

**Cour
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**International
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Court**

**Memorandum of Understanding regarding Administrative
Arrangements between the International Criminal Court
and the Special Court for Sierra Leone**

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Whereas 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 established the Special Court for Sierra Leone to investigate and prosecute ‘those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996’;

Whereas the Special Court for Sierra Leone was established as an independent institution;

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries (the “Rome Statute”) established the International Criminal Court with the power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas the preamble to the Rome Statute affirms the importance of international cooperation in respect of the prosecution of the most serious crimes of concern to the international community and resolves to guarantee the enforcement of international justice;

Whereas the Special Court for Sierra Leone and the International Criminal Court, while respecting each other’s independence, are determined to cooperate to put an end to impunity for perpetrators of serious crimes and to contribute to the prevention of such crimes;

Whereas Article 10 of the Agreement for the establishment of the Special Court for Sierra Leone provides that “the Special Court shall have its seat in Sierra Leone”;

Whereas Article 3 of the Rome Statute provides that the seat of the International Criminal Court shall be in The Hague, Netherlands;

Whereas under Rule 4 of the Rules of Procedure and Evidence of the Special Court, the President of the Special Court is empowered to authorise a Trial Chamber to exercise its functions away from the seat of the Special Court;

Whereas the President of the Special Court for Sierra Leone intends to authorise the conduct of the trial, and any proceedings related to the trial, of Charles Taylor (the “Trial”) at a venue outside of Sierra Leone on the basis of Rule 4 of the Rules of Procedure and Evidence of the SC, and has approached the International Criminal Court to provide temporary assistance with regard to the provision of courtroom and detention services and facilities and support for the conduct of the Trial;

Whereas the International Criminal Court has agreed to provide the above mentioned services, facilities and support to the Special Court for Sierra Leone in accordance with the terms and conditions set out in this Memorandum of Understanding (“MOU”);

Now therefore, the International Criminal Court (“ICC”) and the Special Court for Sierra Leone (“Special Court”) have agreed as follows:

Article 1

Purpose

1. This MOU sets out the terms and conditions on which the ICC shall provide services, facilities and support to the Special Court for the conduct of the Trial and related activities.

Article 2

Principles

- 2.1 The ICC and the Special Court each recognize the other's responsibilities and respect the other's status and mandate.
- 2.2 Notwithstanding the undertakings set out in this MOU, the ICC shall provide to the Special Court the services, facilities and support to the extent that such provision shall not impair or adversely affect the functioning of the ICC.
- 2.3 Should any conflict arise between the interests of the ICC and of the Special Court relating to the provision of the services, facilities and support that cannot be resolved by the procedure set out in Article 17 of this MOU, the interests of the ICC shall take priority.
- 2.4 The provision of the services, facilities and support shall not impinge on the legal or juridical independence of either the ICC or the Special Court, which shall both at all times continue to have the legal status of independent entities.

Article 3

Financial Arrangements

- 3.1 All services, facilities and support provided to the Special Court by the ICC under this MOU shall be provided on the basis of advance payment in full. No financial obligation shall be incurred by the ICC, and no services, facilities and support shall be provided to the Special Court, unless there are sufficient funds to meet the costs thereof.
- 3.2 The Special Court undertakes to deposit with the ICC sufficient funds in advance in order to meet all expected charges and costs for the provision of services, facilities and support under this MOU. The Registrar of the ICC shall establish a Trust Fund ("Trust Fund") in which the Special Court shall deposit in advance such funds.
- 3.3 The Special Court shall pay the ICC in full for and in respect of all clearly identifiable direct and indirect costs that the ICC may incur as a result of or in connection with providing agreed services, facilities and support under this MOU. Such costs shall include a component for any depreciation in the value of ICC owned equipment or property that may be used in the course of providing such services, facilities and support.
- 3.4 The Special Court shall not be required to reimburse the ICC for or in respect of costs that ICC would have incurred regardless of whether or not services, facilities and support were requested by or provided to the Special Court.

Article 4

Temporary Character of the MOU

4. The ICC and the Special Court acknowledge and agree that the services, facilities and support under this MOU are provided on a temporary basis. The provision of the services, facilities and support will therefore not exceed the period of 30 Months, unless otherwise agreed in writing.

Article 5

Courtroom Services and Facilities

- 5.1 With the prior written consent of the Kingdom of the Netherlands, the ICC shall provide the Special Court with courtroom usage time, including court reporting and audio visual recording services, satellite video link capability, safe keeping of evidence and use of vaults for the duration of the trial. The ICC and the Special Court shall consult on the provision of other courtroom related services and facilities.
- 5.2 The Special Court shall, through appropriate means such as markings, logos and flags clearly identify documents, materials and court proceedings as those of the Special Court.
- 5.3 The Special Court shall remain responsible for carrying out all functions and duties related to the conduct of the trial and the ICC assumes no responsibility for the fulfillment of such functions and duties.
- 5.4 The Director of the Court Management Services of the ICC and the Chief of the Court Management Section of the Special Court shall as soon as possible consult on the details of the services, facilities and support, such as usage time and equipment and put in place necessary arrangements for making such services and facilities available.

Article 6

Detention Services and Facilities

- 6.1 With the prior written consent of the Kingdom of the Netherlands, the ICC shall provide to the Special Court detention services and facilities to be used for the custody of persons detained by the Special Court in relation to the Trial (the "Detainee"). The relevant regulations and agreements concluded by the ICC setting out the operational framework of the ICC Detention Centre including but not limited to the Regulations of the ICC and of the Registry of the ICC shall apply mutatis mutandis to the Special Court Detainee.
- 6.2 The Registrar of the ICC shall have overall responsibility for all aspects of management of the ICC Detention Centre including security and order and shall make decisions relating thereto and for any determination regarding the application of the rules, regulations and standards and the agreements referred to in Article 6.1.
- 6.3 The Special Court shall be responsible for the transport of the Detainee to the territory of the Kingdom of the Netherlands and for obtaining the necessary consent thereto from the Government of the Kingdom of the Netherlands.
- 6.4 The Special Court shall retain full legal control and authority over the Detainee and shall assume full legal responsibility for the custody of the Detainee. In particular, the Special Court shall remain fully responsible for all aspects arising out of the provision of the day to day detention services and facilities under this Article including the well-being of the Detainee.
- 6.5 Subject to the provisions of Article 16.2 of this MOU, any direction or determination, including in disciplinary matters, relating to the Detainee by the staff of the ICC Detention Centre, including the Chief Custody Officer, under this part shall be construed as having been done under the authority vested in the staff of the Special Court's Detention Facilities and shall be binding on the Detainee.

- 6.6 Notwithstanding the provisions of Article 6.1 above, the provisions of Article 59 (b) and (c) of the Detention Rules of the Special Court shall apply to any appeal by the Detainee against a decision of the Chief Custody Officer of the ICC.
- 6.7 The ICC and the Special Court shall consult and coordinate with each other and with the relevant authorities of the Kingdom of the Netherlands regarding the custody of the Detainee and to facilitate the transportation of the Detainee by the relevant authorities of the Kingdom of the Netherlands from the ICC Detention Centre to the ICC headquarters for hearings. The ICC assumes no responsibility for the provision of such transportation.
- 6.8 Upon completion of the Trial, or upon release from custody, the Special Court shall assume full responsibility for the departure of the Detainee from the ICC Detention Centre.
- 6.9 Notwithstanding the provisions of Article 15 of this MOU, in the case of any claims by the Detainee or any third parties for acts or omissions arising from the provision of services, facilities and support under this Article, the Special Court shall be responsible for such claims and shall indemnify, hold and save harmless, and defend at the Special Court's own expense, the ICC, its officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind including their costs and expenses.
- 6.10 The conditions and procedures governing the provision of Detention Service and Facilities shall be further particularized by way of an exchange of letters between the parties.

Article 7

Safety and Security at Premises

- 7.1 The Registrar of the ICC shall have overall responsibility for all aspects of management, safety and security of the Detainee at the premises of the Court at 174 Maanweg, The Hague ("Premises").
- 7.2 The ICC shall provide facilities for the detention of the Detainee during the daytime at the Premises whenever that Detainee's attendance is required at the Premises for hearings before the Special Court. The ICC's security policies, protocols and practices shall apply mutatis mutandis to the handling of the Special Court Detainee at the Premises.
- 7.3 Subject to the provisions of Article 16.2 of this MOU, the handling of the Detainee by the ICC security staff under this part shall be construed as having being done under the authority vested in the security staff of the Special Court for Sierra Leone.

Article 8

Administrative and Logistical Services

8. At the request of the Special Court, the ICC shall provide administrative and logistical services to the Special Court, including:
- (a) access to ICC information technology facilities, subject to compliance with ICC information technology protocols, policies and rules, in particular with respect to use of external applications and the installation of software;
 - (b) access to ICC external telecommunication facilities on the understanding that the Special Court purchases compatible equipment for the purpose;
 - (c) storage for items of Special Court owned equipment or property on a space available basis, it being understood that risk and damage to, or destruction or loss of, such

equipment or property during its storage by ICC shall lie with the Special Court while also being understood that the ICC shall take all reasonable care in the storage of such equipment and property. The Special Court hereby agrees to release the ICC, including its officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property.

- (d) assistance to officials and staff of the Special Court with formalities for registration of persons with the Ministry of Foreign Affairs;
- (e) access to and utilization of ICC physical legal and other electronic library media.

Article 9

Related Support

- 9.1 At the request of the Special Court the ICC shall, upon presentation of a valid form of identification, issue officials and staff of the Special Court identity cards granting them access to ICC premises for the duration of the conduct of the trial. The Special Court shall make such requests in writing at least five (5) working days in advance of the arrival of the official or staff member at the headquarters of the ICC. The ICC reserves the right to conduct a background security screening of any Special Court staff requesting access to the ICC premises and to refuse, withdraw or restrict access on the basis of such screening.
- 9.2 At the request of the Special Court, the ICC shall provide financial services support to the Special Court, including the settlement of invoices or provision of travel advances for officials and staff of the Special Court using the monies deposited in the Trust Fund.
- 9.3 At the request of the Special Court, the ICC shall provide support for the procurement of goods and services including use of ICC procurement procedures, systems and contracts.
- 9.4 At the request of the Special Court, the ICC shall provide assistance with making travel arrangements for officials and staff of the Special Court and all persons required to attend the Trial referred to in Article 11 of this MOU.

Article 10

Public Information

- 10. The ICC and the Special Court shall, as appropriate, coordinate their public information, outreach and sensitization work in order to ensure effective management of local and international media interests and explain the respective independent but complementary roles of the two institutions.

Article 11

Witnesses

- 11. The ICC and the Special Court shall, as appropriate, consult and cooperate on matters relating to the facilitation of presence in the Kingdom of the Netherlands of all persons who are required to attend the Trial in accordance with the Statute and Rules of Procedure and Evidence of the Special Court.

Article 12

Additional Staffing

- 12.1 Should the ICC in its discretion and after consultations with the Special Court determine that the provision of administrative services and related support or the provision of services, facilities and support requested by the Special Court are beyond the staffing capabilities of the ICC, the ICC shall nevertheless endeavour to provide such services upon the provision

by the Special Court to the ICC of funds needed by the ICC to recruit and pay staff to carry out such additional services, facilities and support and subsequent to the recruitment of such staff.

Article 13

Loan and Sale of Additional Items of ICC Owned Property and Equipment

- 13.1 At the request of the Special Court, the ICC shall temporarily loan to the Special Court available items of ICC equipment and moveable property on the basis of payment for the depreciation incurred. Such items shall be in addition to those used in the provision of the other services, facilities and support provided for under this MOU. The regular maintenance of ICC property and equipment temporarily loaned to the Special Court shall be carried out by the ICC and shall be included in the loan costs charged to the Special Court.
- 13.2 At the request of the Special Court, the ICC shall sell to the Special Court available equipment and property and supplies of the ICC at the current depreciated market value of the available item including shipping and related costs.

Article 14

Confidentiality

- 14.1 Information exchanged between the Special Court and the ICC relating to provision of services, facilities and support under this MOU shall be treated as confidential. Such information, whether in writing or in any other form, shall not be communicated at any time to any third party or authority except as agreed upon by both parties. This obligation shall not lapse upon the termination or expiration of this MOU.
- 14.2 Notwithstanding the provisions of Article 14.1, each party shall be authorized to make available its relevant records and information regarding this MOU and the operation thereof to its own Internal and External Auditors.

Article 15

Indemnities

- 15.1 The ICC shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless and defend the Special Court, its officials, agents, servants and employees from and against, all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys' fees, settlement payments, damages and all other related costs and expenses ("the Liability") brought by the ICC's officials, agents, servants or employees, based on, arising out of, related to, or in connection with implementation of this MOU, unless the Liability results from the gross negligence or willful misconduct of the Special Court or the Special Court's officials, agents, servants or employees.
- 15.2 The Special Court shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless and defend the ICC, its officials, agents, servants and employees from and against any Liability based on, arising out of, related to, or in connection with implementation of this MOU, unless the Liability results from the gross negligence or willful misconduct of the ICC's officials, agents or employees.

Article 16

Channel of Communication

- 16.1 The Special Court and the ICC shall each appoint an official who shall be responsible for liaising with the other party with respect to the implementation of this MOU and orders

made in respect of the Detainee. The official appointed in this capacity by the ICC shall be responsible, in consultation with the official appointed by the Special Court, for facilitating the provision of the services facilities and support under this MOU. The parties will communicate to each other the respective names of the designated officials.

- 16.2 The staff of the Detention Centre of the ICC and the Security Staff of the ICC shall take their instructions only from the Registrar of the ICC and his authorized representatives.

Article 17

Consultations

- 17.1 The Parties shall consult with each other at the request of either one of them on any difficulties, problems or matters of concern that may arise in the course of the application and implementation of this MOU.
- 17.2 Any differences between the Special Court and the ICC arising out of or in connection with the implementation of this MOU shall be settled, in good faith, by consultations between the Registrars of the Special Court and the ICC. If such differences are not settled by such consultations, they shall be referred to the Presidents of the Special Court and ICC. The principles set out in Article 2 of this MOU shall guide such consultations.

Article 18

Costs and Payments

- 18.1 The Special Court shall pay to the ICC the costs of the services, facilities and support provided pursuant to this MOU.
- 18.2 Payable costs of the services, facilities and support, including courtroom and detention services and facilities are set out in the annex to this MOU ("Annex"). Notwithstanding the provisions of Article 19.3 of this MOU, the ICC may revise the Annex at any time, with immediate effect. Such revision should reflect any change in the actual cost to the ICC of the service provided, any change to the basis of the calculation of the cost to the ICC or the cost of any additional service provided at the request of the Special Court.
- 18.3 The payable costs of any Service, Facilities and Support not set out in the Annex shall be calculated in accordance with Article 3 of this MOU.


Article 19

Final Clauses

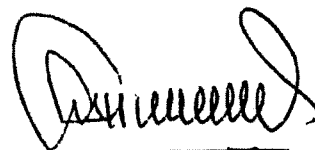
- 19.1 The ICC and the Special Court shall regularly consult about the implementation of this MOU and, where necessary, shall enter into supplementary administrative arrangements for such implementation.
- 19.2 This MOU shall come into effect immediately upon its signature by both parties. It shall remain in force for a period of 30 months from that date.
- 19.3 This MOU may be amended only by mutual written consent of the parties. Any amendment shall enter into force on the day both parties have notified each other in writing of their agreement to the amendment.
- 19.4 This MOU may be terminated by either party with one month's written notice. Notice of termination shall not be given without compliance with Article 17 of this MOU. Termination shall not affect any outstanding obligations or the duty of confidentiality set out in Article 14.

In witness thereof, the undersigned have signed the present MOU.

Signed this thirteenth day of April 2006 in two copies.

A handwritten signature in black ink, consisting of a large, stylized initial 'V' followed by a cursive name, all written above a horizontal line.

For the ICC

A handwritten signature in black ink, featuring a large, stylized initial 'D' followed by a cursive name, all written above a horizontal line.

For the Special Court

ANNEX

SCHEDULE OF COSTS

[to be completed]