

## STATUTORY INSTRUMENT

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### *THE SPECIAL COURT AGREEMENT (RATIFICATION) REGULATIONS, 2004*

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*THE SPECIAL COURT AGREEMENT (RATIFICATION)  
ACT, 2002  
(Act No. 9 of 2002)*

THE SPECIAL COURT AGREEMENT (RATIFICATION)  
REGULATIONS, 2004

Short title.

In exercise of the powers conferred on him by section 47 of the Special Court Agreement, 2002 (Ratification) Act, 2002, the Attorney-General and Minister of Justice hereby makes the following Regulations:—

PART I—PRELIMINARY

1. In these Regulations, unless the context otherwise requires- Interpretation.

“Agreement” means the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone signed on 16 January, 2002, as contained in the Schedule to the Special Court Agreement, 2002 (Ratification) Act, 2002;

“archives” include all papers and documents in whatever form and all materials sent to or from the Special Court.

“competent authorities” means national, provincial, municipal and other competent authorities under the law of the host country;

“counsel” means a person referred to as such in Article 14 of the Agreement and includes co-counsel;

“Deputy Prosecutor” means the Deputy Prosecutor of the Special Court appointed by the Government of Sierra Leone pursuant to Article 3 of the Agreement;

“expert” means a person referred to as such in Article 15 of the Agreement and appearing at the instance of the Special Court, a suspect or an accused to present testimony based on special knowledge, skills, experience or training;

“Government” means the Government of the Republic of Sierra Leone;

“host country” means the Republic of Sierra Leone;

“Judge” means a Judge of the Special Court appointed by the Government of Sierra Leone and the Secretary-General of the United Nations pursuant to Article 2 of the Agreement;

“laws of the host country” means the laws of the Republic of Sierra Leone as referred to in section 170 of the Constitution of the Republic of Sierra Leone;

“person performing missions for the Special Court” means a person other than the one specifically referred to in the Agreement, performing missions for the Special Court in relation to investigations, prosecutions, judicial proceedings or other official activities of the Special Court;

“premises of the Special Court” means buildings, parts of buildings and areas, including those installations, facilities and utilities referred to in Article 5 of the Agreement, made available to, maintained, occupied or used by the Special Court in the host country in connection with its official functions and purposes;

“President” means the President of the Special Court as referred to in Article 2 of the Agreement and in Article 12 of the Statute;

“Prosecutor” means the Prosecutor of the Special Court appointed by the Secretary-General of the United Nations pursuant to Article 3 of the Agreement;

“Registrar” means the Registrar of the Special Court appointed by the Secretary-General of the United Nations pursuant to Article 4 of the Agreement;

“Rules of Procedure and Evidence” means the Rules of Procedure and Evidence referred to in Article 14 of the Statute;

“Sierra Leonean and international personnel” means the staff of the Special Court as referred to in Article 13 of the Agreement;

“Special Court” means the Special Court for Sierra Leone established by the Agreement between the United Nations and the Government of Sierra Leone, and includes any organ of the Special Court;

“Special Court Agreement, 2002, (Ratification) Act 2002” means the Special Court Agreement, 2002, (Ratification) Act, 2002 (No. 9 of 2002) as amended by the Special Court Agreement, 2002, (Ratification) (Amendment) Act, 2002 (No. 16 of 2002);

“Statute” means the Statute of the Special Court, annexed to the Agreement;

“suspect” means a person referred to as such in Article 14 of the Agreement, in the Statute and in the Rules of Procedure and Evidence;

“United Nations” means the United Nations, as international governmental organization established under the Charter of the United Nations;

“Vienna Convention” means the Vienna Convention on Diplomatic Relations done on 18 April, 1961;

“witness” means a person referred to as such in Article 15 of the Agreement and any person appearing before the Special Court from inside Sierra Leone for the purpose of giving testimony on a summons or a request of the Judges, the Prosecutor or the defence.

PART II—PREMISES OF SPECIAL COURT

Inviolability of the premises of Special Court

2. (1) The premises of Special Court shall be inviolable, as set forth in Article 8(1) of the Agreement.

(2) Subject to paragraph (1), any person authorized to enter any place under any law of the host country shall not exercise that authority with respect to the premises of the Special Court except with the consent of, or at the request of, the Registrar or an official designated by the Registrar.

(3) Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Special Court except with the consent and in accordance with conditions approved by the Registrar.

(4) In case of fire or other emergency requiring prompt protective action, or where the competent authorities have reasonable grounds to believe that such an emergency has occurred or is about to occur on the premises of the Special Court, the consent of the Registrar, or an official designated by the Registrar, to any necessary entry into the premises of the Special Court shall be presumed if neither of them can be reached in time.

(5) This regulation shall not prevent the reasonable application of the protection regulations of the competent authorities

and subject to paragraph (1), the competent authorities shall take necessary measures for fire prevention and for the protection of the premises of the Special Court against any other emergency.

3. (1) The premises of the Special Court shall be under the control and authority of the Special Court, as provided in these Regulations. Law and authority on premises of Special Court.

(2) Except as otherwise provided in these Regulations, the law of the host country shall apply on the premises of the Special Court.

(3) The Special Court shall have the power to make regulations, applicable on its premises, for the purpose of establishing therein the conditions necessary for the full execution of its official functions and any law of the host country that is inconsistent with a regulation of the Special Court shall, to the extent of such inconsistency, be inapplicable within the premises of the Special Court.

(4) The Special Court shall promptly inform the competent authorities of regulations made in accordance with paragraph (3).

(5) Any dispute between the Special Court and the host country as to whether a regulation of the Special Court is authorized by this regulation, or as to whether a law of the host country is inconsistent with any regulation of the Special Court authorized by this regulation, shall be promptly settled by the procedure set forth in regulation 25 and pending such settlement, the regulation of the Special Court shall apply and the law of the host country shall be inapplicable on the premises of the Special Court to the extent that the Special Court claims it to be inconsistent with its regulation.

(6) The Special Court may expel or exclude persons from the premises of the Special Court for violation of its regulations.

4. (1) If so requested by the President or the Registrar, competent authorities shall provide, to the extent possible and in accordance with Article 16 of the Agreement, police services for the Protection of the premises of Special Court and their vicinity.

protection of the premises of the Special Court, the preservation of law and order on the premises of the Special Court or in the immediate vicinity thereof, and for the removal of persons therefrom.

(2) Special Court close protection officers and Special Court security officers designated by the Registrar and who have been issued a regular license, may possess and carry small caliber firearms while on duty in accordance with their orders and the relevant laws of the host country.

PART III—PROPERTY, FUNDS AND ARCHIVES OF SPECIAL COURT

Property, funds and assets of Special Court.

5. (1) The Special Court, its property, funds and assets shall enjoy the immunities set forth in Article 8(2) and 9 of the Agreement.

(2) In particular, the Special Court shall enjoy treatment not less favourable than that accorded by the Government to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

Archives and documents of Special Court.

6. The archives and all documents and materials of the Special Court shall be inviolable, in accordance with Article 8(3) of the Agreement.

PART IV—FINANCIAL MATTERS

Exemption from taxes and duties.

7. (1) Within the scope of its official functions, the Special Court, its assets, income and other property shall be exempt from all direct taxes, which include, but are not limited to, income tax, capital tax and corporation tax, as well as direct taxes levied by local and provincial authorities.

(2) Within the scope of its official functions, the Special Court, its assets and other property shall be exempted from import and export duties and taxes, licence fees, or any other restriction related to the import or export of goods.

(3) Goods acquired or imported under paragraph (2) shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed upon with the National Revenue Authority.

(4) While the Special Court will not generally claim exemption from indirect taxes which constitute part of the cost of goods purchased or services rendered to the Special Court, including rentals, nevertheless when the Special Court makes major purchases of goods or services for its official use, on which such taxes have been charged or are chargeable, the National Revenue Authority shall make adequate administrative arrangements for the remission or refund of such taxes or duties.

(5) This regulation shall not apply to taxes and duties that are considered to be charges for public utility services, provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

8. (1) The Special Court shall have the right to establish, maintain and operate a commissary at its headquarters for the benefit of the international personnel of the Special Court, and the commissary may provide goods of consumable nature and other articles to be specified in advance, but the Special Court shall take all necessary measures to prevent abuse of such commissary and the sale of such goods to persons other than international personnel of the Special Court and their resale to any person, and shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissary.

(2) Goods that are for resale in the commissary shall be exempted from import duty, taxes, handling costs at the port of entry in the host country or any other restriction.

9. (1) The Special Court shall be entitled to generate electricity for its use and to transmit and distribute such electricity within its premises and at the request of the Registrar, or an official designated by the Registrar, any license required pursuant to Part III of the National Power Authority Act, 1982, shall be granted free of charge, without undue delay and subject to regulation 4 (2).

(2) Pursuant to regulation 24, the vehicles of the Special Court shall not be subject to paragraph (2) of further registration or licensing by the host country, provided that all such vehicles shall carry the third party insurance required by the relevant laws of the host country.

#### PART V—FACILITIES AND SERVICES

Communi-  
cations  
facilities.

10. (1) The Special Court shall enjoy, for the purposes of its official communications and correspondence, treatment not less favourable than that accorded by the Government to any intergovernmental organisation or diplomatic mission in relation to establishment and operations, priorities, tariffs, charges and taxes on mail, cablegrams, teleprinter, facsimile, telephone and any other modes of communication or correspondence, as well as any applicable rates for information to the press and radio, where such rates are under the control of the Government.

(2) Any official communications or correspondence, including, but not limited to, printed matter, all photographic material, codes, ciphers and electronic data communications, shall be inviolable and immune from censorship and from any other form of interception or interference.

(3) The Special Court shall be entitled to dispatch and receive correspondence and other material or communications by courier or in sealed bags, which shall be subject to the same privileges and immunities as diplomatic couriers and bags and the packages carried by the courier or constituting of the sealed bags must bear visible external marks of their character.

(4) The Special Court shall be entitled, in accordance with the International Telecommunications Convention of 6th November, 1982, to operate radio and other telecommunications equipment on registered frequencies allocated to it by the Government from its premises and between Special Court offices, installations, facilities and means of transport, within and outside the host country, in particular with the Special Court New York Office.

(5) For the fulfillment of its official functions, the Special Court shall be entitled to publish within the host country freely, in any appropriate form and medium and without restrictions.

11. (1) The competent authorities shall secure at the request of the Registrar, or an official designated by the Registrar, on equitable terms, the public services needed by the Special Court including, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets, where such services are under the control of the Government. Public services for premises of the Special Court.

(2) Where electricity, water, gas or other public services referred to in paragraph (1) are made available to the Special Court by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies or other international organizations.

(3) In case of interruption or threatened interruption of the aforementioned public services, the Special Court shall, for the performance of its official functions, be accorded the priority given to essential agencies and organs of the Government.

(4) At the request of the competent authorities, the Registrar, or an official designated by the Registrar, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Special Court under conditions which shall not unreasonably disturb the carrying out of the functions of the Special Court. In particular, underground constructions may be undertaken on the premises of the Special Court only after consultation with the Registrar, or an official designated by the Registrar, and under conditions that do not disturb the carrying out of the functions of the Special Court.

PART VI-PRIVILEGES AND IMMUNITIES

Privileges and immunities of Judges, Prosecutor, Deputy Prosecutor and Registrar.

12. (1) The Judges, the Prosecutor, the Deputy Prosecutor and the Registrar shall enjoy the privileges and immunities set forth in Article 12(1) of the Agreement.

(2) The Judges, the Prosecutor, the Deputy Prosecutor and the Registrar shall continue to enjoy immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity after termination of their employment.

Privileges and immunities of Sierra Leonean and international personnel.

13. (1) Sierra Leonean and international personnel of the Special Court shall enjoy the privileges and immunities set forth in Article 13 of the Agreement.

(2) International personnel shall, in addition thereto, be entitled to re-export free of duties and taxes at the termination of their employment with the Special Court such furniture and effects, including motor vehicles, they imported pursuant to Article 13 (2)(b) of the Agreement.

(3) International personnel shall furthermore have the right to import for personal use, free of customs duty and other levies, motor vehicles and limited quantities of certain articles intended for personal use or consumption, in accordance with the laws of the host country applicable to members of diplomatic missions of comparable ranks accredited to the Government.

Personnel recruited locally and assigned to hourly rates.

14. (1) Personnel recruited by the Special Court locally and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity and such other facilities as may be necessary for the independent exercise of their functions for the Special Court.

(2) Such immunity shall continue to be accorded after termination of employment with the Special Court.

(3) The privileges and immunities are granted to such personnel in the interest of the Court and not for their personal benefit.

The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Registrar.

15. (1) Persons performing missions for the Special Court shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their duties for the Special Court. In particular, they shall be accorded—

Persons performing missions for the Special Court.

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity from legal process shall continue to be accorded after the termination of their mission with the Special Court, and
- (c) inviolability of all official papers and documents in whatever form and materials.

(2) In addition, persons performing missions for the Special Court who are not Sierra Leonean citizens shall be accorded immunity from any immigration restrictions in relation to the performance of their mission.

(3) The privileges and immunities are granted to persons performing missions for the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity referred to in Article 14 of the Agreement in any particular case where it can be waived without prejudice to the purpose for which it is granted, shall lie with the President.

16. (1) The Counsel of a suspect or an accused shall enjoy the privileges and immunities set forth in Article 14 of the Agreement.

Counsel.

(2) Those privileges and immunities shall be without prejudice to such disciplinary rules as may be applicable to the counsel.

(3) The privileges and immunities are granted to counsel in the interest of the Special Court and not for their personal benefit. The right and the duty to waive the immunity referred to in Article 14 of the Agreement in any particular case where it can be waived without prejudice to the purpose for which it is granted, shall be with the President.

Witnesses and experts.

17. (1) Witnesses and experts shall enjoy the privileges and immunities set forth in Article 15 of the Agreement, including the immunity from being detained or subject to any restriction of their liberty by the Sierra Leone authorities.

(2) The immunity provided for in paragraph (1) shall continue to be accorded after their appearance and testimony before the Special Court, subject to the production of the document referred to in paragraph (3). In case of experts called to appear from outside Sierra Leone, such immunity should cease when the witness or expert having had, for a period of fifteen consecutive days from the date when their presence is no longer required by the Special Court, an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned, unless such return is on another summons or request of the Special Court.

(3) The Government shall recognize as valid the document issued by the Registrar, or an official designated by the Registrar, to witnesses and experts who enjoy the privileges and immunities referred to in paragraph (1), certifying that their appearance is required by the Special Court and specifying a time period during which such appearance is necessary.

(4) Where the Registrar deems it is in the interest of a witness or of the Special Court to have a person accompanying a witness, such person shall be accorded the privileges and immunities necessary for the performance of his or her function.

(5) The Government shall recognize as valid the document issued by the Registrar, or an official designated by the Registrar, to persons referred to in paragraph (4), certifying that they are

accompanying a witness and specifying a time period during which such accompaniment is necessary.

(6) The privileges and immunities are granted to witnesses and experts in the interest of the Special Court and not for their personal benefit. The right and the duty to waive the immunity referred to in this article in any particular case where it can be waived without prejudice to the purpose for which it is granted, shall lie with the President.

18. (1) In accordance with Article 8 of the Statute, the host country shall not exercise its criminal jurisdiction over persons present in its territory, who are to be or have been transferred as a suspect or an accused to the custody of the Special Court pursuant to a request or order of the Special Court, in respect of acts, omissions or convictions prior to their transfer to the custody of the Special Court. The suspect or accused.

(2) The immunity from jurisdiction provided for in paragraph (1) shall cease when the person has been acquitted, served his or her sentence, or has otherwise been finally released by the Special Court.

(3) In the case of suspects or accused coming from outside Sierra Leone, the immunity from jurisdiction provided for in paragraph (1) shall cease when the person, has been acquitted, served his sentence, or has otherwise been finally released by the Special Court and having had, for a period of fifteen consecutive days from the date of their release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned.

19. (1) All persons referred to in regulations 12 to 17, notified as such by the Registrar to the Government pursuant to paragraph (1) of regulation 22, shall have the right of unimpeded entry into, exit from, and movement within, the host country, as appropriate and for the official purposes of the Special Court and the competent authorities, wherever located, shall grant them a valid entry visa free of charge and without undue delay. Entry into, exit from and movement within host country.

(2) The same facilities referred to in paragraph (2) shall be accorded to persons accompanying witnesses who have been notified as such by the Registrar to the Government pursuant to regulation 17 (5).

(3) Upon the arrival of persons referred to in paragraph (1) in the host country, the competent authorities shall, at the request of the Registrar or an official designated by the Registrar, grant such persons exemption from registering under the Non-Citizens (Registration, Immigration and Expulsion) Act, 1966, valid for one year or for a duration of their contract with the Special Court, whichever is less, free of charge and without undue delay.

(4) For a limited number of personnel designated by the Registrar and whose names and categories have been notified to the Government, and in accordance with the relevant laws of the host country, or any international convention to which the host country is a party, relating to civil aviation, the Special Court's identity card shall be accepted as a valid runway pass at the Sierra Leone Lungi Airport.

(5) Nothing in this Article shall prevent the competent authorities from requiring that persons claiming the rights granted by this regulation comply with any relevant health and quarantine regulations.

Additional provision on privileges and immunities.

20. Should the Government consider that there has been an abuse of a privilege or immunity conferred by the Act, the Registrar shall, upon request, consult with the appropriate competent authorities to determine whether any such abuse has occurred, and if so, to attempt to ensure that no repetition occurs. If such consultation fails to achieve a result satisfactory to the Government and to the Special Court, either Party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions of settlement of disputes under regulation 25.

## PART VII—COOPERATION, NOTIFICATION AND IDENTIFICATION

21. (1) Without prejudice to Articles 12 to 15 of the Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws of the host country and not interfere in the internal affairs of the host country. Cooperation with the competent authorities.

(2) The Special Court shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of the laws of the host country and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded pursuant to the Agreement and referred to in these Regulations.

(3) The Special Court shall observe all security directives as agreed with the host country or as issued by the competent authorities responsible for security conditions within any prison of the host country where the Special Court detention area is located, as well as all directives of the competent authorities responsible for fire prevention regulations.

22. (1) The Registrar shall notify the Government of the names and categories of all persons referred to in these Regulations, in particular Sierra Leonean and international personnel, persons performing missions for the Special Court, counsel admitted as such by the Special Court, witnesses and experts called to appear before the Special Court and of any change in their status. Notification.

(2) The Registrar shall notify the Government of the names and identity of all personnel of the Special Court who are entitled to carry firearms on the premises of the Special Court, as well as the name, type, caliber and serial number of every firearm at his disposal.

(3) The information notified to the Government pursuant to paragraphs (1) and (2) shall be in writing and directed to the Attorney-General and Minister of Justice, and shall be updated on a regular basis, at least each time there is new or altered information.

(4) The Government undertakes to keep confidential any information received pursuant to paragraph (1) or (2), except insofar as its disclosure to the competent authorities is necessary for the purpose for which the notification is given.

Identification documents. 23. (1) The competent authorities shall recognize and accept the identification documents, including where appropriate, the Special Court identity card, issued to persons referred to in these Regulations as a valid certification of their status pursuant to the Agreement and these Regulations.

Flag, emblem and markings. 24. (1) The Special Court shall be entitled to display its flag, emblem and markings at its premises, and to display its flag on vehicles used for official purposes.

(2) The vehicles of the Special Court shall be entitled to “diplomatic corps” plates, and the corresponding status.

#### PART VIII—MISCELLANEOUS

Settlement of disputes. 25. (1) The Special Court shall make provision for appropriate modes of settlement of—

- (a) disputes arising out of contracts and other disputes of a private law character to which the Special Court is a party;
- (b) disputes involving an official of the Special Court who, by reason of his official position, enjoys immunity, if such immunity has not been waived.

(2) Any dispute between the Parties concerning the interpretation or application of these Regulations or the regulations of the Special Court, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitration tribunal, composed of three members. Each Party shall appoint one

arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their Chair. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

(3) The Parties shall conclude an agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period of two months from the date on which arbitration was requested, the dispute may be brought before the arbitration tribunal upon application of either Party.

(4) Unless the Parties otherwise agree, the arbitration tribunal shall determine its own procedure. The arbitration tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. The decision shall be final and binding on the Parties to the dispute, even if rendered in default of one of the Parties to the dispute.

MADE this 27th day of February, 2004.

EKE AHMED HALLOWAY,  
*Attorney-General and Minister of Justice.*