



## RESIDUAL SPECIAL COURT FOR SIERRA LEONE

### Practice Direction on the procedure following a request to take a statement from a person in the custody of the Residual Special Court for Sierra Leone

Adopted 3 June 2015

The Registrar of the Residual Special Court for Sierra Leone (“Residual Special Court”);

**NOTING** that a State, a judicial or non-judicial accountability mechanism, or other legitimate authority may on occasion request the assistance of the Court to take evidence for the purposes of their proceedings from a person who is in the custody of the Residual Special Court or who is in the custody of another authority based on an order or request of the Special Court or Residual Special Court;

**HEREBY** issues this Practice Direction in consultation with the President of the Residual Special Court pursuant to Rule 33(D) of the Rules of Procedure and Evidence, setting out the procedure governing such requests:

#### Article 1 – Definitions

In this Practice Direction, unless the context requires otherwise, the following terms mean:

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| <b>Detainee</b>             | A person who is in the custody of the Residual Special Court or who is in the custody of another authority based on an order or request of the Special Court or Residual Special Court. |
| <b>Requesting authority</b> | A State, judicial or non-judicial accountability mechanism, or other legitimate authority making a request under this Practice Direction.   |
| <b>Rules</b>                | The Rules of Procedure and Evidence of the Residual Special Court as amended from time to time.   |

#### Article 2 – Requests for assistance

1. A request by a requesting authority for assistance to question or take evidence or information from a detainee shall be transmitted in writing to the Registrar and copied to the detainee’s counsel.
2. Requests shall contain the following information:
  - (i) details of the requesting authority, including their legal basis;
  - (ii) the name of the detainee to whom the request relates;
  - (iii) details of the purpose of the request and a summary of the reasons for the request;

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| RESIDUAL SPECIAL COURT FOR SIERRA LEONE |                       |
| COURT RECORDS                           |                       |
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| NAME                                    | Francis Algabir Smart |
| SIGN                                    |                       |
| DATE                                    | 03-06-15              |
| TIME                                    | 10:40 Am              |

- (iv) a description of any offences or suspected offences charged or likely to be charged or under investigation by the requesting authority, if any;
  - (v) any relevant dates, such as the date of the trial or hearing at which the evidence or information is required, or any cause for special urgency, as appropriate;
  - (vi) details of any caution which should be given to the detainee under the law or rules of the requesting authority;
  - (vii) a list either of specific questions or of subject areas about which questions are to be asked;
  - (viii) a description of any persons from the requesting authority seeking to be present at the questioning; and
  - (ix) a description of the facilities that will be required for recording and transcribing the questioning.
3. The Registrar shall notify the President of any request. The request shall be forwarded to the Presiding Judge as appropriate, and to the Prosecutor and the Defence Staff.
4. The Registrar shall inform the detainee and the detainee's counsel of the request. The Registrar shall ensure that the detainee has ample opportunity to take legal advice before deciding whether or not to agree to the questioning and is made aware:
- (i) that the detainee is not obliged to agree to the questioning or, if he does, that he is not bound to answer any particular question;
  - (ii) that the questioning will be transcribed and the transcript filed with the Court Management Section;
  - (iii) that a copy of the record may be made available, upon order by the President or Presiding Judge, to a party or defence counsel for potential use in proceedings before the Residual Special Court unless the questioning is covered, in whole or in part, by a confidentiality order, statute, or protocol, in which case the party or defence counsel may apply to the President or Presiding Judge for an order that the record of the questioning shall be disclosed in the interests of justice (which may include the interests of justice with respect to other suspects or accused before the Residual Special Court); and
  - (iv) that no decision, judgement, conclusion, or comment by the requesting authority will be allowed to influence the Residual Special Court in determining the detainee's guilt or innocence.
5. In the event that the detainee agrees to the questioning (such agreement having been signed in writing by the detainee and confirmed by the detainee's counsel), the Registrar shall inform the parties and place the request before the President or Presiding Judge. The President or Presiding Judge shall instruct the parties and the detainee's counsel on the procedures to be followed on making representations concerning the request. After such representations are made the President or Presiding Judge shall grant approval (conditional or otherwise) if he or she is satisfied that the detainee agrees to the questioning and has been fully advised in terms of paragraph 4

above. In such circumstances, the request for questioning will only be rejected if the President or Presiding Judge is satisfied that a refusal is necessary in the interests of justice or to maintain the integrity of the proceedings of the Residual Special Court. An appeal against rejection shall be decided by the President if it is made expeditiously and jointly by the detainee and the requesting authority.

6. Once the President or Presiding Judge has approved the request, the Registrar shall make appropriate arrangements for the questioning to proceed on a date convenient for the detainee's counsel to be present. The Registrar shall ensure that the detainee has the services of an interpreter if requested.
7. The questioning shall be supervised by a legal officer nominated by and acting on behalf of the Registrar. This legal officer shall have the authority to stop the questioning if it goes significantly beyond the scope of the questions notified pursuant to paragraph 2(vii) above and/or if any conditions imposed by the President or Presiding Judge (e.g., as to identification of protected witnesses) are not observed.

Done this 3rd Day of June 2015 at The Hague, The Netherlands

A handwritten signature in black ink, appearing to be 'Binta Mansaray', written over a horizontal line.

Binta Mansaray  
Registrar