PT-033-I, SCSL-04-16-PT-033-II	16 June, 22 September 2003 (D Motions) 23 June, 29 September (P Replies) 30 September, 9 October 2003 (Referred to Appeals Chamber) 24 October 2003 (Amicus Submission – Redress Trust) 27 October 2003 (Amicus Submission – Orentlicher) 3,4 November 2003 (Oral Arguments) 21 November (Post-Hearing Submission – Redress Trust) 28 November 2003 (D Post-Hearing Submission) 3 December 2003 (P Post-Hearing Response)	13 March 2004	**9 months**
4.	Decision On Constitutionality and Lack of Jurisdiction (Kallon, Norman, Kamara) (Appeals Chamber), SCSL-04-16-PT-032-I, SCSL-04-16-PT-032-II	16 June, 26 June, 22 September 2003 (D Motions) 23 June, 7 July, 30 September 2003 (P Responses) 30 June, 14 July 2003 (D Replies) 17 September 2003 (Referred to Appeals Chamber) 5 November 2003 (Oral hearing)	13 March 2004	**9 months**
5.	Decision on Preliminary Motion Based on Lack of Jurisdiction (Judicial Independence) (Norman) (Appeals Chamber), SCSL-04-14-PT-034-I, SCSL-04-14-PT-034-II	26 June 2003 (D Motion) 7 July 2003 (P Response) 14 July 2003 (D Reply) 17 September 2003 (Referred to Appeals Chamber) 5 November 2003 (Oral hearing)	13 March 2004	**8 months**
6.	Decision on Motion Challenging Jurisdiction and Raising Objections Based on Abuse of Process (Kanu) (Appeals Chamber), SCSL-04-16-PT-088	20 October 2003 (D Motion) 30 October 2003 (P Response) 5 November 2003 (D Reply) 22 January 2004 (Appeals Chamber Referral) 29 January 2004 (D Additional Submissions)	25 May 2004	**7 months**

7.	Decision on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lomé Accord (Kondewa) (Appeals Chamber), SCSL-04-14-T-128	7 November 2003 (D Motion) 14 November 2003 (P Response) 8 December 2003 (Appeals Chamber Referral)	25 May 2004	**6.5 months**
8.	Decision on Preliminary Motion on Lack of Jurisdiction: Establishment of Special Court Violates Constitution of Sierra Leone (Kondewa) (Appeals Chamber), E SCSL-04-14-PT-107	7 November 2003 (D Motion) 14 November 2003 (P Response) 4 December 2003 (Appeals Chamber Referral)	25 May 2004	**6.5 months**
9.	Decision on Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court (Gbao) (Appeals Chamber), SCSL-04-15-PT-141	6 November 2003 (D Motion) 17 November 2003 (P Response) 24 November 2003 (D Reply) 3 December 2003 (Referred to Appeals Chamber)	25 May 2004	**6.5 months**
10.	Decision on Preliminary Motion on Lack of Jurisdiction - Illegal Delegation of Jurisdiction by Sierra Leone (Fofana) (Appeals Chamber), SCSL-04-14-PT-102	14 November 2003 (D Motion) 21 November 2003 (P Response) 30 November 2003 (D Reply) 3 December 2003 (Referred to Appeals Chamber) 6 January 2004 (D Additional Submissions) 20 January 2004 (P Response) 26 January 2004 (D Reply)	25 May 2004	**6 months**
11.	Decision on Preliminary Motion on Lack of Jurisdiction - Illegal Delegation of Powers by The United Nations (Fofana) (Appeals Chamber), SCSL-04-14-PT-100-6836, SCSL-04-14-PT-100-6846	14 November 2003 (D Motion) 21 November 2003 (P Response) 30 November 2003 (D Reply) 3 December 2003 (Referred to Appeals Chamber) 6 January 2004 (D Additional Submissions) 20 January 2004 (P Response) 26 January 2004 (D Reply)	25 May 2004	**6 months**

12.	Decision on Preliminary Motion on Lack of Jurisdiction - Nature of the Armed Conflict (Fofana) (Appeals Chamber), SCSL-04-14-PT-101	14 November 2003 (D Motion) 24 November 2003 (P Response) 30 November 2003 (D Reply) 10 December 2003 (Referred to Appeals Chamber) 12 January 2004 (D Additional Submissions) 26 January 2004 (P Response) 2 February 2004 (D Reply)	25 May 2004	**6 months**
13.	Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (Gbao) (Trial Chamber), SCSL-03-09-PT-048	7 May 2003 (P Motion) 16 May 2003 (D Request for Extension) 26 May 2003 (D Response) 29 May 2003 (P Reply)	10 October 2003	**5 months**
14.	Decision on the Urgent Application for Release from Provisional Detention[196] (Kondewa) (Trial Chamber), SCSL-03-12-PT-049	11 June 2003 (D Application) 19 June 2003 (P Response) 23 June 2003 (D Reply)	21 November 2003	**5 months**
15.	Decision on the Urgent Application for Release from Provisional Detention[197] (Fofana) (Trial Chamber), SCSL-03-11-PT-072	11 June 2003 (D Application) 19 June 2003 (P Response) 26 June 2003 (D Reply)	21 November 2003	**5 months**

[196] See also Decision Approving the Indictment and Order for the Continued Detention of the Accused (Kondewa), 26 June 2003. This decision was decided after the motion was filed and provides for continued detention of the accused. Accordingly, the motion was arguably mooted, although the court notes that the issuance of the indictment did not constitute a bar to judgment on the grounds that "the issues raised are important and could receive application in other cases." (Decision on the Urgent Application for Release from Provisional Detention (Kondewa), para. 21.)

[197] See also Decision Approving the Indictment and Order for the Continued Detention of the Accused (Fofana), 26 June 2003. This decision was decided after the motion was filed and provides for continued detention of the accused. Accordingly, the motion was arguably mooted, although the court notes that the issuance of the indictment did not constitute a bar to judgment on the grounds that "the issues raised are important and could receive application in other cases." (Decision on the Urgent Application for Release from Provisional Detention (Fofana), para. 21.)

16.	Written Reasons for the Trial Chamber's Oral Decision on the Defence Motion on Abuse of Process Due to Infringement of Principles of *Nullem Crimen Sine Lege* and Non-Retroactivity as to Several Accounts (Kanu) (Trial Chamber), SCSL-04-16-PT-047	20 October 2003 (D Motion) 30 October 2003 (P Response) 5 November 2003 (D Reply) 8 March 2004 (Oral Decision dismissing motion)	31 March 2004	**4.5 months (until Oral Decision)**
17.	Decision on the Defence Application for Leave to Appeal 'Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure' (Kallon) (Trial Chamber), SCSL-03-07-PT-148	21 July 2003 (D Application) 28 July 2003 (P Response)	10 December 2003	**4.5 months**
18.	Decision on Motion for Modification of the Conditions of Detention (Norman) (President Justice Robertson), SCSL-03-08-PT-119	23 July 2003 (D Motion) 31 July 2003 (P Response) 4 August 2003 (D Reply) 30 October 2003 (Submissions reach Justice Robertson)[198] 5 November 2003 (Oral hearing)	26 November 2003	**4 months**
19.	Decision on Motion for Exclusion of Prosecution Witness Statements and Stay of Filing of Prosecution Statements (Kanu) (Trial Chamber), SCSL-04-16-PT-101	19 March 2004 (D Motion) 26 March 2004 (P Response) 31 March 2004 (D Reply)	30 July 2004	**4 months**

[198] Delay was explained on the grounds that: 1) there was confusion as to whether it was an application for bail, or modification of conditions of detention; and 2) court was in recess during August 2003.

20.	Decision on the Defence Motion Requesting the Suspension of Delays for Filing Preliminary Motions or New Request for an Extension of Delays (Sesay) (Trial Chamber), SCSL-03-05-PT-085	30 June 2003 (D Motion) 8 July 2003 (P Reply) 17 July 2003 (D Reply)	7 November 2003	**4 months**
21.	Decision on Applicant's Motion against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel (Brima) (Trial Chamber), SCSL-04-16-PT-068-5276-5290, SCSL-04-16-PT-068-5291-5305, SCSL-04-16-PT-068-5306-5316, SCSL-04-16-PT-068-5317-5326	5 January 2004 (P Motion) 16 January 2004 (Registrar and Acting Principal Defender Responses) 19 January 2004 (D Replies) 12 February 2004 (Oral Arguments)	6 May 2004	**4 months**
22.	Decision on the Motion by Morris Kallon for Bail (Kallon) (Trial Chamber), SCSL-04-15-PT-026	29 October 2003 (D Motion) 5 November 2003 (P Response) 10 November 2003 (D Reply) 18 November 2003 (Submissions by Sierra Leone government) 3 December 2003 (Hearing)	23 February 2004	**3.5 months**
23.	Decision and Order on Prosecution Motions for Joinder (Kondewa, Fofana, Norman) (Trial Chamber), SCSL-03-12-PT-057-I, SCSL-03-12-PT-057-II	9 October 2003 (P Motion) 20 October, 12 November 2003 (D Responses) 24 October 2003 (P Reply) 4 December 2003 (Oral hearing)	27 January 2004	**3.5 months**
24.	Decision and Order on Prosecution Motions for Joinder (Kamara, Gbao, Kallon, Brima, Sesay, Kanu) (Trial Chamber), SCSL-03-10-PT-059-I; SCSL-03-10-PT-059-II	9 October 2003 (P Motions) 15 October – 18 November 2003 (D Replies) 17 October – 21 November 2003 (P Responses) 2 December 2003 (Oral Arguments)	27 January 2004	**3.5 months**
25.	Decision on the Defence Preliminary Motion Based on Lack of Jurisdiction: Command Responsibility (Norman) (Trial Chamber), SCSL-03-08-PT-090	26 June 2003 (D Reply) 7 July 2003 (P Response) 14 July 2003 (D Reply)	15 October 2003	**3.5 months**

26.	Decision on Motion to Reverse the Order of the Registrar under Rule 48(C) of the Rules of Detention (Norman) (Acting President Justice Winter), SCSL-04-14-PT-087	27 January 2004 (D Motion)	18 May 2004	**3.5 months**
27.	Decision and Order on the Defence Preliminary Motion for Defects in the Form of the Indictment (Sesay) (Trial Chamber), SCSL-03-05-PT-080	24 June 2003 (D Motion) 18 July 2003 (P Response) 28 July 2003 (D Reply)	13 October 2003	**3.5 months**
28.	Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (Fofana) (Trial Chamber), SCSL-03-11-PT-039	3 July 2003 (P Motion) 18 July 2003 (D Response) 21 July 2003 (P Reply)	16 October 2003	**3 months**
29.	Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (Kamara) (Trial Chamber), SCSL-03-10-PT-040	11 July 2003 (P Motion) 22 July 2003 (D Response) 24 July 2003 (P Reply)	23 October 2003	**3 months**
30.	Decision on the Application by the Redress Trust and Lawyers Committee for Human Rights for Leave to File Amicus Curiae Brief and to Present Oral Submissions (Appeals) (Kallon) (Appeals Chamber), SCSL-03-07-PT-128	24 July 2003 (Redress Trust Application) 2 October 2003 (Referred to Appeals Chamber) 14 October 2003 (Transmitted to Appeals Chamber)	1 November 2003	**3 months**
31.	Decision on Prosecution Request for Leave to Amend the Indictment (Norman, Fofana, Kondewa) (Trial Chamber), SCSL-04-14-PT-113-7001, SCSL-04-14-PT-113-7016	9 February 2004 (P Motion) 19 February 2004 (D Response) 24 February 2004 (P Reply)	20 May 2004	**3 months**
32.	Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment (Kamara) (Trial Chamber), SCSL-04-16-PT-046-I, SCSL-04-16-PT-04-II	7 January 2004 (D Motion) 19 January 2004 (P Response) 22 January 2004 (D Reply)[199]	1 April 2004	**2.5 months**

[199] The decision claims that the consolidated indictment effectively mooted aspects of the defendant's motion – in part perhaps explaining reasonableness of some delay.

33.	Decision on Prosecution Request for Leave to Amend the Indictment (Sesay, Kallon, Gbao) (Trial Chamber), SCSL-04-15-PT-108-5971-5985, SCSL-04-15-PT-108-5986-5992	9 February 2004 (P Request for Leave) 19 February 2004 (D Response) 24 February 2004 (P Reply)	6 May 2004	**2.5 months**
34.	Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (Sesay, Kallon, Gbao) (Trial Chamber), SCSL-04-15-PT-174-6713, SCSL-04-15-PT-174-6723	2 April 2004 (P Motion) 21 April, 11 May 2004 (D Responses) 26 April, 17 May 2004 (P Replies)	24 June 2004	**2.5 months**

Acknowledgements

Elise Keppler, counsel for the International Justice program at Human Rights Watch, wrote this report. Elise Keppler and Corinne Dufka, West Africa team leader and Sierra Leone/Liberia researcher for the Africa division, conducted interviews in Freetown in March 2004, and by telephone and in person in New York and Freetown between April and August 2004. Richard Dicker, director of the International Justice program, edited the report. Corinne Dufka and Jennifer Trahan, counsel for the International Justice program, also edited the report. Wilder Tayler, legal and policy director, conducted legal review and Widney Brown, deputy program director, conducted program review. Substantial research assistance and drafting of the appendix was provided by interns Collin Smith and Mark Kleyna. Additional research assistance was provided by interns Bina Ahmad, Lisa Gambone, Tara Urs, and Neza Kogovsek. Yolanda J. Revilla, coordinator for the International Justice program, and Andrea Holley, manager of outreach and publications, prepared this report for publication.

Human Rights Watch is grateful to all the individuals who provided information for this report, particularly staff at the Special Court for Sierra Leone and defense counsel who represent accused at the Special Court, some of whom we interviewed several times. Human Rights Watch would also like to acknowledge the International Center for Transitional Justice and the Coalition for International Justice, whose monitoring efforts in relation to the Special Court served as a useful resource for Human Rights Watch.

The International Justice program would like to express appreciation for contributions provided by Mr. Allen Adler, the Joseph and Edith Fischer Family Foundation, the Redlich Horwitz Foundation, the Norman Hirschfield Foundation, and the Edward T. Cone Foundation to support the program's work on justice in Sierra Leone. Additionally, we would like to thank The John D. and Catherine T. MacArthur Foundation, the Planethood Foundation, and the Third Millennium Foundation for their support of the International Justice program.