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Justice in Motion

The Trial Phase of the Special Court for Sierra Leone

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I. Introduction

The Special Court for Sierra Leone is playing a crucial role in bringing justice for horrific human rights abuses committed during the Sierra Leone armed conflict. The conflict, which lasted from 1991 to 2002, was characterized by extreme brutality. Civilians suffered widespread and systematic attacks involving murder, mutilation, amputation, torture, rape, abduction, and the conscription and use of child soldiers. The majority of crimes were perpetrated by rebels from the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC). Government forces and their allies, including the Civil Defense Forces (CDF), also committed serious violations, albeit on a smaller scale than those by the rebel alliance.

Accountability for serious human rights crimes committed during Sierra Leone's war is essential for several reasons, including to bring justice to the victims, to punish the perpetrators, and to strengthen respect for the rule of law in the post-conflict era. Since 1998, Human Rights Watch has monitored the conflict in Sierra Leone, documented human rights crimes committed there, and pressed for justice for these crimes. Human Rights Watch maintained a field office in Sierra Leone from 1999 to 2002.

Within the context of the dysfunctional condition of the national justice system since the end of the conflict, the Special Court for Sierra Leone was established in 2002 by agreement between the Sierra Leone government and the United Nations (U.N.). The court has a mandate to "prosecute persons who bear the greatest responsibility" for serious crimes committed during the Sierra Leone war since 1996.¹

Human Rights Watch takes a two-pronged approach to the court, reflecting our approach to international justice institutions more generally. We actively support the efforts of the Special Court. Human Rights Watch has encouraged governments to cooperate to ensure that suspects do not escape the court's jurisdiction. We have urged the international community to provide the court with adequate financial support. As an independent human rights organization committed to effective justice for the victims and fair trials for the accused, Human Rights Watch also critically assesses the court's work to meet international standards: we make constructive recommendations to ensure that the Special Court fulfills its mandate fairly and efficiently, protects and supports witnesses and others at risk due to testimony provided, and is accessible and meaningful to those most affected by the crimes in the short and long term.

As a hybrid international-national court based in the country where the crimes occurred, the Special Court represents a new type of international justice institution. This fact makes scrutiny of the Special Court all the more important. Its success or failure is likely to have implications for assuring justice in other countries where crimes of a similar character and magnitude have been committed.

¹ Statute of the Special Court for Sierra Leone (SCSL Statute), art. 1(1).

Consistent with our approach, in September 2004 Human Rights Watch issued *Bringing Justice: The Special Court for Sierra Leone; Accomplishments, Shortcomings, and Needed Support*. That report, based on a mission Human Rights Watch researchers conducted to Sierra Leone in March 2004, evaluated the court against a series of benchmarks crucial to its ability to bring justice fairly and effectively: 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 identified accomplishments and made recommendations regarding court operations. It also made recommendations on the crucial importance of enhanced financial and political support by key governments.

This report seeks to build upon and expand Human Rights Watch's prior work on the Special Court. We assess developments since our March 2004 mission and focus on the court's practice during trials, which began in June 2004. This report utilizes a set of benchmarks similar to, but developed upon, those framing the September 2004 report: 1) efficiency and effective trial management; 2) adherence to international fair trial standards; 3) protection and support of witnesses; and 4) impact. This report does not discuss each of the various components of court operations in depth. Instead, it highlights those areas that represent particularly significant accomplishments or concerns, and makes recommendations for improving operations.

The report is based largely on interviews conducted during a mission by Human Rights Watch to Freetown in April 2005. During this mission, Human Rights Watch researchers conducted interviews with approximately 40 Special Court staff, including current and former international and Sierra Leonean staff in the Office of the Prosecutor (OTP), the Registry, the Chambers, and the Office of the Principal Defender. Researchers also interviewed international and Sierra Leonean defense counsel, independent court monitors, national justice sector staff, and members of civil society. Aside from interviews, Human Rights Watch researchers also conducted limited observation of proceedings in both trial chambers at the Special Court and in the national courts, attended a Special Court outreach event, and held discussions with Sierra Leoneans around Freetown not involved with the court. Additional interviews with court staff, diplomats, and defense counsel in New York and Freetown were conducted by phone, e-mail, and in person between March and October 2005.

Some of the individuals interviewed wished to speak candidly but did not wish to be cited by name. To protect the anonymity of these persons, most sources are cited with only generic references, such as "Special Court staff," or "member of civil society."

II. Overview: Continuing Accomplishments and Shortcomings

During the phase of holding trials, which began in June 2004, the Special Court continues to make significant strides towards bringing justice for atrocities that were committed during the Sierra Leone armed conflict. The Special Court's accomplishments are all the more significant given the obstacles the court has had to overcome, including establishing an infrastructure in a severely underdeveloped country devastated by

conflict, and in the face of limited and uncertain funding. Despite its achievements, some concerns remain regarding court operations. Summarized below, and detailed in later sections of this report, are the Special Court's strengths and achievements, and the areas of concern that should be addressed to ensure that the court is able to conduct and complete its work as fairly and effectively as possible.

A. A Highly Functional Operation

Only three years after its establishment, the Special Court is making major progress on trials. Three trials of nine accused are currently proceeding simultaneously before two trial chambers. As of August 2005, more than 150 witnesses had testified, and the prosecution had closed its case in one of the three trials. The appointment of Trial Chamber II in January 2005 was a major development that enhanced the court's efficiency by enabling the third major trial to commence in March 2005.

Given the substantial progress made in what tend to be extremely complex cases, both trial chambers have overall demonstrated a strong degree of efficiency. The active interventionist style of courtroom management by Trial Chamber II also makes a useful contribution to addressing the need to fully protect the rights of the accused and the interests of witnesses while promoting the efficient administration of justice. Additionally, the Registrar has consistently promoted effective courtroom management, which has included the creation of a judicial services coordination committee to make recommendations on technical and logistical issues related to courtroom usage.

The Office of the Principal Defender (Defence Office) continues to serve a critical function in helping to protect the rights of the accused, and represents an unprecedented and important innovation for international and hybrid tribunals. The principal defender advocates on behalf of the defense with the court administration and before the judges on issues relevant to defense representation and fair trials. The principal defender, along with duty counsel who work in the Defence Office, screen defense counsel applicants, and monitor performance by defense counsel. The Registry has shown an important commitment to effective defense representation, including making significant increases in allocations of needed logistical support for defense teams and access to investigators.

The Special Court provides a comprehensive scheme of protection and support for the hundreds of mostly Sierra Leonean witnesses, both victims and non-victims, who will testify. The court makes much effort to protect the identity of witnesses, and provides shelter for witnesses prior to and during testimony in safe houses around Freetown. The court also provides medical assistance and psychosocial counseling for witnesses. The court has taken a range of steps to respond to threats against witnesses that have been made in certain instances (despite ongoing efforts to avoid such threats). For a small number of witnesses considered to be particularly vulnerable to reprisal, the court has organized their relocation within Sierra Leone or abroad.

Witnesses are generally treated with respect and dignity, and receive support by staff from Witness and Victim Support (Witness and Victim Support Unit) in the courtroom. Witnesses have characterized the experience of testifying positively to court staff. Aware

of the importance of assessing the condition of witnesses after they testify and return home, the Special Court provides return transport, and plans to make at least one follow-up visit to each witness after he or she is back home.

The court continues to make robust and innovative outreach and communications efforts to increase Sierra Leoneans' awareness of the court's work. The Public Affairs Unit creatively engages and trains local media, and produces audio and video summaries of the court's work. The Outreach Unit canvasses the country with information about the court through video screenings, discussion, and dissemination of written material. The court magnifies its reach by targeting particular sectors of society such as students, and conducting trainings for civil society.

The court's judicial operations, combined with its outreach programming, are helping to leave an important legacy by strengthening respect for the rule of law in Sierra Leone. Through employment and training of Sierra Leonean staff, the court is also building local professional capacity. The development of a domestic witness protection unit (an element of the Special Court's commitment to protection after the court closes operations, and hitherto lacking in Sierra Leone) is serving to increase capacity in this crucial area. The proposed establishment of an independent radio station dedicated to justice issues would serve to promote debate on the rule of law. The court is also taking some steps to reach out to the national justice sector.

Special Court staff have recognized the importance of advance planning for the completion of court operations and responsibilities that will remain after that time, which is underscored by the court's anticipated limited duration. The court began developing a strategy to address this, known as its "completion strategy," in 2004. In May 2005, the court issued an updated completion strategy that identifies two major components: the completion phase and the post-completion phase.²

B. Areas Where Improvement is Needed

This summary and the subsequent sections presenting issues of concern contain recommendations by Human Rights Watch for remedial actions. Additionally, a detailed set of recommendations addressed to specific institutions and actors is presented at the end of the report. Many of the earlier recommendations have financial implications, which are acknowledged in the recommendations at the end of the report addressed to the Special Court's Management Committee and donors.

² Under the strategy, the completion phase will include completion of trials and appeals, transferring convicted persons to serve sentences, and closing down operations in Freetown. The post-completion phase will include performance of certain "residual activities," including supervision of enforcement of sentences, witness protection and support, and conduct of necessary proceedings such as against any accused surrendered once the court is in the post-completion phase. It is envisioned that during the post-completion phase, the court will no longer exist in its current state, but as a "residual mechanism" consisting of either a "miniaturized" Special Court or delegation of the Special Court's authority to another institution. U.N. General Assembly, Security Council, Identical letters dated 26 May 2005 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, May 27, 2005, A/59/816-S/2005/250, Annex. para. 3.

During proceedings, instances of disclosure of identifying information concerning protected witnesses by judges, accused, prosecution, and defense counsel have occurred. While complete non-disclosure may not be achievable or even advisable, efforts to avoid the disclosure of identifying information concerning witnesses should be intensified. There have also been instances of judges making insensitive and condescending remarks to witnesses in the courtroom.

Substantial delays in decisions on motions continue to exist in certain instances, and raise particular concern with regard to motions that implicate fair trial rights. Efforts to prioritize and dispose of such motions must be made. There are also significant differences in the pace of trials between the first and second trial chambers, with some practices by Trial Chamber I undermining the momentum of proceedings.

Despite improvements in support for defense teams over the past year, funding of two areas essential to the preparation and presentation of defense cases – expert witnesses and international investigators – may prove insufficient. Defence Office staff and defense counsel have expressed concern that funding is inadequate and budgetary allotments in 2005-2006 are a fraction of the amounts requested by the Defence Office for these areas. When Human Rights Watch researchers raised concerns over possible inadequate funding, we were told that there is some flexibility in the budget, and that the Special Court is committed to ensuring reasonable defense needs. Human Rights Watch welcomes the Registry's commitment to ensuring defense needs. However, relying on the Registry's flexibility to secure adequate funding means that concerns remain.

Given the challenges in assuring high quality representation of complex cases, performance of some defense counsel at the Special Court is, not surprisingly, deficient in certain instances. Increased oversight by the Defence Office to address problems in performance by counsel, including ensuring full participation by all members of defense teams and more training, is needed.

There has been substantial late disclosure of witness statements to defense counsel and instances where disclosure obligations have been breached by the prosecution. Disclosure is crucial to case preparation, and the prosecution should rigorously abide by its obligations to make disclosure in a timely fashion.

Given the limits of what the court can do to guarantee the physical and mental well-being of witnesses, they have, not surprisingly, suffered threats. In some cases, these incidents are believed to be linked to disclosure of information about the witness by the accused or part of his defense team. Although the court has aggressively sought to hold persons involved in making such threats accountable when they occur on court premises, the court would do well to consider taking similar action for incidents that occur off court premises.

Follow up with witnesses after they return to home villages is somewhat limited, due reportedly to a lack of adequate staffing in the Witness and Victim Support Unit, and logistical challenges. Plans to fully address witness protection after the court closes down in Sierra Leone should also be further developed. This includes integrating all relevant

court staff in the creation of a domestic witness protection unit, and allocating a limited number of court staff to provide oversight of this unit as part of the court's residual activities.

With regard to accessibility, given that radio remains the main medium for the majority of Sierra Leoneans to learn about the court, having weekly radio summaries of proceedings is too limited. While the court has indicated interest and commitment to developing an independent radio station that would focus on justice issues and provide detailed coverage of the court, this project has not yet been funded. In the meantime, more immediate efforts to increase radio programming on proceedings are needed. Attendance in the public gallery also remains limited. Court staff have recognized this as a problem and indicated their intention to intensify initiatives to expand attendance. Plans in this regard should be actively implemented.

To ensure a meaningful legacy, engagement with the national justice system should be increased. There is currently little interaction between Special Court judges and staff with judges and staff of the national courts, and limited programming to foster such interaction. While the Special Court is not a judicial reform project, more active efforts are needed to create impact on the national justice system, a crucial aspect of strengthening the rule of law in Sierra Leone. Such efforts are closely linked to promoting the overall purpose of the court to limit impunity.

C. Two Major External Obstacles

There are two main obstacles beyond the court's control which continue to undermine the court's ability to bring justice as fairly and effectively as possible for crimes committed during the Sierra Leone conflict: inadequate and uncertain funding, and Nigeria's continued shielding of Charles Taylor.

Initially forced to rely exclusively on voluntary contributions, the Special Court has faced constant financial shortfalls. Following a request by the U.N. Secretary-General in March 2004 for a U.S.\$40 million subvention to help address the court's financial difficulties, the U.N. General Assembly has assisted the court enormously by granting it up to U.S.\$33 million to help fund operations through the end of 2005.³ However, this assistance will not cover the court's budget for its final period of operations nor during its post-completion phase.

The court has made tremendous achievements on scarce and insecure resources. Inadequate funding for the court to complete operations would be extremely detrimental, and Special Court officials should not have to devote extensive time to

³ U.N. General Assembly, Resolution adopted by the General Assembly, Special subjects and questions relating to the programme budget for the biennium 2004-2005, August 31, 2005, A/RES/59/294, paras. 7-14; U.N. General Assembly, Resolution adopted by the General Assembly, Questions relating to the programme budget for the biennium 2004-2005, January 17, 2005, A/RES/59/276, section VII, paras. 16-20; U.N. General Assembly, Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or Security Council, April 22, 2005, A/59/569/Add.4, paras. 15-26; U.N. General Assembly, Request for a subvention to the Special Court for Sierra Leone, Report of the Secretary-General, March 15, 2004, A/58/733.

securing funding. It is essential that governments come forward with necessary voluntary contributions to fund the court during its final phase and in this regard, Human Rights Watch welcomes pledges made by donors at a funding conference for the court in late September 2005. Governments must now redeem those pledges and make additional contributions to ensure the court has adequate funding to complete operations fairly and effectively and to perform necessary activities during its post-completion phase. It is also essential that the U.N. provide funding to the court to address outstanding shortfalls, and in this regard, the General Assembly should authorize the remaining U.S.\$7 million of the Secretary-General's subvention request.

It is also crucial that Nigeria promptly surrender Charles Taylor to the Special Court. Taylor has been accused by the Special Court of seventeen counts of war crimes and crimes against humanity against the people of Sierra Leone. The crimes include killings, mutilations, rape and other forms of sexual violence, sexual slavery, the recruitment and use of child soldiers, abduction, and the use of forced labor by Sierra Leonean armed opposition groups. Nigeria's ongoing harboring of an indicted war criminal undermines the court's ability to achieve its mandate to prosecute those bearing the greatest responsibility for serious crimes committed in Sierra Leone's armed conflict. African governments, along with other key states including the United States (U.S.) and the United Kingdom (U.K.), as well as the U.N., must work vigorously with Nigeria's President Olusegun Obasanjo to ensure Taylor's surrender to the Special Court. Given scarce resources and the anticipated short duration of the court, time is of the essence.

Human Rights Watch continues to engage in intensive advocacy to ensure adequate overall funding of the Special Court, and the surrender of Charles Taylor to face trial there. As this report focuses on current operations at the Special Court, however, these issues are not discussed further in this document (although it does detail a number of instances where increased allocations of funding may be necessary to support particular operations).

III. Trial Management

Efficiency and effective trial management while fully adhering to protection of the rights of the accused are key elements to the Special Court's success. They are significant for assuring the accused's right to a trial without unreasonable delay, providing proper treatment of witnesses in the courtroom, and maximizing the limited resources available to support international justice.

A. Substantial Progress on Trials

The current progress on trials reflects a substantial accomplishment. The Special Court is currently holding three trials of nine accused simultaneously. The three trials include all indictees now in custody, in groups delineated by their association with the three main warring factions: 1) Civil Defense Forces (CDF trial); 2) Revolutionary United Front

(RUF trial); and 3) the Armed Forces Revolutionary United Council (AFRC trial).⁴ On July 14, the prosecution completed its case in the CDF trial.⁵ As of August 5, seventy-five prosecution witnesses had been called in the CDF trial, forty-three witnesses had been called in the RUF trial, and forty-eight witnesses had been called in the AFRC trial.⁶

The appointment of judges to Trial Chamber II in January 2005 significantly enhanced efficient progress by enabling the AFRC trial to commence in March 2005. The CDF and RUF trials, which began in June and July 2004 respectively and alternate approximately every six weeks, continue before Trial Chamber I. Another significant development is the increase in support made available to chambers, with two legal advisors now appointed to assist with each trial.⁷

B. Treatment of Witnesses in the Courtroom

Proper treatment of witnesses, many of whom are victims, is a critical component of effective trial management. Witnesses must be treated with dignity and respect to minimize the trauma that may be caused by testifying, to allow victims who testify to be as empowered and fulfilled by the process as possible, and to promote continued participation of witnesses in trials.⁸

1. Interaction between judges, counsel, and witnesses

Witnesses are generally treated with appropriate respect and sensitivity in the courtroom. Judges largely adjourn as necessary when a witness breaks down, or ask a counselor from the Witness and Victim Support Unit who is present in the courtroom to approach the witness.⁹ While some defense counsel treat witnesses with less sensitivity than others,¹⁰

⁴ There are two remaining indictees: Charles Taylor, who is currently evading justice in exile in Nigeria, and Johnny Paul Koroma, whose whereabouts are unknown and is believed possibly to be dead.

⁵ "Prosecution Wraps Up Case in Trial of CDF Accused," Special Court for Sierra Leone Press and Public Affairs Office, July 14, 2005 [online], <http://www.sc-sl.org/Press/pressrelease-071405.pdf> (retrieved July 14, 2005).

⁶ These figures were compiled from data provided by the Special Court and weekly court summaries of proceedings. See Special Court for Sierra Leone, Weekly Court Summaries [online], <http://www.sc-sl.org/weeklysummaries.html> (retrieved August 12, 2005); Special Court for Sierra Leone, "Witness Evidence Time Log," document on file with Human Rights Watch; Special Court for Sierra Leone, "Court Sitting Time Log," document on file with Human Rights Watch.

⁷ Human Rights Watch interview with Special Court staff, Freetown, April 20, 2005. See also Special Court for Sierra Leone, "Second Annual Report of the President of the Special Court for Sierra Leone for the Period 1 January 2004 – 17 January 2005," p. 37; "Bringing Justice: The Special Court for Sierra Leone; Accomplishments, Shortcomings, and Needed Support," A Human Rights Watch Report, vol. 16, no. 8(A), September 2004, pp. 15-16, available online at <http://hrw.org/reports/2004/sierraleone0904/> (hereinafter "Bringing Justice: The Special Court for Sierra Leone").

⁸ For additional information on witness protection and support, see Section V of this report.

⁹ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 13 and 18, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with two court monitors, Freetown, April 14, 2005. See also U.C. Berkeley War Crimes Studies Center, "Interim Report on the Special Court for Sierra Leone," April 2005, pp. 24-25 [online], http://ist-socrates.berkeley.edu/~warcrime/SLSC_Report.pdf (retrieved July 15, 2005) (hereinafter "Special Court Interim Report").

¹⁰ Human Rights Watch separate interviews with three Special Court staff, Freetown, April 13-19, 2005.

judges have intervened to avoid harassing questioning, particularly in Trial Chamber II.¹¹ Chambers also move into closed session to protect witness identity.¹²

Human Rights Watch was told by court staff that witnesses have characterized testifying as an overall positive experience, although some witnesses expressed difficulty with cross-examination, as they felt as if they had not been believed. Witnesses also occasionally have been inconvenienced by having to come to Freetown multiple times due to rescheduling of their court appearance.¹³

Witnesses have indicated to court staff that having come with the purpose of telling their story they have no regrets, and that in some cases, they have felt a sense of release by providing testimony. They have also expressed a sense of empowerment, which stands in stark contrast to the disempowering experiences they suffered during the war. Some have indicated that they were pleased to testify, would even do so again if needed, and believe that it could contribute to peace.¹⁴

At the same time, there are instances where judges have made insensitive remarks to witnesses in the courtroom such as “be a man; don’t cry.” There are also instances where some judges have made condescending or disrespectful remarks in reference to witnesses, such as comments that a witness cannot understand something because he is from “the bush,” or is illiterate. Judges have also reportedly failed to thank witnesses for participating in what is often a difficult process of testifying, although this has improved over time.¹⁵

Special Court judges should treat witnesses with respect and dignity at all times, and ensure that all parties in the courtroom do so as well. Around the time that Trial Chamber II began functioning, it received a briefing from staff within the Witness and Victim Support Unit regarding witnesses. This type of briefing allows judges at the Special Court to take advantage of available experience and expertise concerning witness treatment. As of April 2005, Trial Chamber I had not availed itself of the Witness and Victim Support Unit’s offer to provide a similar briefing.¹⁶ Trial Chamber I should move forward swiftly with participating in such a briefing if it has not yet done so in order to maximize effective witness treatment in the courtroom.

¹¹ Human Rights Watch interview with Special Court staff, Freetown, April 13, 2005; Human Rights Watch observations of proceedings in Trial Chamber II, April 18, 2005. See also U.C. Berkeley War Crimes Studies Center, “Special Court Interim Report,” pp. 26-27.

¹² Human Rights Watch interview with two court monitors, Freetown, April 12, 2005.

¹³ Human Rights Watch interviews with four Special Court staff, Freetown, April 13-21, 2005 (three interviews in total).

¹⁴ Human Rights Watch separate interviews with Special Court staff, Freetown, April 13-20; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

¹⁵ Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with three Special Court staff, Freetown, April 12, 2005 (two interviews in total); Human Rights Watch interview with defense counsel, Freetown, April 12, 2005.

¹⁶ Human Rights Watch interview with two Special Court staff, Freetown, April 12, 2005; Human Rights Watch interview with two court monitors, Freetown, April 12, 2005.

2. Disclosure of identifying information concerning witnesses

In a number of instances, identifying information about a witness whose identity is protected has been improperly disclosed in the courtroom. Some disclosures are attributable to defense counsel, the accused, or the prosecution, while others are attributable to the judges.¹⁷ Such disclosures appear to be largely unintentional, and some defense counsel have demonstrated concern about revealing identifying information by amending questions to avoid such disclosure.¹⁸ Where such information has been disclosed, it is the practice for it to be expunged from the record.¹⁹

One Special Court official indicated that these disclosures have not created serious risks for the witnesses, in part due to the low turnout in the public gallery, the current absence of live broadcasts of proceedings and the removal of the information from the record.²⁰ Human Rights Watch researchers recognize that attendance in the public gallery is currently limited, and that perfect compliance with the obligation not to disclose identifying information concerning protected witnesses presents an enormous challenge.²¹ However, given the substantial risks that witnesses may face due to their testimony, rigorous adherence to this objective is crucial. Accordingly, Human Rights Watch urges judges, the prosecution, and defense counsel to ensure that as little information as possible identifying protected witnesses is disclosed during court proceedings.

C. Motion Practice

During the trial phase, numerous written motions have been decided in an efficient manner. However, the pace of rendering decisions has reportedly slowed in recent months, and significant delays have been found to exist in certain instances.²² Some delays by the trial and appeals chambers in issuing decisions are unavoidable. However, extended lags can raise concern, especially where they implicate fair trial issues.

¹⁷ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 12 and 20, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with two court monitors, Freetown, April 12, 2005. See also Sierra Leone Court Monitoring Programme, "Newsletter," vol. 2, October 2004 [online], www.slcmp.org/newsletter_vol2.htm (retrieved July 14, 2005); U.C. Berkeley War Crimes Studies Center, "Special Court Monitoring Program Update #4 Trial Chamber I - CDF Trial," September 17, 2004, and "Special Court Monitoring Program Update #22 Trial Chamber I - CDF Trial," February 18, 2005 [online], <http://ist.socrates.berkeley.edu/~warcrime/weeklyupdate.htm> (retrieved August 11, 2005).

¹⁸ Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch observations of proceedings in Trial Chamber II, April 20, 2005.

¹⁹ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 20, 2005.

²⁰ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

²¹ For in-depth discussion on limited attendance, see Section VI of this report.

²² Specifically, Human Rights Watch researchers were told that as of April 2005, many motions were pending. In Trial Chamber I, which alternates sessions between the RUF and CDF trials approximately every six weeks, decisions on motions filed in one session of either of the trials are often not decided until after a full session of the other trial has passed. This was attributed at least in part due to the hours the chamber is in session each day, which can create difficulties for judges to make adequate time to address motions. Human Rights Watch interview with Special Court staff, Freetown, 20, 2005; Human Rights Watch interview with two court monitors, April 12, 2005. See also U.C. Berkeley War Crimes Studies Center, "Special Court Monitoring Program Update #27, Trial Chamber I – RUF Trial," March 18, 2005 [online], <http://ist-socrates.berkeley.edu/~warcrime/weeklyupdate.htm> (retrieved October 18, 2005); "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, pp. 13-14.

In this regard, delays in several decisions in the past year raise particular concern. For example, decisions denying bail to defendants continue to be marked by protracted delays. A decision on an application for bail by one of the accused in the CDF trial designated for disposition by one judge in Trial Chamber I was not issued until more than four months after all submissions had been filed.²³ The Appeals Chamber then took another three months to render a decision on a motion appealing the denial of bail.²⁴ The Appeals Chamber similarly took approximately three months to issue a decision on an appeal against denial of bail to an accused in the RUF trial.²⁵

Notable delays have also existed in decisions on motions relating to the charges against defendants. The Appeals Chamber took approximately four months to render a decision on amendments to the consolidated indictment in the CDF trial, which implicated the accused's opportunity to plead to new charges and to be personally served with such charges.²⁶ Additionally, Trial Chamber I has taken extended periods to issue decisions on motions regarding disclosure to defense: five months to issue a decision on a defense motion in the RUF trial to disclose links between the OTP and government agencies;²⁷ and four months for one judge in Trial Chamber I to render a decision on a defense motion in the AFRC trial requesting exclusion of witness statements on the basis that they had not been disclosed within the required timeframe.²⁸

Both trial and appeals chambers should identify and address any impediments that may exist to the more consistently efficient rendering of decisions, particularly motions that have implications for the court's full adherence to protection of the rights of the accused. The trial chambers should consider prioritizing issuing decisions on motions that are key to upholding fair trial rights, and allocating one extra time on a regular basis to dispose of such motions.

D. Courtroom Management

Trials for serious international crimes tend to be by their nature extremely complex and slow-moving. Such prosecutions often involve offenses committed over long periods of time in wide geographic areas with numerous perpetrators and victims. Balancing full protection of the rights of the accused and ensuring that the needs of witnesses are met with the efficient administration of justice poses real challenges. In making substantial progress on trials for serious crimes committed during the Sierra Leone conflict, both trial chambers have demonstrated a strong degree of effective courtroom management. At the same time, there are significant differences in the pace of trials between the first and second trial chambers. There is also a major difference in the pace between the two trials before Trial Chamber I, with the RUF trial proceeding substantially slower than the CDF trial.

²³ Decision on Application for Bail Pursuant to Rule 65 (Fofana) (Trial Chamber I), August 5, 2004.

²⁴ Appeal against Decision Refusing Bail (Fofana) (Appeals Chamber), March 11, 2005.

²⁵ Decision on Appeal against Refusal of Bail (Sesay) (Appeals Chamber), December 14, 2004.

²⁶ Decision on Amendment of the Consolidated Indictment (Norman) (Appeals Chamber), May 16, 2005.

²⁷ Decision on Sesay Motion Seeking Disclosure of the Relationship between Governmental Agencies of the United States of America and the Office of the Prosecutor (Sesay) (Trial Chamber I), May 2, 2005.

²⁸ Decision on Motion for Exclusion of Prosecution Witness Statements and Stay of Filing of Prosecution Statements (Brima) (Trial Chamber I), August 2, 2004.

There are a variety of factors that contribute to differences in progress in trials, including the conduct of defense counsel and prosecution staff, and differences in the complexity and scope of the different cases. In particular, court staff and defense counsel view the RUF trial as more complex than the CDF and AFRC trials because of factors including that the indictments have more counts and involve charges covering a longer period and crime scenes from a wider geographic area.²⁹ However, interviews with court staff based throughout the court, defense counsel, and courtroom monitors, along with limited observation by Human Rights Watch researchers of proceedings in both trial chambers, suggest that the conduct of the judges is also a substantial factor.

Trial Chamber II has been broadly characterized as a more active, focused, interventionist bench than Trial Chamber I.³⁰ Special Court staff and monitors of court proceedings told Human Rights Watch that Trial Chamber I grants extensive latitude to counsel during cross-examination, which has undermined momentum in proceedings by allowing counsel to pursue questioning on irrelevant issues or conduct repetitive cross-examination in certain instances.³¹ While in Freetown, Human Rights Watch researchers observed that Trial Chamber I judges intervened and engaged counsel and witnesses significantly less frequently than those of Trial Chamber II, and generally were less aggressive in keeping proceedings moving forward.³² Judges in Trial Chamber I have reportedly acknowledged that direct and cross-examination has been repetitious and unduly lengthy in some instances, and have expressed concerns about the pace of trials.³³

Human Rights Watch believes that a more interventionist style helps to ensure the effective administration of justice by creating a sense that proceedings are pushing forward. It can also make counsel more accountable, thereby setting a tone conducive to efficiency. In this regard, we note that the Rules of Procedure and Evidence for the Special Court for Sierra Leone provides that “The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to: (i)

²⁹ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 12 and 20, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch group interview with defense counsel, April 19, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005. See also Amended Consolidated Indictment, Prosecutor Against Sesay, Kallon and Gbao, May 13, 2004 (indicting RUF accused on eighteen counts, compared to eight counts for CDF and fourteen counts for AFRC accused).

³⁰ Human Rights Watch separate interviews with three Special Court staff, Freetown, April 12-20, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch group interview with defense counsel, April 19, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005; Human Rights Watch interview with two court monitors, April 12, 2005.

³¹ Human Rights Watch interviews with eight Special Court staff, Freetown, April 12-20, 2005 (seven interviews in total); Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with two monitors of the proceedings, April 12, 2005. See also U.C. Berkeley War Crimes Studies Center, “Special Court Interim Report,” p. 27, “Special Court Monitoring Program Update #30, Trial Chamber I – RUF Trial,” April 1, 2005, and “Special Court Monitoring Program Update #26, Trial Chamber II – AFRC Trial,” March 11, 2005 [online], <http://ist-socrates.berkeley.edu/~warcrime/weeklyupdate.htm> (retrieved October 19, 2005).

³² Human Rights Watch observations, Trial Chamber I, Freetown, April 18, 2005; Human Rights Watch observations, Trial Chamber II, Freetown, April 18 and 20, 2005.

³³ Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005. See also U.C. Berkeley War Crimes Studies Center, “Special Court Monitoring Program Update #27, Trial Chamber I – RUF Trial,” March 18, 2005; U.C. Berkeley War Crimes Studies Center, “Special Court Interim Report,” fn. 125, p. 26; Sierra Leone Court Monitoring Programme, “Newsletter Volume 5,” Jan.-Feb 2005, p. 2 [online], http://www.slcmp.org/newsletter_5th_edition.doc http://www.slcmp.org/newsletter_5th_edition.doc (retrieved July 14, 2005).

Make the interrogation and presentation effective for the ascertainment of the truth; and (ii) Avoid the wasting of time.”³⁴ Court staff and observers cited other differences that affected the overall momentum of proceedings in Trial Chamber I, including a pattern of poor time keeping, something that Human Rights Watch researchers themselves observed while attending proceedings in Freetown in April 2005.³⁵

Effective trial management also involves properly addressing practical and technical issues. The Registry has urged for various changes to enhance courtroom usage over time at the Special Court; some changes which have had positive impact include providing lunch to judges in their offices, and increasing sitting times.³⁶ Increased sitting times are largely welcome, although they appear to have contributed to challenges in prompt rendering of decisions on motions, as discussed above.

One significant initiative by the Registry is the creation of a judicial services coordination committee.³⁷ The committee includes representatives from the various organs of the court and looks at practical issues such as courtroom usage, advance preparation needed for particular witnesses, statistics on how cases are moving forward, and technical matters related to equipment used in the courtroom.³⁸ Some staff have touted this committee as an important effort to improve efficiency by creating a sense of accountability.³⁹ However, Human Rights Watch was also told that Trial Chamber I judges have largely ignored the committee, deeming it an inappropriate effort to control judicial matters, which has limited the committee’s impact.⁴⁰

Human Rights Watch believes that this committee can serve as an important management tool – without compromising judicial independence – by focusing on enhancing coordination and communication between court organs to better understand and maximize courtroom usage. Statistics and monitoring of the timing of proceedings are useful ways to enable the judges to evaluate the efficacy of courtroom practice, including with regard to time keeping. All judges at the Special Court should support the work of this committee. By being actively involved, the judges will also be in a better position to ensure that it strictly respects the boundaries of judicial independence.

Judicial exchanges between Special Court judges and judges working at other international justice institutions can also be a valuable tool to allow sharing of best

³⁴ Rules of Procedure and Evidence, Special Court for Sierra Leone, amended May 2005, Rule 90.

³⁵ Human Rights Watch interviews with three Special Court staff, Freetown, April 12 and 20, 2005 (two interviews in total); Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005; Human Rights Watch group interview with defense counsel, April 19, 2005; Human Rights Watch interview with two court monitors, April 12, 2005; Human Rights Watch observations, Trial Chamber I, Freetown, April 18, 2005; Human Rights Watch observations, Trial Chamber II, Freetown, April 18 and 20, 2005. See also U.C. Berkeley War Crimes Studies Center, “Special Court Interim Report,” pp. 26-27.

³⁶ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005.

³⁷ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

³⁸ Human Rights Watch interviews with four Special Court staff, Freetown, April 14-21, 2005 (three interviews in total).

³⁹ Human Rights Watch interview with Special Court staff, New York, April 8, 2005.

⁴⁰ Human Rights Watch interviews with three Special Court staff, Freetown, April 19-21, 2005 (two interviews in total); Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005.

practices and lessons learned. A judicial exchange between Special Court judges and judges from the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court took place in June 2004 devoted to procedure and substance, including courtroom and case management, elements of crimes, theories of liability, and witness issues. Another such exchange is planned for late October 2005.⁴¹ The Special Court should continue to support these exchanges on a regular basis.

IV. Fair Trial Rights

Trials at the Special Court for Sierra Leone must rigorously uphold international fair trial rights to ensure that justice is done, and is seen to be done.⁴² The gravity of the charges against the accused underscores the importance of effective representation by defense counsel. Observing fair trial rights is also essential for building respect for the rule of law in Sierra Leone, particularly since the court can serve as a model for the struggling national justice system.⁴³

During the trial phase, the Defence Office – an innovation for international tribunals developed by the Special Court – continues to play a crucial role in helping to protect the rights of the accused. The head of the office, the principal defender, advocates with the court administration and before the judges on issues relevant to defense representation and fair trials. The office further helps to ensure that defense counsel have adequate support to prepare and present cases.

The Registry has also demonstrated a real commitment to supporting effective representation for defendants. In addition to increasing needed resources for defense teams, as discussed below, it has supported efforts to amend the statute of the Special Court to formalize the independence of the Defence Office, which is currently under the Registry's umbrella.⁴⁴

A. Access to Resources

Over the past year, substantial improvements have been made in support for defense, which will promote maximum assurance of fair trial rights.⁴⁵ These include increases in logistical support, such as photocopiers, confidential meeting spaces, and transportation;

⁴¹ Human Rights Watch e-mail correspondence with David Cohen, Berkeley War Crimes Studies Center, September 10, 2005. See also "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, pp. 17-18.

⁴² In particular, the rights of the accused as enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR) and contained within Article 17 of the SCSL Statute must be comprehensively and consistently upheld.

⁴³ For a more detailed discussion of problems with the Sierra Leone justice system, see Section VI of this report and "The Jury is Still Out," *A Human Rights Watch Briefing Paper on Sierra Leone*, July 11, 2002, available online at <http://hrw.org/backgrounder/africa/sl-bck0711.htm>.

⁴⁴ Human Rights Watch interview with two Special Court staff, New York, March 30, 2005.

⁴⁵ Shortcomings in several areas related to ensuring effective representation at the Special Court had previously raised concern, including: 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. "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, pp. 21-28.

a commitment to increasing access to international investigators; and improved language interpretation.⁴⁶ In speaking with Human Rights Watch researchers, defense counsel and Defence Office staff recognized that logistical support, vital to adequate case preparation, has improved over time.⁴⁷ Moreover, the registrar has indicated a commitment to respond flexibly to defense requests and to enhance support for defense where reasonable.⁴⁸

Despite these advances, funding of two areas essential to the preparation and presentation of defense cases – expert witnesses and international investigators – may prove insufficient. Defense counsel and court staff told Human Rights Watch that they believe that currently allotted amounts for the defense expert witness budget for 2005-2006⁴⁹ are inadequate.⁵⁰ The Defence Office requested approximately three times what was ultimately allotted in the 2005-2006 budget for defense consultants and experts.⁵¹ While the notion of equality of arms between the prosecution and defense does not mean precise equality of resources, it is notable that substantial disparities exist between financial allotments for the defense and prosecution in this area.⁵²

Defence Office staff and defense counsel have expressed similar concern about lack of funding for investigators.⁵³ Prior to its April 2005 mission, Human Rights Watch was

⁴⁶ Human Rights Watch interviews with three Special Court staff, Freetown, April 19 and 21, 2005 (two interviews in total); Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Human Rights Watch e-mail correspondence with former court staff, October 17, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005; Human Rights Watch interview with two court monitors, Freetown, April 12, 2005. As for language interpretation, the court has enhanced its capacity over time by recruiting additional interpreters and providing ongoing training for interpreters. Human Rights Watch interview with Special Court staff, April 13, 2005. See also U.C. Berkeley War Crimes Studies Center, "Special Court Interim Report," p. 31.

⁴⁷ Human Rights Watch interviews with three Special Court staff, Freetown, April 19 and 21, 2005 (two interviews in total); Human Rights Watch interview with defense counsel, Freetown, April 12, 2005.

⁴⁸ Human Rights Watch interview with two Special Court staff, New York, March 30, 2005; Human Rights Watch e-mail correspondence with former Special Court staff, October 17, 2005.

⁴⁹ The 2005/06 budget provides two allocations regarding experts for the defense office: "consultants and experts in the management of the Legal Assistance Programme and experts to participate in disciplinary proceedings" and "expert defence" which includes "contract fees on behalf of the Defence, in areas such as Sierra Leonean history, structure, and the principles of Sierra Leone armed forces, conflict mapping, and specialized areas on International and Sierra Leonean law." While the experts discussed in this section relate to the second type of experts, allotments to both categories totaling U.S.\$76,000 are taken into account to assure that the maximum possible amount is considered and to provide greater accuracy in comparisons between the defense and prosecution budgets. Human Rights Watch interview with Special Court staff, New York, April 8, 2005. See also Special Court for Sierra Leone, Budget 2005-2006, Version 05/06, p. 34 [online], <http://www.sc-sl.org/Documents/budget2005-2006.pdf> (retrieved July 29, 2005); The Special Court for Sierra Leone Proposed Budget for 2005/2006 Fiscal Year, Defense Office, on file with Human Rights Watch, pp. 7-8.

⁵⁰ Human Rights Watch e-mail correspondence with Special Court staff, Freetown, September 30, 2005; Human Rights Watch group interview with defense counsel, Freetown, April 19, 2005.

⁵¹ This request was made on the basis that such resources would be necessary to provide each team with funds to cover: travel expenses for one initial meeting with the defense team; consultation with the expert; research, review of transcripts, and advice by the expert; preparation of an expert report; and preparation for testimony. Funds to cover travel for experts to testify are expected to be provided by the Registry. The Special Court for Sierra Leone Proposed Budget for 2005/2006 Fiscal Year, Defense Office, pp. 6-8.

⁵² The OTP budget for 2005-2006 allocates U.S.\$168,000 for "consultants and experts," more than double the allotment to defense. The budget allocation provided under the heading of "consultants and experts" indicates that it covers "short term assistance from specialists, including but not limited to the fields of forensic anthropology, financial tracking and specialist expert legal advice." Special Court for Sierra Leone, Budget 2005-2006, Version 05/06, p. 33.

⁵³ Human Rights Watch interview with former Special Court staff, New York, July 27, 2005; Human Rights Watch e-mail correspondence with Special Court staff, Freetown, September 30, 2005; Human Rights Watch group interview with defense counsel, Freetown, April 19, 2005.

told that access to investigators by defense teams has improved over time, with defense teams having access to the full-time assistance of national investigators plus limited access to the assistance of an international investigator.⁵⁴ Given the importance of investigation to preparation of the defense, and ongoing demands for investigation as additional information is disclosed throughout trial, the opportunity to secure some assistance of international investigators is significant. Consistent with these developments, the Defence Office requested funds for 2005-2006 to cover the services of an international investigator for up to two months for each defense team, in addition to the full-time services of national investigators. However, the 2005-2006 budget allots less than half the amount the Defense Office requested for investigators.⁵⁵

When Human Rights Watch researchers raised concerns over the limited allocations for defense expert witnesses and investigators in April 2005 in Freetown, we were told that the budget does not necessarily reflect the total amount that may be made available for all areas; some areas may extend into the next budget cycle and there may also be funds remaining from the previous budget cycle, which ended on June 30, 2005.⁵⁶ In follow-up discussions, Human Rights Watch was also told that the budget is constructed based on anticipated amounts, but that there is flexibility; funds can be found to address needed areas and there is a commitment by the court to ensuring reasonable needs by the defense. Human Rights Watch was also told that the principal defender has been invited recently to meet with Registry staff to discuss needs in these two areas so that any appropriate redeployments can be considered.⁵⁷

Detailed budgeting for all potential operational needs throughout the court is a difficult task, especially when resources are scarce. However, particularly with the departure of the court's first registrar, Robin Vincent, relying on the flexibility of the Registry to ensure adequate funding for key areas for the defense poses some concern.

Human Rights Watch welcomes that the principal defender has been invited to meet with the Registry to discuss funding for defense investigators and expert witnesses. Human Rights Watch suggests that to ensure adequate funding of these two areas, the Registry meet regularly with the Defence Office to evaluate needs and to redeploy funds as appropriate. Human Rights Watch further encourages the Registry to document

⁵⁴ Each accused has been entitled to a full-time Sierra Leonean investigator. Defense teams could also pay for the additional services of an international investigator out of their largely lump sum payment contracts, known as the legal services contracts. Human Rights Watch was later told though that "where the investigator is working on an expert related matter or requires an international investigator as a consultant, the defense team can make a request to the Principal Defender to obtain expert or consultant funds for this purpose, subject to the request being justified." See Special Court for Sierra Leone, Response to the Report by Human Rights Watch: "Bringing Justice – The Special Court for Sierra Leone," November 9, 2004, paras. 25-26, on file with Human Rights Watch. See also "Bringing Justice: The Special Court for Sierra Leone," A Human Rights Watch Report, pp. 26-27.

⁵⁵ In line with increased access, the Defence Office requested an allocation of U.S.\$293,400 to cover one full-time national investigator and up to two months of the services of an international investigator where good cause is shown for each defense team for 2005-2006. The Special Court for Sierra Leone Proposed Budget for 2005/2006 Fiscal Year, Defense Office, pp. 9-10. Despite this, the Special Court budget for 2005-2006 allocates less than half of the request, U.S.\$124,200, to the Defence Office for "the services of International and National Investigators as and when required to support the defence teams." Special Court for Sierra Leone, Budget 2005-2006, p. 34.

⁵⁶ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005.

⁵⁷ Human Rights Watch e-mail correspondence with former Special Court staff, October 17, 2005; Human Rights Watch interview with two Special Court staff, New York, July 15, 2005.

necessary redeployments in order to ensure that the Management Committee has adequate information concerning reallocations and other areas that may suffer as a result, and to help ensure proper allocation of funds in the next financial period.

B. Performance of Defense Counsel

Effective assistance of counsel to the accused is an essential component of a fair trial. Given the complex nature and significance of the cases tried at the Special Court, high quality representation is all the more important.

The Special Court has set important criteria to ensure defense counsel are qualified. Under the Rules of Procedure and Evidence, a list of “highly qualified criminal defense counsel” who could serve as duty counsel or represent the accused must be maintained by the Defence Office.⁵⁸ The Rules stipulate that such counsel must: 1) speak English fluently; 2) be admitted to practice law; 3) have seven years or more relevant experience; and 4) have indicated willingness and availability to undertake the responsibilities required. Under the Legal Services Contract, defense teams must further be “comprised of persons having, in the opinion of the [Defence Office] sufficient experience in the following fields of expertise: a) International Criminal Law; b) Criminal Trial, including serious offences, and c) Sierra Leone Criminal Law.”⁵⁹ This requirement helps to ensure that defense teams include both Sierra Leonean and international counsel. The Defence Office has worked to ensure that these criteria are met in each defense team by seeking out qualified candidates and screening applicants.

Ensuring high quality representation in practice is a challenging task. In any domestic jurisdiction, quality of defense representation varies dramatically and may often be far from ideal. Moreover, a list of qualifications and past experience do not necessarily translate into adequate representation. The Defence Office has taken some steps to ensure adequate representation by defense counsel in practice. Duty counsel currently monitor trials, assess counsel performance, and may raise areas of concern with the principal defender who can take action to address problems. The principal defender reportedly has raised such issues with counsel in certain instances.⁶⁰

Given the difficult nature of screening counsel, it is not surprising that Human Rights Watch was told nevertheless that there are deficiencies in the performance of some defense counsel at the Special Court.⁶¹ Special Court staff and defense counsel have cited problems with effective cross-examination by defense counsel, including failure to lay an adequate foundation for questioning and failure to address core issues in their

⁵⁸ Human Rights Watch interview with Special Court staff, Freetown, April 19, 2005; Special Court for Sierra Leone, Rules of Procedure and Evidence, Rule 45(C).

⁵⁹ Legal Services Contract, Contract Specifications, on file with Human Rights Watch.

⁶⁰ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005.

⁶¹ Human Rights Watch interviews with five Special Court staff, Freetown, April 12 and 21, 2005 (three interviews in total); Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch group interview with defense counsel, Freetown, April 19, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005; Human Rights Watch interview with former Special Court staff, July 27, 2005.

client's case. Inadequate preparation, poor quality of motions, and insufficient knowledge of international law were also identified as shortcomings.⁶²

The difficulty of ensuring quality representation is magnified at the Special Court due to the criteria that seek to foster teams of mixed national-international composition. Bringing Sierra Leonean and international counsel to work together in defense teams is an insightful and innovative initiative and should be considered as a model for other international justice institutions. It can ensure quality representation by combining expertise and experience with international and Sierra Leonean law and knowledge of the conflict, while also enhancing local professional capacity. But given that each counsel on every defense team does not necessarily have adequate skills in all of the designated areas, this approach creates challenges. All team members must be fully involved in case preparation and presentation to assure quality representation. At the same time, it can be difficult to regulate defense teams to ensure such involvement. Indeed, Human Rights Watch was told that representation for a number of teams is in practice apparently provided largely by either Sierra Leonean or international counsel, but not both.⁶³

In order to promote the best possible performance by defense counsel, Human Rights Watch believes that in addition to setting experience requirements, the Defence Office should take more steps to ensure that all members of defense teams fully participate in the representation. Human Rights Watch urges the Defence Office, as part of its oversight function, to monitor the extent to which all team members are participating, to express concern where full participation is not occurring, and to urge team members who are not fully participating to assume more responsibilities in the representation. Human Rights Watch also urges the Defence Office to promptly intervene and provide targeted training in trial advocacy and international criminal law as necessary where particular conduct may be undermining vigorous representation.

In this regard, training opportunities, which remain limited, should also be increased. Although informal training and information sharing with defense counsel reportedly takes place, only one formal legal training has been held as of April 2005 for defense counsel.⁶⁴ (Court staff indicated to Human Rights Watch that the Defence Office was seeking to hold a second training with an institute of trial advocacy.⁶⁵) Time and funding constraints may make providing training difficult. However, given the complexity and gravity of the cases, Human Rights Watch believes it is essential that counsel participate in relevant training in trial advocacy and international criminal law where appropriate. Human Rights Watch further recommends that the Defence Office consider making

⁶² Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 19, 2005; Human Rights Watch group interview with defense counsel, Freetown, April 19, 2005; Human Rights Watch separate interviews with two defense counsel, Freetown, April 12 and 15, 2005.

⁶³ Human Rights Watch interview with Special Court staff, Freetown, April 19, 2005; Human Rights Watch interview with former Special Court staff, New York, July 27, 2005; Human Rights Watch group interview with defense counsel, Freetown, April 19, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005; Human Rights Watch interview with two court monitors, Freetown, April 12, 2005.

⁶⁴ Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 19, 2005.

⁶⁵ Human Rights Watch interview with Special Court staff, New York, April 8, 2005.

such training mandatory. Where additional funding is needed to provide training, the Registry should support allocations to the Defence Office for this purpose, either by reallocating existing funds or requesting an increase in the overall budget.

Any additional counsel assignments that may take place should also result in appointments of counsel with adequate experience. Emphasis should be placed on securing lead counsel with demonstrable skills and experience in defending complex criminal cases involving international crimes. Moreover, counsel who are considered for selection should demonstrate willingness to take part in extensive trainings when appropriate and demonstrate their commitment to spending sufficient time on the preparation of cases.

C. Delays in Disclosure

Under the Special Court Rules of Procedure and Evidence, the prosecutor is required to disclose to the defense, within thirty days of the initial appearance of the accused, witness statements for all witnesses the prosecutor intends to call.⁶⁶ Where the prosecutor decides to call additional witnesses, he or she must continuously disclose witness statements to the defense, but not later than sixty days before trial commences, or as otherwise ordered by a Trial Chamber judge upon a showing of good cause by the prosecution.⁶⁷ Where previously known witnesses provide additional information to the prosecution prior to testifying, the prosecution is obliged to continuously disclose such information.⁶⁸

Disclosure of witness statements by the prosecution to the defense is an important aspect of ensuring a fair trial. It is intimately related to an accused's ability to know the nature and cause of the charges against him or her, to prepare his or her case, and to effectively examine witnesses.⁶⁹ Human Rights Watch is concerned that disclosure of substantial additional information from witnesses by the prosecution to the defense, which in some instances contains new and incriminating evidence, has occurred shortly before witnesses are scheduled to testify.⁷⁰ Special Court staff acknowledge that substantial additional disclosure has taken place following initial disclosure of witness statements, but they have rightly highlighted that such additional disclosure is unavoidable in some cases; witnesses, as they gain trust in the court, are more likely to remember additional facts or otherwise become more willing to provide certain evidence.⁷¹ However, Human Rights Watch believes that the OTP has missed opportunities to obtain and disclose additional evidence earlier. The OTP conducted a

⁶⁶ Special Court Rules, Rule 66(A)(i).

⁶⁷ Special Court Rules, Rule 66(A)(ii).

⁶⁸ See Rule 66, 67(D); Decision on Disclosure of Witness Statements and Cross-Examination (Norman, Kondewa) (Trial Chamber I), July 16, 2004; Ruling on the Oral Application for the Exclusion of "Additional" Statement for Witness TF 1-060 (RUF) (Trial Chamber I), July 23, 2004; Ruling on the Oral Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9th of October, 2004, 19th and 20th of October, 2004 and 10th of January, 2005 (Sesay, Gbao) (Trial Chamber I), February 3, 2005.

⁶⁹ See ICCPR, art. 14(3); SCSL Statute, art. 17(4).

⁷⁰ Human Rights Watch interview with defense counsel, Freetown, April 16, 2005; Human Rights Watch group interview with defense counsel, Freetown, April 19, 2005; Human Rights Watch interview with defense counsel, Freetown, April 12, 2005.

⁷¹ Human Rights Watch separate interviews with three Special Court staff, Freetown, April 18 and 20, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005.

process approximately one year after initial statements were taken whereby witnesses were asked to confirm the accuracy of their statements, known as the “confirmation process.”⁷² Human Rights Watch was told that some witness statements had gaps, due in part to the quality of initial statement taking, which were known prior to the confirmation process. Nevertheless, during the confirmation process, witnesses were not asked about such gaps, nor were they asked to provide a full re-accounting of the events they had experienced. Instead, they were reportedly simply asked if they agreed with their witness statement. The confirmation process did not yield substantial additional evidence from witnesses, some of whom later provided such evidence shortly prior to testifying.⁷³

Additionally, in at least two instances, the prosecution was found to have breached its disclosure obligations to the defense by failing to disclose certain evidence in its possession at any point in advance of a witness testifying.⁷⁴ Human Rights Watch was told by one court official that the prosecution’s failure to comply with its disclosure obligations was attributable to inexperience.⁷⁵ While the breach in these instances may have been inadvertent, rigorous adherence to disclosure obligations is essential to ensure full protection of the accused.

Where new evidence is disclosed shortly before a witness is scheduled to testify, adequate adjournments to ensure that counsel can sufficiently prepare are crucial.⁷⁶ Moreover, the extent of disclosure made to the defense at the Special Court following disclosure of initial witness statements highlights the importance of adequate resources to support defense investigators who may be needed to investigate new evidence.

V. Witness Protection

Effective protection and support for witnesses and others at risk due to testimony provided during trials at the Special Court is an essential aspect of court operations. Adequate arrangements must be made to protect the physical and mental well-being of these individuals, many of whom are victims of serious crimes committed during the conflict.⁷⁷ This is necessary to avoid re-traumatization or an otherwise negative experience, one effect of which could be to create a disincentive for witnesses to testify.

⁷² Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005.

⁷³ Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with two Special Court staff, Freetown, April 12, 2005.

⁷⁴ Human Rights Watch interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005. See also Ruling on Disclosure Regarding Witness TF1-015 (RUF) (Trial Chamber I), January 28, 2005; Ruling on Disclosure Regarding Witness TF1-195 (RUF) (Trial Chamber I), February 4, 2005; U.C. Berkeley War Crimes Studies Center, “Special Court Monitoring Program Update #19, Trial Chamber I – RUF Trial,” January 28, 2005 and “Special Court Monitoring Program Update #20, Trial Chamber I – RUF Trial,” February 4, 2005 [online], <http://ist-socrates.berkeley.edu/~warcrime/weeklyupdate.htm> (retrieved October 19, 2005).

⁷⁵ Human Rights Watch interview with Special Court staff, Freetown, April 18, 2005.

⁷⁶ Such adjournments have been previously granted by the chambers. See Ruling on the Oral Application for the Postponement of the Testimony of Witness TF1-060 (Sesay) (Trial Chamber I), July 27, 2004.

⁷⁷ SCSL Statute, art. 16(4). Article 16(4) details the establishment of a witnesses and victims unit to provide “protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.” See also Special Court Rules, Rule 34.

Due to being located in Sierra Leone, the Special Court faces substantial and distinct challenges to ensuring protection and support.⁷⁸ Sierra Leone is a small country without prior experience with witness protection. The accessibility of the court to the general population and the nature of close-knit communities that exist in Sierra Leone may make witnesses more vulnerable to being identified than if the court were located outside the country where the crimes occurred. While witness identity is withheld from the public and witnesses testify behind a screen unless they request otherwise, witnesses may be recognizable by the substance of their testimony. Additionally, not all witnesses address the court through voice distortion equipment, so may be recognizable by their voices.⁷⁹

Some defense counsel have argued that the level of protection provided is excessive and that testifying without their identity being shielded from the public is more likely to encourage truthful testimony from witnesses.⁸⁰ However, the serious risks witnesses and others may face due to testimony provided make intensive protection and support vital. Additionally, the importance of arrangements for long-term protection and support, including after the court completes trials and operations in Sierra Leone, cannot be overstated. The Special Court's success will be highly dependent not only on its ability to render immediate protection and support to witnesses and others at risk on account of testimony provided, but also on its efforts to help ensure their safety and well-being in the long term.

A. A Comprehensive Scheme of Protection and Support

Ensuring the physical and mental well-being of witnesses and others at risk due to testimony provided is an enormously difficult challenge. Moreover, there are limits to what any court can do to guarantee the well-being of these individuals. Given the serious constraints, the Special Court is actively implementing its witness protection and support scheme with what appears to be a high degree of success. From in-depth discussions with staff based in various sections of the Special Court, it is clear that a comprehensive scheme of protection and support for witnesses is provided during the trial phase.

There are extensive procedures in place to protect witness identity and to ensure against threats to witnesses. All witnesses at a minimum receive protection through the use of pseudonyms to prevent their identity from being revealed to the public unless the witness otherwise requests.

The Witness and Victim Support Unit in the Registry, along with the Witness Management Unit in the OTP, provide witnesses with a range of crucial services.

⁷⁸ At the same time, the location of the court in Sierra Leone provides particular advantages from the perspective of promoting the well-being of witnesses. Particularly for witnesses who live in remote areas of the country and have never traveled, emotional hardship that could be caused by traveling may be less than if they had had to travel outside Sierra Leone to testify.

⁷⁹ Human Rights Watch interview with two Special Court staff, Freetown, April 12 and 18, 2005; Human Rights Watch telephone interview with former Special Court staff, August 23, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 14, 2005. See also Sierra Leone Court Monitoring Programme, "Newsletter," Volume 3, November-December 2004 [online], www.slcmp.org/newsletter_vol3.htm (retrieved July 14, 2005).

⁸⁰ Human Rights Watch separate interviews with two defense counsel, Freetown, April 15 and 16, 2005.

Most witnesses are provided care and security at safe houses in Freetown from the moment their identity is disclosed to the defense, or earlier where a witness expresses concern for his or her safety.⁸¹ At any given time, several dozen witnesses and their dependents are estimated to be receiving such care and assistance. In order to house such witnesses and ensure appropriate separation of particular groups, such as victims, children, insider witnesses, and victims of gender based violence, the Witness and Victim Support Unit maintains a number of different facilities that have constant security protection.⁸²

Witnesses who are deemed to face security threats and are expected to provide particularly important testimony receive longer-term care and security throughout the course of the trial. These witnesses are housed at some two dozen safe houses around Freetown.⁸³ A number of witnesses have also been relocated abroad, within the region and to a lesser extent further a field. Other witnesses have been relocated inside Sierra Leone.⁸⁴

Prosecution witnesses who live outside Freetown are transported to the capital by the OTP Witness Management Unit, which also conducts substantial coordination of support and protection for such witnesses prior to this time. As the Defence Office does not have a witness management unit, plans are being developed for transporting defense witnesses to Freetown.⁸⁵

While in Freetown, witnesses receive a variety of other important services that properly help to ensure their well-being. Specifically, they receive medical assistance and access to psychosocial counseling. They also receive a briefing on courtroom procedure in which witnesses have the opportunity to see the courtroom, and examination is simulated. Staff of the Witness and Victim Support Unit also assess the state of witnesses and, where necessary, advise the OTP against calling a witness if it appears that doing so would too adversely affect the individual.⁸⁶ Employing Sierra Leoneans in the section to work closely with witnesses also helps to enhance the section's ability to give relevant support.⁸⁷

⁸¹ Disclosure of witness identity to the defense takes place between three and six weeks in advance of scheduled testimony. Human Rights Watch separate interviews with two Special Court staff, Freetown, April 12 and 13, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005. See also Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (CDF) (Trial Chamber I), June 8, 2004; Decision on Prosecution's Motion for Modification of Protective Measures for Witnesses (RUF) (Trial Chamber I), July 5, 2004; Oral Decision on Prosecutions Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004 (AFRC) (Trial Chamber II), February 3, 2005.

⁸² Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 13, 2005.

⁸³ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 13, 2005. See also "Bringing Justice: The Special Court for Sierra Leone," A Human Rights Watch Report, pp. 29-30.

⁸⁴ Human Rights Watch interviews with Special Court staff, Freetown, April 18 and 21, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

⁸⁵ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 18 and 20, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

⁸⁶ Human Rights Watch interview with Special Court staff, Freetown, April 13, 2005.

⁸⁷ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 13 and 18, 2005.

Protection and support is actively provided in the courtroom. As noted above, witness identity is protected through a range of methods, including voice distortion, testifying behind a screen, and redaction of all identifying information from the record.⁸⁸ The Witness and Victim Support Unit further reviews all transcripts to ensure that any disclosure of identifying information concerning witnesses is properly identified and removed from the record and any related audio or video tape.⁸⁹ A psychosocial counselor is also generally present in the courtroom. This counselor provides support and comfort to witnesses by sitting in the direct sight of the witness or, in some cases, next to the witness.⁹⁰

Despite the protection and support efforts by the court, instances of threats against witnesses have occurred. In some cases, this has consisted of generalized calls in public meetings against any individual who testifies at the Special Court.⁹¹ In other instances, Human Rights Watch was told that particular witnesses have been singled out and subjected to verbal intimidation, searched for in their villages, or subject to more serious threats.⁹² Where threats have been made against individual witnesses, it is suspected that information about the identity of the witness was leaked by the accused or part of his defense team.⁹³

In one instance, a protected witness was verbally threatened on the grounds of the Special Court complex. Relatives of two accused yelled the name of the witness at a court vehicle with tinted windows in which the witness was being transported, that they knew she was in the vehicle, and a threatening phrase in Krio concerning her testimony.⁹⁴ Additionally, there are instances of witnesses who had been relocated out of the country being telephoned directly by indictees. In such cases, it is suspected that the witness may have disclosed contact details to persons who then leaked the information to indictees.⁹⁵

The court has actively responded to such threats. The court has worked with local police to try to curtail generalized threats against individuals who testify at the Special Court. Where witnesses are individually targeted, Witness and Victim Support Unit staff have

⁸⁸ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch separate interviews with two court monitor teams, Freetown, April 12 and 14, 2005. See also, for example, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (RUF) (Trial Chamber I), June 8, 2004.

⁸⁹ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 13 and 20, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

⁹⁰ Human Rights Watch separate interviews with Special Court staff, Freetown, April 13 and 18, 2005.

⁹¹ Human Rights Watch separate telephone interviews with two former Special Court staff, May 26 and August 23, 2005; Human Rights Watch separate telephone interview with Special Court staff, Freetown, August 22, 2005.

⁹² Human Rights Watch separate telephone interviews with Special Court staff, Freetown, July 29 and August 22, 2005; Human Rights Watch telephone interview with former Special Court staff, August 23, 2005.

⁹³ Human Rights Watch separate telephone interviews with two former Special Court staff, May 26 and August 23, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, August 22, 2005.

⁹⁴ Human Rights Watch interview with Special Court staff, Freetown, April 12, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with defense counsel, Freetown, April 16, 2005. See also "Trial Chamber issues order to indict five people for contempt of Court," Special Court for Sierra Leone, Chambers Release, May 3, 2005 [online], www.sc-sl.org/Press/pressrelease-050305.pdf (retrieved August 8, 2005); U.C. Berkeley War Crimes Studies Center, "Special Court Monitoring Program Update #26, Trial Chamber II – AFRC Trial," March 11, 2005.

⁹⁵ Human Rights Watch telephone interview with former Special Court staff, May 26, 2005.

assured the person's immediate safety by involving the local police, sending court staff to the witness, or advising the witness to leave the area as appropriate. The unit then investigates the incident, assesses the security situation, and relocates the witness when necessary.⁹⁶ The court also reportedly has responded to threats where appropriate by suspending privileges of detainees.⁹⁷

In response to the threat made on court premises, the defense investigator for one of the accused who was suspected of disclosing the witness' identity was promptly suspended. The women who threatened the witness were also prohibited from observing proceedings. An independent investigator was then appointed to investigate the incident and produce a report, which led to the initiation of contempt proceedings against the defense investigator and the four women.⁹⁸ At the time of writing, a decision on the contempt proceedings is pending.⁹⁹

Efforts to avoid contact between protected witnesses and observers of court proceedings should be intensified. It is largely unavoidable that some witness protection vehicles – despite efforts to disguise them – will be recognizable by people such as relatives of the accused who regularly attend proceedings. Moreover, keeping vehicles transporting witnesses completely out of sight remains difficult, as people are constantly moving around the court premises. Human Rights Watch was told that staff generally make an effort to ensure that the path of transport is clear.¹⁰⁰ However, given the risk of threat, extra care to wait until a clear path exists before transporting witnesses is necessary. Otherwise, an alternate route to transport witnesses to and from the court should be constructed.

In cases where threats are made off court premises, the court may do well to consider strengthening its action against persons suspected of making the threats or of leaking the identity of a witness. Such action could include working with the local authorities to pursue prosecution in the national courts under any relevant domestic offenses, the development of a domestic witness protection law, or pursuing additional contempt proceedings at the Special Court.¹⁰¹

⁹⁶ Human Rights Watch separate telephone interviews with two former Special Court staff, May 26 and August 23, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, August 22, 2005.

⁹⁷ Human Rights Watch telephone interview with former Special Court staff, August 23, 2005.

⁹⁸ Human Rights Watch interview with Special Court staff, Freetown, April 12, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with defense counsel, Freetown, April 16, 2005. See also "Trial Chamber issues order to indict five people for contempt of Court," Special Court for Sierra Leone, Chambers Release, May 3, 2005; Decision on the report of the independent counsel pursuant to rules 77(c)(iii) and 77(D) of the rules of procedure and evidence (AFRC) (Trial Chamber II), April 29, 2005.

⁹⁹ See Decision on joint Defence appeal against the decision on the report of the Independent Counsel pursuant to Rule 77(c)(iii) and 77(D) (AFRC) (Appeals Chamber), August 17, 2005.

¹⁰⁰ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

¹⁰¹ SCSL Rules, Rule 77; Human Rights Watch telephone interview with Special Court staff, Freetown, August 22, 2005.

B. Post-Testimony Follow Up

Follow up after a witness testifies is crucial for adequate assessment of risks to their physical and mental well-being following testimony. However, such follow up can be a difficult task, particularly where resources are scarce.

The Special Court has developed important procedures to return witnesses home and assess their condition after they testify. The Witness and Victim Support Unit works to ensure safe travel home for witnesses at an appropriate juncture. The Witness and Victim Support Unit transports witnesses to their villages, and witnesses are provided with telephone numbers to contact if they have a problem upon return. The unit also notifies the Sierra Leone police in the area about the witness to maximize safety upon return if the witness is concerned. The length of time before witnesses return home varies from immediately to one month after testifying. The decision to travel home is made with due consideration for when the witness feels ready to return.¹⁰²

The Witness and Victim Support Unit intends to conduct at least one follow-up visit to each witness once he or she has returned home, to evaluate his or her condition; psychosocial support and security personnel participate in these visits. However, as of July 2005, only approximately half the witnesses who had testified had received a follow-up visit by the unit. This is reportedly due in part to the psychosocial counselors on staff being limited in number and committed also to providing support to witnesses testifying in Freetown. It is also due to the logistical difficulty of traveling to the location of each witness.¹⁰³

Human Rights Watch was told by one court official that the Witness Management Unit also contacts witnesses after they testify through phone calls where possible and visits around the country. Human Rights Watch was told that there is coordination between the Witness Management Unit and the Witness and Victim Support Unit on follow-up, but there was a mutual lack of knowledge as to services the other provided.¹⁰⁴

Cognizant of the challenges, Human Rights Watch believes that an intensification of efforts to ensure that all witnesses receive a follow-up visit soon after they return home after testifying is needed. To achieve this, Human Rights Watch suggests that the Registry hold meetings with the Witness and Victim Support Unit to evaluate needs; if additional staff are necessary to conduct such visits given ongoing responsibilities in Freetown, the registrar might redeploy funds to ensure adequate staffing for this purpose.

¹⁰² Human Rights Watch interview with Special Court staff, Freetown, April 13, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

¹⁰³ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 18, 2005.

¹⁰⁴ Human Rights Watch telephone interview with former Special Court staff, May 26, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

C. Planning for Long-Term Protection

Protecting and supporting witnesses and others at risk due to testimony provided in the long-term after the court has ceased operations in Sierra Leone poses especially intense challenges. Long-term protection and support by a short-term court operating on a limited budget can appear by its nature contradictory. Ongoing concerns about the capacity of the domestic authorities to ensure long-term protection and support, and the lack of a prior practice with witness protection in Sierra Leone, magnify the difficulties.¹⁰⁵

At the same time, the Special Court has a responsibility to help ensure witness protection and support long term to fully achieve its mandate and to avoid leaving vulnerable witnesses and others at risk due to testimony provided. While the major part of the responsibility for ensuring long-term protection and support will largely fall to domestic authorities in Sierra Leone, the court must also put in place infrastructure to support these efforts.

The Special Court, including within the Witness Management Unit and the Witness and Victim Support Unit, has shown an interest in addressing long-term protection and support of witnesses and others at risk due to testimony provided.¹⁰⁶ The court's current completion strategy document properly recognizes the role of the court in ensuring long-term protection of witnesses, stating that the court will continue "certain 'residual activities' after it no longer exists in its current form and capacity," including "the continued provision of support and protection to witnesses."¹⁰⁷ Court staff similarly told Human Rights Watch that witness protection is envisioned as part of the court's "residual activities."¹⁰⁸

Plans concerning services that will be provided by the court to ensure long-term protection after the court ends operations appear to remain vague at this point, apart from including maintenance of support to witnesses who are relocated out of the country.¹⁰⁹ Human Rights Watch believes that domestic protection efforts will need to be complemented by at least a small number of residual court staff with responsibilities to provide oversight of these efforts to ensure adequate long-term protection and support. Human Rights Watch urges for such provisions to be included as the court further develops plans for its "residual activities."

The Special Court has also supported the creation of a domestic protection unit to operate after the court closes down; the Witness Management Unit has been taking the lead on this initiative and it is reportedly being developed as follows: the unit is expected

¹⁰⁵ Human Rights Watch interview with Special Court staff, Freetown, April 12, 2005.

¹⁰⁶ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005; Human Rights Watch telephone interview with former Special Court staff, May 26, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005.

¹⁰⁷ See U.N. General Assembly, Security Council, Identical letters dated 26 May 2005 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, May 27, 2005, A/59/816-S/2005/350, Annex, para. 3.

¹⁰⁸ Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

¹⁰⁹ Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005; Special Court staff e-mail to Human Rights Watch, Freetown, October, 12, 2005.

to be run by senior Sierra Leonean police who currently work in the Witness Management Unit; a training took place in April 2005 for fifty Sierra Leone police who were drawn from districts where a number of the witnesses are concentrated, and included Sierra Leone police who currently work in the Witness Management Unit who also receive ongoing informal training; and the domestic protection unit is expected to be operational by December 2005 with plans to adopt full responsibilities by July 2006, thereby ensuring that there is overlap between the functioning of this unit and the court's operations.¹¹⁰

However, despite a roundtable that exists between the Witness and Victim Support Unit and the Witness Management Unit, it was also apparent that not all relevant staff in the Witness and Victim Support Unit were involved in or even briefed on the development of this domestic unit. This is not entirely surprising given certain tensions and coordination difficulties that have existed between the Witness and Victim Support Unit and the OTP Witness Management Unit. Some staff also contradicted information that concrete steps to take forward the idea to create a domestic protection unit have been taken.¹¹¹

Human Rights Watch believes that the Special Court should help ensure that the domestic protection unit has the capacity and expertise to respond effectively to threats to the well-being of witnesses and others at risk due to testimony provided. To achieve this, appropriate input and expertise should be sought from all relevant staff in the development of this initiative, including in the Witness and Victim Support Unit. In this regard, Human Rights Watch recommends that the Registry consider creating a task force of relevant staff to oversee the development of this initiative, and that the Witness Management Unit brief relevant staff on developments to date. (Detailed recommendations for aspects to be included in the development of the domestic protection are given in Section VII, below.)

VI. Impact

It is crucial that the Special Court maximize the impact of its operations beyond fair and efficient trials. When serious crimes have been committed, the people most affected by these crimes have a right to know that justice is being done. Maximizing impact is also essential to help strengthen respect for the rule of law and promote stability in Sierra Leone, and in West Africa more broadly, including by: 1) expanding the reach of the possible deterrent effect of the trials, and 2) allowing the national justice system to draw from the Special Court's experience, by working to enhance its capacity overall and specifically in relation to prosecuting serious crimes.

¹¹⁰ Human Rights Watch telephone interview with former Special Court staff, May 26, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 18, 2005.

¹¹¹ Human Rights Watch telephone interview with former Special Court staff, May 26, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interviews with Special Court staff, Freetown, April 13 and 21, 2005; Human Rights Watch telephone interview with Special Court staff, Freetown, July 29, 2005. See also "Bringing Justice: The Special Court for Sierra Leone," A Human Rights Watch Report, pp. 30-31.

A. Outreach and Communications

Initiatives to effectively inform the public about the Special Court's work are critically important to making the court accessible and meaningful to Sierra Leone society both in the short and long term. During the trial phase, the Special Court is implementing a program of activity to make the court accessible to the Sierra Leonean population. It has one of the most successful outreach programs of any international or hybrid court to date, and may be considered a model for other such courts.

The priority the court has given to outreach and communications is particularly commendable as these represent one of the most difficult areas for any international justice institution to address. It is also impressive given that the Special Court Management Committee has made cuts to funding for outreach from the core budget on the basis that such programming was seen as a non-essential activity fundable from other sources.¹¹²

Despite the strengths of the court's outreach and communications activities, Human Rights Watch believes that activities in two areas can be improved: efforts to increase production of radio programming and observation of proceedings. Human Rights Watch expressed its views over weaknesses in these areas in its September 2004 report.¹¹³ With trials in full swing, these issues are even more important.

1. Robust programming

The Registry is the primary organ responsible for outreach and communications. In the Registry, two units implement outreach and communications programming: the Outreach Unit and the Public Affairs Unit. The Public Affairs Unit is responsible for media relations and production of radio and video summaries of court proceedings. The Outreach Unit communicates directly with local communities and coordinates participation by staff within the OTP and Defence Office in conducting outreach. The Registry has helped promote effective implementation of outreach and communications programming by developing an internal policy procedure on coordination of these activities. This procedure clearly delineates responsibilities between the organs of the court, and between the relevant units within those organs.

The Public Affairs Unit prepares video summaries twice a month and audio summaries once a week.¹¹⁴ These summaries provide a crucial way for people who do not have the opportunity to attend trials to hear testimony, follow developments, and in the case of the video summaries, observe the courtroom. In making the video summaries, the Public Affairs Unit has appropriately used the knowledge of local staff to help identify developments that will likely be of the greatest importance or interest to Sierra Leoneans, and then focuses the summaries accordingly.¹¹⁵ The audio summaries are broadcast on radio stations throughout the country and the video summaries are shown

¹¹² See "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, p. 34.

¹¹³ *Ibid.*, p. 35.

¹¹⁴ Human Rights Watch separate interviews with three Special Court staff, Freetown, April 15-20, 2005.

¹¹⁵ Human Rights Watch interview with Special Court staff, Freetown, April 15, 2005.

on the state television station, as well as at screenings by the Outreach Unit in various parts of the country.¹¹⁶

The Public Affairs Unit also interacts with the local media, and has built relationships with local reporters that include responding flexibly to their needs, such as by telephoning reporters who have signaled interest in speaking with court officials, but who lack the resources to pay for the time on their cell phones to conduct interviews.¹¹⁷ Additionally, the unit conducts training of local media on international law, which helps to ensure accurate reporting.¹¹⁸

The Outreach Unit employs innovative and wide-ranging techniques to reach the local population around the country.¹¹⁹ One of its most important operational methods is basing some outreach staff, known as district officers, throughout Sierra Leone's provinces. These staff regularly conduct activities such as trainings, video screenings, and holding public discussions with local communities, thereby allowing the court to have more regular and far-reaching engagement with people around the country. These staff further increase their ability to reach different segments of society by tapping into existing community networks, such as social clubs and sports groups.¹²⁰ Additionally, the Outreach Unit helps to ensure that the local population has accurate and relevant information about the court by preparing and disseminating written material about the court, including information distributed around Freetown on how to attend proceedings.¹²¹

There are strong indications that the outreach efforts are going a long way to making the court accessible. Members of civil society and court staff told Human Rights Watch that people throughout the country are increasingly aware of the existence and work of the court, and that they regularly access information about the court through radio.¹²² There is substantial coverage of the court in local newspapers, and also on radio programs other than those produced by the court.¹²³ While Human Rights Watch researchers were in Freetown, articles on the Special Court were featured prominently in a variety of the daily newspapers. Court staff also report that there is wide interest in outreach materials and programs conducted around the country. Hundreds of people often attend programs and actively participate in the events.¹²⁴

¹¹⁶ Human Rights Watch separate interviews with three Special Court staff, Freetown, April 14-19, 2005.

¹¹⁷ Other ways in which the Public Affairs Unit has creatively adapted its operating methods to the realities of working in Freetown include generally hand delivering hard copies of its press releases, as other forms of distributing releases, such as email, are likely to be less reliable.

¹¹⁸ Human Rights Watch interview with Special Court staff, Freetown, April 20, 2005.

¹¹⁹ See also "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, pp. 33-34.

¹²⁰ Human Rights Watch group interview with Special Court staff, Freetown, April 20, 2005.

¹²¹ Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

¹²² Human Rights Watch group interview with members of civil society, Freetown, April 14, 2005; Human Rights Watch separate interviews with three members of Sierra Leone civil society, Freetown, April 13-14, 2005.

¹²³ Human Rights Watch interview with two court monitors, Freetown, April 14, 2005; Human Rights Watch group interview with members of civil society, Freetown, April 14, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 14, 2005; Human Rights Watch group interview with fishermen, Freetown, April 19, 2005.

¹²⁴ Human Rights Watch group interview with Special Court staff, Freetown, April 20, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 15, 2005.

These reports about outreach were corroborated by a number of discussions Human Rights Watch held with ordinary citizens around Freetown about the court, including market women, taxi drivers, and fishermen. These individuals generally knew that the court exists and what its purpose is, although their level of understanding varied. They indicated that they obtain information about the court primarily from the radio.¹²⁵ Several people indicated that they enjoy listening to broadcasts about the court, particularly when testimony by witnesses is aired.¹²⁶

The Outreach Unit seeks to magnify its effect by targeting students who can be expected to share information they obtain about the court with family members. The Outreach Unit has established and continues to facilitate groups on accountability at thirteen schools around the country, known as “Accountability Now Clubs.”¹²⁷ While in Freetown, Human Rights Watch researchers observed an outreach event conducted at an elementary school and was impressed by the level of sophistication and specificity of questions that students posed to court officials concerning its work.¹²⁸

The Outreach Unit further seeks to augment its effect by providing training on the court’s work and conducting outreach about the court for relevant sectors of the population such as customary law personnel, artists, and civil society groups, including children’s rights organizations and groups focused on promoting justice and the rule of law, to provide a base of accurate information about the court.¹²⁹ Outreach conducted by civil society is an important complement (although not a substitute) for court outreach programs. Working with groups that have and will continue to conduct discussion and other activities concerning the court with the general population also helps ensure that such programs will continue after the court closes operations.

The court also engages local civil society and has demonstrated responsiveness to their input. Court officials regularly meet with civil society in Freetown through the Special Court Interactive Forum that is held approximately once a month. In an example of responsiveness, following suggestions by a member of civil society that its outreach to religious leaders was not adequately targeted to those leaders who would regularly interact with ordinary citizens, Human Rights Watch was told that the Outreach Unit expanded its efforts to include such religious leaders. The Outreach Unit also works with several civil society members who monitor and report on court proceedings, to enable the Outreach Unit to effectively respond as necessary to developments in the trials. For example, based on this feedback, the Outreach Unit has sought to provide further explanation of the basis for closed proceedings at the court. Sierra Leone civil society generally praised the court’s outreach efforts and responsiveness to civil society.¹³⁰

¹²⁵ Human Rights Watch group interview with fishermen, Freetown, April 19, 2005; Human Rights Watch group interviews with market women, Freetown, April 19 and 20, 2005; Human Rights Watch separate interviews with taxi drivers, Freetown, April 19, 2005.

¹²⁶ Human Rights Watch group interview with fishermen, Freetown, April 19, 2005; Human Rights Watch group interview with market women, Freetown, April 19, 2005.

¹²⁷ Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

¹²⁸ Human Rights Watch observation of Special Court outreach event, Freetown, April 15, 2005.

¹²⁹ Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

¹³⁰ Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005; Human Rights Watch separate interviews with two members of Sierra Leone civil society, Freetown, April 12 and 14, 2005; Human Rights Watch group interview with members of civil society, Freetown, April 14, 2005.

Over the course of the past year, the Outreach Unit also helped to ensure broad-based discussion about the Special Court by facilitating four regional conferences and a national conference which looked at a range of issues, including perceptions of justice and accountability in Sierra Leone, the work of the Special Court and the Truth and Reconciliation Commission, and how communities can complement the efforts of these institutions. More than 500 individuals representing various sectors of society, including teachers, police, victims, women, and children participated in these conferences. A noteworthy exercise conducted at the conference involved participants identifying their expectations of the court. Court staff then responded by identifying which of these expectations the court is able to address, those it can influence, and those it does not have the capacity to address.¹³¹ Such exercises are excellent initiatives to clarify the role of the court and to contribute to accurate understanding of its work.

2. Increasing radio programming and attendance

Radio is the main forum through which Sierra Leoneans obtain information about the court, due to high rates of illiteracy in the country and that very few newspapers are distributed widely outside of a few regional capitals. Given these facts, audio summaries produced weekly by the Public Affairs Unit remain too limited. Court staff have recognized the frequency of production of audio summaries as a problem. While the court considered hiring more staff to increase production of audio summaries, they decided instead to pursue establishment of an independent radio station. Some court staff also expressed a sense that producing audio summaries any more frequently than weekly would undermine the ability to craft an interesting story out of the day-to-day developments as they occur at the court.¹³²

The proposed radio station would broadcast Special Court proceedings in English and Krio approximately eight hours each day, but then would also broadcast four to five hours of other programming on various related topics such as the national justice system, truth and reconciliation, and human rights, along with more generic radio programs. The station would be staffed by Sierra Leoneans who would be provided with relevant training as appropriate. It is envisioned that the station would continue operating after the court wraps up operations in Sierra Leone. The court is currently looking for funding for the proposal and anticipates that the radio station could be operational within three months of the allotment of funds.¹³³

The creation of the proposed radio station is an innovative proposal that should be funded. It holds potential for the court to leave a meaningful legacy by making a real contribution to enhancing debate on justice and the rule of law in Sierra Leone. At the same time, Human Rights Watch is concerned that more frequent radio programming

¹³¹ Presentations by court staff at a Special Court Interactive Forum Meeting attended by Human Rights Watch researchers, Freetown, April 13, 2005. See also Report on the Nationwide Regional Victims Commemoration Conferences – Southern Region, Northern Region, Eastern Region and Western Area, March 2005, on file with Human Rights Watch; Marieke Wierda, International Center for Transitional Justice, “Report on National Victim Commemoration Conference” [online], http://www.slcmp.org/national_victim_commemorations.htm (retrieved August 25, 2005).

¹³² Human Rights Watch interview with Special Court staff, Freetown, April 15, 2005.

¹³³ Human Rights Watch interview with Special Court staff, Freetown, April 20, 2005; Human Rights Watch telephone interview with Special Court staff, New York, September 23, 2005.

has been and continues to be sacrificed while this proposal has been developed and awaits funding. Given the court's short timeframe, it is important for Sierra Leoneans to have substantial information about proceedings while they are still taking place. Accordingly, Human Rights Watch recommends in the period prior to the possible establishment of the radio station, radio programming should immediately be produced on a more regular basis. This should include segments whenever there are noteworthy developments in the trials or other moments that best illustrate the judicial process at the court, in addition to weekly summaries. Recognizing the creative challenges to preparing more frequent summaries, Human Rights Watch recommends that the court consider devoting some of its radio programming to segments which could represent more traditional journalistic trial reporting as opposed to creating summaries.

The court's unique location creates an important opportunity for those most affected by the crimes to observe up close the process of accountability. However, attendance in the trial chamber galleries remains very limited. Human Rights Watch was told that on average, between ten and twenty people are present in the gallery to observe proceedings, many of whom are either relatives of the accused or court monitors.¹³⁴ This is consistent with attendance in the chambers when Human Rights Watch observed proceedings.¹³⁵

Court staff and civil society members suggested a variety of reasons for limited attendance in the gallery. Of these, lack of knowledge about the option to attend proceedings, the need to focus on work responsibilities and survival, and the intimidating character of the court complex – which is protected by concrete walls, barbed wire, and has extensive security – appear to pose the more significant obstacles.¹³⁶

Court staff recognize that limited attendance is an issue and have worked to increase attendance. The court has posted information about the schedule of proceedings and opportunity to attend at universities, schools, and around Freetown city center to promote attendance.¹³⁷ The court has also tried to address concerns ordinary citizens

¹³⁴ Human Rights Watch separate interviews with two teams of court monitors, April 12 and 14, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 12, 2005; Human Rights Watch group interview with members of Sierra Leone civil society, Freetown, April 14, 2005. See also U.C. Berkeley War Crimes Studies Center, "Special Court Interim Report," p. 29.

¹³⁵ For example, during one day on which Human Rights Watch observed proceedings, approximately ten people were in the gallery of Trial Chamber I, several of whom were court monitors. On the same day, approximately twenty people were in the gallery of Trial Chamber II, several of whom were court monitors, while others included relatives of the accused and students visiting from South Africa. Human Rights Watch observations, Trial Chambers I and II, Freetown, April 18, 2005.

¹³⁶ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 14 and 19, 2005; Human Rights Watch separate interviews with two former Special Court staff, Freetown, April 15 and 20, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 12, 2005; Human Rights Watch group interview with members of civil society, Freetown, April 14, 2005; Human Rights Watch interview with two monitors, Freetown, April 14, 2005; Human Rights Watch group interview with fishermen, Freetown, April 19, 2005; Human Rights Watch interview with taxi driver, Freetown, April 19, 2005; Human Rights Watch group interviews with market women, Freetown, April 19 and 20, 2005; Human Rights Watch observations of proceedings in the domestic courts, Sierra Leone Law Court, April 19, 2005.

¹³⁷ Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 12, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

may have about entering the court complex by preparing video of persons going to attend proceedings for video summaries. Court staff have further indicated that the Outreach Unit will focus in the next year on initiatives to increase attendance, including by utilizing targeted invitations. This was previously avoided over concerns that members of the general public who decided on their own to attend might be turned away if the gallery was full with invited persons.¹³⁸

Human Rights Watch welcomes the court's commitment to increasing attendance and believes that the unique opportunity for Sierra Leoneans to observe proceedings due to the court's location must not be squandered. The organization also welcomes the Outreach Unit's plans to make targeted invitations to attend proceedings, and urges the unit to actively develop and implement initiatives that will focus on targeting a range of specific groups within civil society to facilitate their attendance.

B. Legacy

The Special Court's existence creates enormous opportunities to leave a meaningful legacy in Sierra Leone and West Africa. The opportunities for long-term impact are magnified by the court's hybrid nature and location in the country where the crimes were committed. At the same time, harnessing the opportunities to identify and implement feasible initiatives to create an appropriate legacy is unquestionably a difficult task. The challenges are all the more demanding in the face of the Special Court's resource constraints and short life span.

The Special Court is taking important steps to create a meaningful legacy during the trial phase. From its judicial operations and outreach to its efforts to develop a domestic witness protection unit and build capacity of Sierra Leonean staff, the court is making real inroads on this difficult terrain and impacting Sierra Leoneans' perception and support of justice. However, Human Rights Watch believes that the court should more actively seize on what will otherwise become a sorely missed opportunity to enhance the rule of law in Sierra Leone by increasing efforts to impact the national justice system. This is an area about which Human Rights Watch expressed concern in its September 2004 report, and which is becoming more pressing as the court moves into its final phase of operations.¹³⁹

The Sierra Leone justice system, which was dysfunctional prior to the 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.¹⁴⁰ Although Human Rights Watch did not conduct an extensive inquiry concerning the national justice system during its Freetown mission in April 2005, pervasive problems appear to continue to exist, including lack of qualified staff and resources, corruption, and

¹³⁸ Human Rights Watch separate interviews with two Special Court staff, Freetown, April 14 and 19, 2005.

¹³⁹ See also "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, pp. 36-38.

¹⁴⁰ For a more detailed discussion of problems with the Sierra Leone justice system, see "The Jury is Still Out," *A Human Rights Watch Briefing Paper on Sierra Leone*, July 11, 2002, available online at <http://hrw.org/backgrounder/africa/sl-bck0711.htm>.

constant delays in proceedings.¹⁴¹ The current state of the national justice system underscores the seriousness of rule of law issues in Sierra Leone and the importance of seizing the opportunity to make a positive impact.

The Special Court is not, nor should it be expected to serve as, a national justice reform project. At the same time, Human Rights Watch believes that the Special Court has both the responsibility and opportunity to make the most of its limited operations by more intensively seeking to interact positively with the national justice system. The Special Court's scope goes far beyond a standard domestic court prosecuting ordinary offenses. Meaningful interaction between the national courts and the Special Court will be intimately connected to its ability to promote respect for the rule of law in Sierra Leone and West Africa. This includes promoting the capacity of the courts in Sierra Leone to prosecute both ordinary offenses and serious crimes.

While interaction with the national courts is not explicitly delineated within the court's mandate, it is integral to the overall purpose of the Special Court: to limit impunity for serious crimes. Moreover, Human Rights Watch believes that with a relatively minimal investment of time and financial resources, the court can achieve a substantially increased return on the international community's investment in creating the Special Court, long after it has ceased to operate.

1. Existing contributions to a meaningful legacy

The court's investigation, indictment, and trial of persons allegedly bearing the greatest responsibility for serious crimes committed in Sierra Leone is sending the message that serious crimes are not permissible and will not be tolerated. Moreover, the pursuit of members of all three warring factions in its prosecutions has helped to enhance understanding that serious crimes are not permissible regardless of the overarching goals of a particular faction. The outreach and communications efforts discussed in detail in the previous section are ensuring that this message reaches the Sierra Leonean public.

Interviews with court staff and members of civil society, along with discussions with ordinary citizens around Freetown, suggest that the court's efforts to date are having an important impact that will contribute to a meaningful legacy by building respect for the rule of law. As discussed in the previous section, there are strong indications that people are aware of the Special Court's work. Moreover, local civil society members report that people's perceptions about the importance of justice for serious crimes and international standards, including fair trial concepts, are continuing to increase. Court staff and members of civil society also report that as people learn more about the court's work, their perception of the accountability process and the essential role this plays in underpinning the rule of law has improved. In particular, they noted that acceptance of prosecution of the accused associated with pro-government forces (namely the Civil

¹⁴¹ Human Rights Watch interview with former Special Court staff, Freetown, April 20, 2005; Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005; Human Rights Watch interview with defense counsel, Freetown, April 16, 2005; Human Rights Watch separate interviews with two members of Sierra Leone civil society, Freetown, April 13 and 14, 2005.

Defense Forces, whom many perceived as war heroes) has increased with greater awareness of international standards.¹⁴²

Information Human Rights Watch researchers obtained during discussions with ordinary citizens around Freetown about the court support these assessments. The individuals Human Rights Watch researchers spoke with described the court in positive terms. They indicated that the court is “good” and “necessary,” and the court is helping to bring justice.¹⁴³ They stated that the court is important because it is helping to defend women who have suffered citing that “they stand up for women there.”¹⁴⁴ They expressed their belief that the court can help to stop violence and that it is helping to bring out the truth of what occurred.¹⁴⁵ Additionally, people spoke positively about the international involvement with the court, and cited major problems with their own legal system including delay and corruption.¹⁴⁶

The Special Court has made some efforts to reach out to the national justice system. The Court has invited judges from the national courts to attend Special Court proceedings and trainings offered to Special Court judges, for example on gender issues. The Court has invited input from the local bar on relevant legal issues, such as on the Special Court Rules of Procedure and Evidence. The registrar also meets regularly with the chief justice of the Sierra Leone Supreme Court.¹⁴⁷

Recently the OTP began undertaking an initiative with a view to positively impact the national justice sector by offering a monthly lecture series for the Sierra Leone bar and universities. The court is also exploring the possibility of enhancing the library at the Fourbay University in Freetown by equipping it with legal texts.¹⁴⁸ Additionally, court staff have expressed a commitment to working with a U.S.\$25 million initiative to reform the national justice sector, which is funded by the U.K. Department for International Development (DFID).¹⁴⁹ While this initiative is in the early stages, it could help to put expertise available at the Special Court to benefit the national courts.

There are indications that the court is having some impact on the national justice system. Special Court decisions have been reportedly cited in domestic proceedings. Some members of the legal community also view the jurisprudence of the Special Court as

¹⁴² Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 13, 2005; Human Rights Watch group interview with members of civil society, Freetown, April 14, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 20, 2005.

¹⁴³ Human Rights Watch separate interviews with taxi drivers, Freetown, April 19, 2005.

¹⁴⁴ Human Rights Watch group interview with market women, Freetown, April 20, 2005.

¹⁴⁵ Human Rights Watch group interview with fishermen, Freetown, April 19, 2005.

¹⁴⁶ Human Rights Watch group interview with fishermen, Freetown, April 19, 2005; Human Rights Watch group interview with market women, Freetown, April 19, 2005; Human Rights Watch separate interviews with taxi drivers, Freetown, April 19, 2005.

¹⁴⁷ Human Rights Watch interviews with four Special Court staff, Freetown, April 21, 2005 (two interviews in total).

¹⁴⁸ Human Rights Watch interview with two Special Court staff, New York, October 4, 2005; Human Rights Watch e-mail correspondence with Special Court staff, Freetown, October 15, 2005; Human Rights Watch separate interviews with three Special Court staff, Freetown, April 18-20, 2005.

¹⁴⁹ Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Presentations by court staff at a Special Court Interactive Forum Meeting attended by Human Rights Watch researchers, Freetown, April 13, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

holding value for future prosecutions of crimes in Sierra Leone and the development of implementing legislation for the Rome Statute of the International Criminal Court.¹⁵⁰

The court also makes a major contribution to legacy by employing and building the professional capacity of Sierra Leoneans. As discussed in depth in Human Rights Watch's September 2004 report, the Special Court employs significant numbers of Sierra Leoneans in nearly every aspect of court operations.¹⁵¹ This includes many Sierra Leone police who work as investigators or in witness protection for the OTP or the Witness and Victim Support Unit. It also includes a small number of Sierra Leonean lawyers working in the OTP and the Defence Office. A larger number of Sierra Leonean lawyers are also involved in the Special Court through representing the accused. Additionally, the OTP and Defence Office have Sierra Leonean interns, some of whom are already lawyers. The court has also attracted members of the Sierra Leone diaspora to work in professional posts at the Special Court, such as lawyers in the OTP, some of whom reportedly have indicated an intention to remain in Sierra Leone following the close of the court's operations.¹⁵²

While the number of Sierra Leoneans employed in more senior positions at the court is fairly limited, court staff indicated a commitment to promoting Sierra Leoneans where possible, particularly in the final stages of the court's life, and such promotion has already taken place in at least one instance.¹⁵³ Human Rights Watch welcomes this approach and encourages the court to as much as possible train and promote Sierra Leonean staff.

The employment of local staff and location in Sierra Leone is also enabling the court to increase its cultural sensitivity to the local population, such as by focusing its video summaries on issues of particular importance to Sierra Leoneans. This in turn helps to ensure long-term impact by ensuring that the court's operations are made relevant to the general public.

Other initiatives, discussed earlier in this report, are also being developed. The domestic witness protection unit discussed in the witness protection section could make a major contribution to not only protecting and supporting witnesses who testify at the Special Court, but ultimately witnesses who testify before the national courts in Sierra Leone. The establishment of an independent radio station on justice issues discussed in the previous section also could, if funded, significantly enhance understanding of justice and rule of law issues in Sierra Leone.

The court will further contribute to legacy through donating the courthouse to Sierra Leone and establishing appropriate procedures for storing evidence and establishing archives related to Special Court trials. Court staff indicated that the court is currently exploring possible future uses for the courthouse, which might include as a court or as a

¹⁵⁰ Human Rights Watch interview with Special Court staff, Freetown, 20, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 13, 2005; Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005.

¹⁵¹ See "Bringing Justice: The Special Court for Sierra Leone," *A Human Rights Watch Report*, pp. 36-37.

¹⁵² Human Rights Watch interview with Special Court staff, Freetown, April 12, 2005.

¹⁵³ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005.

human rights center, along with means to ensure that it is adequately maintained.¹⁵⁴ Court staff have further indicated that they are continuing to develop additional ideas and plans to enhance legacy contributions.¹⁵⁵

2. Constraints and intensifying engagement with national courts

Despite these efforts, the court's ability to positively contribute to promoting the rule of law, including accountability for serious crimes, is constrained. This is due to several factors beyond the court's control, including the limited temporal jurisdiction of the court (which covers less than half the conflict), the court's limited mandate to prosecute those who bear the greatest responsibility, and the absence of indictees Charles Taylor and Johnny Paul Koroma before the court.¹⁵⁶

However, the court's legacy will also be limited if its engagement with the national courts does not expand beyond what has occurred to date. Aside from judges at the Special Court attending the opening of the Sierra Leone Supreme Court, there have been no formal interactions between judges serving in the national system and the Special Court. Despite invitations, national court judges have not attended Special Court proceedings or the trainings offered to Special Court staff.¹⁵⁷

While a substantial proportion of Special Court personnel are Sierra Leonean, almost none have worked as legal or registry staff for the domestic justice system.¹⁵⁸ Lawyers working in both the OTP and defense teams at the Special Court have generally come from private practice as opposed to government service in Sierra Leone. Additionally, although 40 percent of staff in the OTP are reportedly Sierra Leoneans, most staff are not local lawyers, but rather Sierra Leone police, or lawyers from the diaspora.¹⁵⁹ Impact on Sierra Leonean lawyers working on defense teams is also limited as they are not court staff, and a number of the teams are not (as discussed above) as integrated as was initially envisioned. Additionally, while the Sierra Leone government appoints a total of four judges to the chambers of the Special Court, it has appointed only two Sierra Leonean judges.¹⁶⁰

According to members of the legal profession and civil society, and staff of the national justice system and the Special Court, engagement between the Special Court and the national justice system is constrained by a number of factors, the most pressing of which include:

¹⁵⁴ Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

¹⁵⁵ Human Rights Watch interview with Special Court staff, New York, October 4, 2005.

¹⁵⁶ Human Rights Watch group interview with members of Sierra Leone civil society, Freetown, April 14, 2005. See also Report on the Nationwide Regional Victims Commemoration Conferences; Marieke Wierda, International Center for Transitional Justice, "Report on National Victim Commemoration Conference."

¹⁵⁷ Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Human Rights Watch telephone interview with Special Court staff, New York, October 19, 2005.

¹⁵⁸ Human Rights Watch interview with former Special Court staff, Freetown, April 15, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 14, 2005; Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005.

¹⁵⁹ Human Rights Watch interview with Special Court staff, Freetown, April 18, 2005; Human Rights Watch interview with former Special Court staff, Freetown, April 15, 2005; Human Rights Watch group interview with Special Court staff, Freetown, April 18, 2005.

¹⁶⁰ The Sierra Leone government has also appointed a U.K. national and a Samoan national. See "Chambers" [online], <http://www.sc-sl.org/chambers.html> (retrieved October 12, 2005).

- Resistance by judges to taking advantage of the court's presence, reportedly due to their not seeing the value of sharing experience and expertise, and cultural differences;¹⁶¹
- Concern that interaction could compromise independence between the Special Court and national courts;¹⁶² and
- Lack of local judges and staff to engage with or employ. Many domestic judges are either retired or overseas, and qualified judicial staff are also limited.¹⁶³ Special Court staff indicate that they were encouraged to avoid draining the local courts of its staff.¹⁶⁴ The government also reportedly resisted seconding staff to the Special Court due in part to a desire to maintain control over staff.¹⁶⁵

Other factors constrain any effort to engage the national justice system to promote additional domestic prosecutions for serious crimes committed during Sierra Leone's armed conflict, including: the Lomé Amnesty,¹⁶⁶ lack of capacity of the national courts, a sense that the Special Court is the accountability venue, and concern that even if the amnesty were overturned, any additional prosecutions would likely be politically targeted.¹⁶⁷ While there is some interest by a small number of Sierra Leonean lawyers who are pursuing a legal challenge to the Lomé Amnesty, there has been little movement to date on this.¹⁶⁸

Lack of support for legacy initiatives by some members of the Special Court Management Committee also creates a major additional challenge.¹⁶⁹ Given these constraints, Human Rights Watch commends the Special Court's efforts to date to reach out to the national justice system and its commitment to work with the U.K.-sponsored national justice reform project.

¹⁶¹ Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Human Rights Watch separate interviews with two members of Sierra Leone civil society, Freetown, April 12 and 14, 2005.

¹⁶² Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Human Rights Watch separate interviews with three Special Court staff, April 18-20, 2005; Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 13, 2005.

¹⁶³ Human Rights Watch interview with Special Court staff, New York, April 8, 2005; Human Rights Watch interviews with two Special Court staff, April 21, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 14, 2005; Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005.

¹⁶⁴ Presentations at a Special Court Interactive Forum Meeting attended by Human Rights Watch researchers, Freetown, April 13, 2005.

¹⁶⁵ Human Rights Watch interview with two Special Court staff, Freetown, April 21, 2005; Human Rights Watch interviews with national justice system staff, Freetown, April 19, 2005.

¹⁶⁶ The 1999 Lomé Peace Agreement included a blanket amnesty under Sierra Leonean law for offenses committed by all sides. The United Nations stated that it did not recognize the Lomé amnesty insofar as it purported to apply to international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law. In March 2004, the Special Court ruled that the Lomé Amnesty is not a bar to prosecution of crimes before it. *Decision on Challenge to Jurisdiction: Lomé Accord Amnesty* (Kallon, Kamara) (Appeals Chamber), March 13, 2004.

¹⁶⁷ Human Rights Watch interview with national justice system staff, Freetown, April 19, 2005; Human Rights Watch interview with former Special Court staff, Freetown, April 20, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 14, 2005; Human Rights Watch group interview with members of civil society, Freetown, April 14, 2005.

¹⁶⁸ Human Rights Watch interview with former Special Court staff, Freetown, April 15, 2005; Human Rights Watch interview with member of Sierra Leone civil society, Freetown, April 12, 2005.

¹⁶⁹ Human Rights Watch telephone interview with Special Court staff, New York, March 30, 2005; Human Rights Watch interview with Special Court staff, Freetown, April 14, 2005.

At the same time, Human Rights Watch strongly urges the Special Court to creatively respond to these difficult realities, as it has in so many of its other programs. While the U.K.-sponsored national justice sector reform project will serve a critical function, it cannot replace the role that can and should be played by the Special Court given the unique and relevant expertise of its staff. Human Rights Watch believes that the Special Court should develop a few targeted and inexpensive programs to engage the national justice system without compromising the independence of the Special Court and national courts. This programming should focus on issues related to the work and experience of the Special Court that are relevant to enhancing the national justice system, including on prosecuting serious crimes.

The main emphasis should be on monthly discussions with national justice system judges and staff. These discussions could function quite similarly to the monthly forum the court currently holds with civil society by bringing together Special Court and national justice system staff and judges to discuss a variety of relevant subjects including: trial and case management, fair trial standards, witness treatment, minimum procedural and substantive requirements for prosecuting serious crimes, and pre-trial proceedings (which are not utilized in Sierra Leone). Despite the Lomé Amnesty, emphasis on prosecuting serious crimes domestically could be extremely valuable in the event that such expertise is needed to address serious crimes committed in the future, or the amnesty is repealed or is found to be unconstitutional, as has been the case in other countries.

Participants should include as appropriate judges, registry staff, clerks and legal advisors, and prosecutors from the Special Court and the national courts; efforts must be made to ensure participation by all relevant persons. This will require working to overcome resistance by Sierra Leonean national justice system judges and staff to take advantage of these opportunities. To achieve this, it would be useful if court personnel personally engaged participants and involved them in the development of the initiative from the initial stages including by soliciting their views concerning discussion topics.

Initiatives should also be developed to increase observation of Special Court proceedings by judges and staff of the national justice system, other local legal professionals, and law students. Efforts must again be made to personally engage relevant participants and deploy local staff to facilitate attendance. This could include coordinating the logistics for attendance by relevant participants. Where appropriate and feasible, consideration to adapting observation practice (such as allocating a space for Sierra Leonean judges to observe proceedings by sitting on the interior of the court space as opposed to in the public gallery) should be made.

Human Rights Watch also urges that the Registry and the OTP coordinate their existing and future legacy initiatives targeted at impacting the national justice system. This will help to ensure maximum effectiveness of programming.

VII. Recommendations

To the Special Court for Sierra Leone

To the Chambers

- To the Appeals and Trial Chambers
 - Identify and address any impediments to more consistently efficient rendering of decisions, particularly motions that have implications for the court's full adherence to protection of the rights of the accused.
 - Consider prioritizing issuing decisions on motions that are key to upholding fair trial rights, and allocating one extra afternoon per week or every other week as necessary to dispose of such motions.
 - Continue to participate in judicial exchanges with judges from other international justice institutions on procedure and substance, including courtroom and case management, elements of crimes, theories of liability, and witness issues.
- To the Trial Chambers
 - Consistently treat witnesses with respect and dignity at all times, and ensure that all parties in the courtroom also do so.
 - Work scrupulously to ensure that as little identifying information as possible concerning protected witnesses is disclosed during court proceedings.
 - Support the work of the judicial services coordination committee to maximize courtroom usage without compromising judicial independence, and other efforts to promote efficiency without compromising the rights of the accused.
 - For Trial Chamber I, promptly participate in a briefing from staff within the Witness and Victim Support Unit regarding witnesses if it has not yet done so in order to maximize effective witness treatment in the courtroom.

To the Registry

- Ensure that all relevant staff, especially in the Witness and Victim Support Unit, are included in the development of the envisaged domestic protection unit, by considering creating a task force of relevant staff to oversee the development of this initiative and taking steps to ensure the domestic unit is composed of necessary elements (see Recommendations to Witness and Victim Support Unit for detailing of elements).
- Develop plans, in coordination with the Witness and Victim Support Unit, for the Special Court to maintain residual staff capacity to provide oversight to the envisioned domestic protection unit.
- Hold regular meetings with the Defence Office to evaluate needs and redeploy funds as necessary to ensure adequate defense expert witnesses and international investigators.
- Hold meetings with the Witness and Victim Support Unit to evaluate needs and redeploy funds as necessary to ensure that all witnesses receive a follow-up visit soon after they return after testifying.

- Document necessary redeployments to increase support to the Defence Office and Witness and Victim Support Unit to ensure that the Management Committee has adequate information concerning reallocations and thus help ensure proper allocations in the next financial period.
- Develop a few targeted and inexpensive programs to engage the national justice system, including:
 - Holding monthly discussions between Special Court and national justice system judges and staff to discuss relevant subjects (such as trial and case management, fair trial standards, witness treatment, and minimum requirements for prosecuting serious crimes);
 - Initiatives to increase observation of Special Court proceedings by national justice system judges and staff, other local legal professionals, and law students; and
 - Promote participation in programs by personally engaging and involving possible participants from the national court system in the development of programs from the initial stages by soliciting their views about the program, deploying local Special Court staff to facilitate participation, and coordinating logistics.
- Advocate increases to the overall budget, where necessary, to ensure adequate:
 - Expert witnesses and access to international investigators by defense teams;
 - Training for defense counsel;
 - Follow-up visits to witnesses soon after they testify;
 - Creation of a domestic witness protection unit;
 - Targeted initiatives to foster engagement between judges and staff of the Special Court and the national justice system; and
 - Limited staff to provide oversight to the envisioned domestic witness protection unit as part of the court's residual activities during the court's post-completion phase.

To the Office of the Prosecutor

- Scrupulously abide by disclosure obligations to the defense at all times to ensure full protection of the accused.
- Brief relevant staff on developments to date in efforts by the Witness Management Unit to develop a domestic witness protection unit.
- Coordinate with the Registry (including through participation in a task force of relevant staff) to create a domestic protection unit that has the capacity and expertise to respond effectively to threats to the security and well-being of witnesses who testify at the Special Court (see Recommendations to Witness and Victim Support Unit).

To the Office of the Principal Defender

- Take more steps to ensure that all members of defense teams fully participate in defense representation by:
 - Monitoring the extent to which all team members participate;
 - Expressing concern where full participation is not occurring; and

- Urging team members who are not fully participating to assume more responsibilities in the representation.
- Respond more aggressively where particular conduct by counsel undermines vigorous representation, by promptly intervening and providing targeted training in trial advocacy and international criminal law as necessary.
- Increase training for defense counsel in trial advocacy and international criminal law where appropriate, consider making training mandatory, and advocate for increases in funding to provide training as necessary.
- Ensure that any additional counsel assignments have demonstrable skills and adequate experience defending complex criminal cases involving international crimes, particularly for lead counsel or counsel who will likely perform a significant share of the representation.

To Witness and Victim Support

- Intensify efforts to avoid contact between protected witnesses and court observers, particularly while transporting witnesses to and from the court.
- Where threats against witnesses occur off court premises, consider strengthening action against suspected perpetrators, such as by working with local authorities to pursue prosecution in the national courts under relevant domestic offenses and develop a domestic witness protection law, and pursuing Special Court contempt proceedings.
- Intensify efforts to ensure that all witnesses receive a follow-up visit soon after they testify by:
 - Holding meetings with the Registry to evaluate needs; and
 - Request and advocate for budgetary increases for this purpose as necessary.
- Coordinate with Registry staff to create a domestic protection unit that has the capacity and expertise to respond effectively to threats to the security and well-being of witnesses who testify at the Special Court including by ensuring that the unit:
 - Is composed of male and female protection officers, including officers with experience working with victims of gender based crimes, along with psychosocial counselors;
 - Receives ongoing training in ensuring adequate witness protection; and
 - Has a mandate to monitor the security situation for witnesses and others at risk due to testimony provided at the Special Court; to communicate regularly, but discretely, with witnesses; to respond to threats to the physical and mental well-being of witnesses such as by relocating individuals where necessary; and to consider pursuing domestic prosecution of persons allegedly responsible for threats.

To the Outreach Unit

- Actively develop and implement initiatives focused on increasing observation of proceedings by targeting and facilitating attendance for a range of groups within civil society.

To the Public Affairs Unit

- Increase radio programming by including segments whenever there are noteworthy moments in the trials or other moments that best illustrate the judicial process at the court, in addition to weekly summaries.
- Consider devoting some radio programming to traditional journalistic trial reporting as opposed to summaries, if helpful to increase programming.

To Defense Counsel Representing Accused at the Special Court

- Treat witnesses with respect and dignity at all times.
- Work scrupulously to ensure that identifying information concerning protected witnesses is not disclosed during or outside of court proceedings.
- Fully participate in defense representation and attend trainings.

To the Government of Sierra Leone

- Consider taking action against persons suspected of threatening witnesses off court premises or leaking the identity of a witness to a person who makes such a threat by:
 - Pursuing prosecution of perpetrators under relevant domestic offenses; and
 - Developing and enacting a domestic witness law.

To the members of the Management Committee of the Special Court

- Intensively lobby for funding for the Special Court to fairly and effectively complete operations and conduct necessary residual activities during the court's post-completion phase.
- Support increases to the overall budget, where necessary, for the purposes of
 - Ensuring adequate expert witnesses and access to international investigators for defense;
 - Training for defense counsel;
 - Staffing to comprehensively conduct follow-up visits to witnesses soon after they testify;
 - Establishment and effective functioning of a domestic witness protection unit;
 - Targeted initiatives to foster engagement between judges and staff of the Special Court and the national justice system; and
 - Allocating limited residual staff to provide oversight to the envisioned domestic witness protection unit during the court's post-completion phase.

To key donors, including the United States, the United Kingdom, and the Netherlands

- Redeem pledges made at the September funding conference for the Special Court.
- Make additional contributions as necessary to ensure that the court has sufficient funding to operate effectively and fairly during the final phases of its operation and post-completion.
- Respond positively to requests for support to increases in the overall budget for the purposes listed above.

To the United Nations Secretary-General

- Intensively lobby for funding for the Special Court to fairly and effectively complete operations and conduct necessary residual activities during the court's post-completion phase.
- Request financial assistance from the United Nations where necessary to address funding shortfalls.

To the United Nations General Assembly

- Approve remaining U.S.\$7 million of the U.N. Secretary-General's March 2004 subvention request for the Special Court for Sierra Leone.
- Authorize financial assistance for the Special Court to fairly and effectively complete operations and conduct necessary residual activities during the court's post-completion where necessary to address funding shortfalls.

To the U.K. Department for International Development Sierra Leone Justice Sector Reform Initiative

- Identify and implement programs to maximize the short-term presence of the Special Court and its staff to positively impact the national justice system as part of the reform initiative.

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