



## RESIDUAL SPECIAL COURT FOR SIERRA LEONE

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### **Residual Special Court for Sierra Leone: Records and information sensitivity, classification, changes in classification, handling and access policy**

The Registrar of the Residual Special Court for Sierra Leone (RSCSL), pursuant to Article 7 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone (RSCSL Agreement), Article 15 of the Statute of the Residual Special Court for Sierra Leone (RSCSL Statute) and Rule 33 of the Special Court for Sierra Leone's Rules of Procedure and Evidence (SCSL Rules of Procedure and Evidence), for the purposes of ensuring the classification, changes in classification, secure handling and provision of authorised access to the records and information entrusted to or originating from the Special Court for Sierra Leone (SCSL), and the RSCSL, in recognition of its power to grant, refuse or restrict access to the records and information, hereby promulgates the following:

#### **INTRODUCTION**

#### **SECTION 1: GENERAL PROVISIONS**

1.1 Management, classification, changes in classification, handling of and access to the RSCSL records and information shall be in accordance with this policy, set out as follows:

#### **INTRODUCTION**

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Management, classification, changes in classification, handling of and access to records and information entrusted to or originating from the SCSL shall be in accordance with this policy and the SCSL Records and Archival Policy. Account will be taken of the RSCSL Agreement, the RSCSL Statute, the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, the Statute of the Special Court for Sierra Leone, the Office of the Prosecutor records and information protocols and the Secretary-General's bulletin on International Criminal Tribunals: information sensitivity, classification, handling and access (UN Doc. ST/SGB/2012/3), except in so far as the present policy or the applicable Rules of Procedure and Evidence may otherwise provide.

1.2 In accordance with Article 7 of the RSCSL Agreement, the RSCSL shall maintain, as necessary, the confidentiality of the archives and shall be responsible for the management and preservation of and access to its archives including the SCSL archives. The RSCSL shall ensure the continued protection of records and information that were provided by individuals, States and other entities with confidentiality restrictions under the SCSL Rules of Procedure and Evidence as long as that confidentiality is maintained or records and information protected by judicial orders of the SCSL.

1.3 In this Policy, the following definitions apply:

Applicable Rules of Detention	The Rules of Detention applicable to persons detained or convicted by the SCSL or RSCSL as the case may be;
Applicable Rules of Procedure and Evidence	The Rules of Procedure and Evidence applicable to the SCSL or the RSCSL as the case may be;
Classification authority	The body possessing the authority to classify, reclassify or declassify records, information and other materials to which this policy applies;
Judicial records	Records which form part of the official case record of the SCSL and the RSCSL, including but not limited to filings made in the cases, transcripts, audio and video recordings of hearings, and exhibits admitted in the cases.

## **SECTION 2: SCOPE**

2.1 The present policy shall apply to all records and information, regardless of the content or medium, in the possession of the RSCSL or generated by the SCSL or the RSCSL. However, records and information generated for and from the deliberation process in Chambers, including, but not limited to, summaries of deliberations conducted pursuant to the applicable Rules of Procedure and Evidence, will be destroyed.

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## **CLASSIFICATION OF RECORDS AND INFORMATION**

### **SECTION 3: CLASSIFICATION AUTHORITY**

3.1 The RSCSL is vested with the classification authority to determine the security level of all its records and information in accordance with this policy.

3.2 The authority to determine the security classification levels of the judicial records lies with the President or a duty Judge or with a Chamber if one is constituted.

3.3 Other records, in whole or in part, or information whose security classification level has been determined by the President, a duty Judge or Chambers shall maintain that security classification level wherever in the archives the records or information are located until such time as that security classification level is changed by the President, a duty Judge or Chambers in accordance with sub-section 6.1 and sub-section 6.2. The RSCSL Prosecutor, Registrar, Defence representative/Duty Counsel shall ensure that such records and information are treated in accordance with the security classification level determined by the President, a duty Judge or Chambers. Nothing in this policy precludes a request to the President, a duty Judge or Chambers to reconsider the security classification level previously determined.

3.4 Subject to sub-section 3.3, the authority to determine the security classification levels of non-judicial records and information lies with the SCSL Chambers, Prosecutor, Registrar, Principal Defender and/or Lead Counsel which initially created or received them, or where applicable, their successor, meaning the RSCSL Chambers, Prosecutor, Registrar, Defence representative/Duty Counsel.

### **SECTION 4: GENERAL PRINCIPLES**

4.1 The overall approach to classifying records and information within the scope of the present policy shall be consistent with the classification principles defined in the SCSL Records and Archival Policy. The work of the RSCSL shall be open and transparent, except insofar as the nature of the records and information concerned is deemed sensitive in accordance with the SCSL Records and Archival Policy, the present policy and/or the applicable Rules of Procedure and Evidence.

4.2 For the purposes of this policy and consistent with the SCSL Records and Archival Policy, sensitive records and information shall include the following:

- a) Judicial records classified by order or decision of the President, a duty Judge, or Chambers as “confidential” or “strictly confidential”. Judicial records are records which form part of the official case record of the SCSL and the RSCSL, including but not limited to filings made in the cases, transcripts, audio and video recordings of hearings, and exhibits admitted in the cases;
- b) Records and information related to the protection of witnesses, victims and other vulnerable individuals referred to in the evidence or otherwise related to the judicial process, including records which contain information which, if disclosed without

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appropriate authorisation, could reveal the identity and location of protected witnesses, victims and other vulnerable individuals;

- c) Records and information of the Office of the Prosecutor which, if disclosed without appropriate authorisation, could jeopardise investigations or prosecutions, or could reveal the identity and location of protected witnesses, victims and other vulnerable individuals, or those who gave information in confidence, as long as that confidentiality is maintained;
- d) Personal records and information deemed as sensitive such as that referred to in the applicable Rules of Detention related to persons, or families of such persons, who are or have been detained or convicted by the SCSL or RSCSL;
- e) Records and information provided to the SCSL or RSCSL by third parties on a confidential basis, or with the expectation of confidentiality as long as that confidentiality is maintained;
- f) Records and information provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, and;
- g) Records and information such as reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of a case or cases, a trial or appeal.

## **SECTION 5: CLASSIFICATION LEVELS**

5.1 SCSL records and information are classified in accordance with the SCSL Records and Archival Policy.

5.2 RSCSL records and information deemed sensitive shall be classified as “confidential” or “strictly confidential”. Records and information not deemed sensitive shall be classified as “public”.

5.3 The designations of “confidential”, “strictly confidential” and “public” shall be applied to RSCSL records and information in accordance with the following definitions:

- a) The designation “confidential” shall apply to records and information whose unauthorised disclosure could reasonably be expected to cause damage to the work of the SCSL or RSCSL.
- b) The designation “strictly confidential” shall apply to records and information whose unauthorised disclosure could reasonably be expected to cause exceptionally grave damage to or impede the conduct of the work of the SCSL or RSCSL or could reveal the identity and location of protected witnesses, victims and other vulnerable individuals, or those who gave information in confidence, as long as that confidentiality is maintained.
- c) The designation “public” shall apply to records and information whose unauthorised disclosure could reasonably be expected not to cause damage to the work of the SCSL or RSCSL.

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5.4 The designation of “confidential and *ex parte*” or “strictly confidential and *ex parte*” shall apply to those confidential or strictly confidential judicial records for which access has been restricted to exclude certain parties to the judicial process.

## **CHANGES IN CLASSIFICATION LEVEL OF RECORDS AND INFORMATION**

### **SECTION 6: CHANGES IN CLASSIFICATION**

6.1 For archival purposes, changes in classification and handling of, and access to the SCSL records and information classified as strictly confidential or confidential shall be effected in accordance with the provisions of this policy applicable to strictly confidential records and information.

#### Judicial records

6.2 Changes to the classification levels of judicial records, as defined in sub-section 1.3 shall be effected only after judicial authorisation or as otherwise provided for by the applicable Rules of Procedure and Evidence, and in accordance with the procedures described therein.

6.3 Changes to the classification levels of other records, in whole or in part, or information whose security classification level has been determined by the President, a duty Judge or Chambers in accordance with sub-section 3.3 shall be effected only after judicial authorisation. Nothing in this policy precludes a request to the President, a duty Judge or Chambers to reconsider the security classification level previously determined.

#### Non-judicial records reviewable after 50 years

6.4 Subject to sub-section 6.3, the following types of strictly confidential and confidential non-judicial records and information may be reviewed for possible declassification 50 years after the date of creation or acquisition:

- a) Records, reports, memoranda, or other internal documents prepared by a party to judicial proceedings, its assistants or representatives for the internal use of that party, in connection with the investigation or preparation of a case or cases, a trial or appeal;
- b) Records and information provided to the Prosecutor in confidence for the purpose of conducting investigations or tracing and tracking fugitives;
- c) Records and information which are not subject to protective measures in judicial proceedings but the disclosure of which would likely endanger the life, health or safety of any individual or could reveal the identity and location of protected witnesses, victims and other vulnerable individuals, or those who gave information in confidence, as long as that confidentiality is maintained; and
- d) Records and information which requires the Prosecutor, the Registrar or the Defence to obtain consent from the individual or entity that provided the records and information in confidence.

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6.5 Records and information not declassified at that time may be further reviewed, every 10 years thereafter, for possible declassification. Changes to classification levels of these records and information shall be effected with the authorisation of the RSCSL Chambers, Prosecutor, Registrar, Defence representative/Duty Counsel for records and information over which they have classification authority.

#### Non-judicial records and information reviewable after 20 years

6.6 Subject to sub-section 6.3, non-judicial records and information which do not fall under sub-section 6.4 may be reviewed for possible declassification 20 years after the disposition of the relevant case.

6.7 Records and information not declassified at that time may be further reviewed, every 5 years thereafter, for possible declassification. Declassification of these records and information may be effected with the authorisation of the RSCSL Chambers, Prosecutor, Registrar, Defence representative/Duty Counsel for records and information over which they have classification authority.

6.8 Subject to sub-section 6.3, in the event that the RSCSL is in receipt of a request for access to non-judicial records and information prior to 20 years from the date of creation or acquisition, the RSCSL Chambers, Prosecutor, Registrar, Defence representative/Duty Counsel, may authorise advance changes to the classification of the records and information over which they have classification authority consistent with the security classification levels as defined in sub-section 5.1, sub-section 5.2 and sub-section 6.1 of this policy.

#### Third party confidential information

6.9 Notwithstanding the requirements set out in this section, records and information provided to the SCSL or the RSCSL by a third party on a confidential basis or with the expectation of confidentiality as long as that confidentiality is maintained, shall not be declassified or disclosed without the consent of the third party.

6.10 If the third party who provided the records and information has subsequently died, or can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to give consent, the RSCSL Prosecutor, Registrar, Defence representative/Duty Counsel, shall, if satisfied of the third party's unavailability as set out in this sub-section, decide if the records and information over which they have classification authority should be declassified or disclosed in accordance with this policy.

### **SECTION 7: HANDLING OF CLASSIFIED RECORDS AND INFORMATION**

The RSCSL shall ensure that sufficient measures are taken to protect the confidentiality and integrity of sensitive records and information, and that their management and handling in all formats is appropriate to their security classification.

### **SECTION 8: ACCESS REGIME FOR THE ARCHIVES**

8.1 The RSCSL is committed to the principle that the work of the RSCSL should be open and transparent, except in so far as the nature of the records and information concerned is

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deemed sensitive in accordance with the SCSL Records and Archival Policy, the present policy and/or the applicable Rules of Procedure and Evidence.

8.2 In this regard, access shall be afforded to the records and information entrusted to, or originating from, the SCSL and the RSCSL as follows:

- a) The RSCSL shall provide public access to public judicial records;
- b) The RSCSL may grant access to records and information classified as “confidential” or “strictly confidential” in accordance with sub-section 3.3, which contain information classified by judicial authority, wherever in the archives the records and information are located, only after judicial authorisation has been obtained or as provided for by the applicable Rules of Procedure and Evidence, and in accordance with the procedures described therein;
- c) The RSCSL shall facilitate access to public records and information and portions of sensitive records which are classified as public and respond to requests for such information;
- d) Subject to sub-section 8.2 b), the RSCSL may grant access to non-judicial records and information classified as “confidential” or “strictly confidential” as determined by the RSCSL Chambers, Prosecutor, Registrar, Defence representative/Duty Counsel for records and information over which they have classification authority, in accordance with this policy;
- e) The RSCSL shall not grant access to records and information that was provided by a third party on a confidential basis, or with the expectation of confidentiality which has maintained its confidentiality without the consent of the third party. If the third party who provided the records and information has subsequently died, or can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to give consent, the RSCSL Prosecutor, Registrar, Defence representative/Duty Counsel, shall, if satisfied of the third party’s unavailability as set out in this sub-section, decide if the records and information over which they have classification authority should be declassified or disclosed in accordance with this policy;
- f) In respect of any “confidential” or “strictly confidential” records and information, the RSCSL or the classification authority shall ensure that:
  - i. Access to such records and information is monitored and audited as required;
  - ii. If access is granted, that the individual or entity given access to the records and information is given notice of the conditions on which such access is granted; and
  - iii. Internal and external usage of such records and information is monitored and audited as required.

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**SECTION 9: FINAL PROVISIONS**

The present policy shall enter into force on the date of its issuance.

(Signed)  
Binta Mansaray, Acting Registrar

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

1 January 2014