An Administrative Practices Manual

for Internationally Assisted Criminal Justice Institutions

Robin Vincent

international center for TRANSITIONAL JUSTICE

AN ADMINISTRATIVE PRACTICES MANUAL
FOR INTERNATIONALLY ASSISTED CRIMINAL JUSTICE INSTITUTIONS

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JOINT FOREWORDS

It is with the greatest of pleasure and no small measure of personal relief that, after some years of persuading myself and others of the need for a manual of this nature, I find myself providing this foreword. I am extremely grateful to the International Center for Transitional Justice for supporting the production of this manual and for their faith and confidence in me to undertake what has been a fascinating and challenging task. Inevitably, this manual may serve only as a basis upon which future experience will build as such newly created internationally assisted criminal justice institutions are required to stand alongside the International Criminal Court. My sincere hope is that administrators at all levels in such institutions will find something in this manual that assists them in an important area of work that can be both challenging and often under-estimated.

Robin Vincent

The International Center for Transitional Justice has been extremely fortunate to oversee and support the production of this landmark manual. With decades of experience in both national, international and hybrid courts, Robin Vincent has a well-earned reputation for excellent and practical management of such institutions. His accessible and hands-on approach has been captured here in what I believe is an invaluable guide to best practice in the administrative aspects of these important institutions. Although much of what this manual addresses remains out of public view, it is the bedrock upon which the judicial work rests and underpins the success and efficiency of internationally assisted courts. Too often the overwhelming task of establishing a new tribunal has led to reinventions of the wheel that detract from the importance and time-pressures of the task at hand. By drawing upon the various experiences and lessons learned from existing courts, I am quite sure that this manual will become an essential resource for those involved in future efforts.

Juan E. Mendez
ICTJ President

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ABOUT THE AUTHOR

Mr. Vincent, who in 2008 became Registrar of the Special Tribunal for Lebanon, has worked as a consultant on criminal and transitional justice issues for both the United Nations and the ICTJ. His work in the field of international criminal justice has included: serving temporarily as deputy registrar at the International Criminal Tribunal for the Former Yugoslavia, advising on the establishment of the Extraordinary Chambers in the Courts of Cambodia, providing advice to the US Regime Crimes Liaison Office on the functioning of the Iraqi High Tribunal, and advising the International Criminal Tribunal for Rwanda on issues of operational efficiency. In 2002, Mr Vincent was appointed registrar of the Special Court for Sierra Leone, where he was responsible for all aspects of the court's administration from its establishment until his departure in 2005. Between 2000 and 2002, Mr Vincent provided training in court administration for the Russian Judicial Department in Moscow and southern Russia on behalf of the British Council and the UK Department for International Development and was Project Manager for the United Kingdom's bid for a European Twinning Project in Slovakia.

Mr. Vincent began his career as a court administrator in the United Kingdom, in the Worcester County and Crown Courts, Worcester County Magistrate's Court and in the Crown Court at Manchester. He later worked in the Lord Chancellor's Department Headquarters as Head of the Court Service Development, Personnel and Judicial Appointments Divisions, respectively. Later, Mr. Vincent served as a member of the Court Service Board for England and Wales in his capacity as Regional Director for the North West of England.

HM Queen Elizabeth II invested Mr. Vincent as a Commander of the British Empire and a Companion of the Most Distinguished Order of St Michael and St George in 2001 and 2006, respectively. He has also received an honorary degree for services to national and international justice by the University of Worcester and is an honorary member of the Northern Circuit Bar.

ABOUT THE ICTJ

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and non-judicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localised approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through non-judicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organisations and experts around the world to do so. By working in the field through local languages, the ICTJ provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organisations, governments and others.

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I. INTRODUCTION

The principal purpose of this administrative practices manual is to offer a template in the form of a reference manual for future use by those given the responsibility for setting up and operating an internationally-assisted criminal justice institution from an administrative perspective. It is very much intended to provide a sound, practical basis for developing an institution in its early days.

Second, and in so doing, it has drawn on a number of the relevant practices currently in place in existing internationally-assisted criminal justice institutions, ranging from the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR respectively) to the International Criminal Court (ICC). Inevitably, a significant element of personal experience of the Special Court for Sierra Leone (SCSL) is included. It is, however, impossible to capture each and every one of those practices, many of which have evolved over a number of years in response to changing needs and circumstances.

The potential scope for a manual that attempts to address all aspects of administrative practice in such institutions is immense and, to an extent, an almost impossible task if the manual is to serve as a user-friendly, manageable and easily accessible point of reference. While every attempt has been made to include reference to those activities that support the daily operations in criminal tribunals or courts, the overall intention is to provide an overview of the key functions and, where possible, to include a description of so-called best practices.

In particular, it should be noted that no 'one size fits all' approach has been adopted, not least because existing institutions operate in entirely different circumstances—for example, being located inside or outside the country where the conflict took place, and being funded and supported in different ways.

Where there is a recommendation that a particular approach be adopted, the intention is not to be critical of those other approaches in operation, especially where deviation from a United Nations practice is recommended. The purpose is rather to highlight the importance of flexibility and innovation where circumstances demand and, in particular, the importance of vesting senior administrators with discretionary authority.

Finally, while the main emphasis of this manual is on administrative practices, it includes mention and comment on areas of responsibility, which—whilst not administrative in nature—either overlap with administrative functions or are significantly dependent upon administrative support or exercise supervisory control over administrative activities. For example, a judicial function might be responsible for either authorising or overseeing selected administrative functions.

II. PLANNING MISSIONS

A. General Commentary

Most international criminal tribunals are preceded by planning missions. Whether arranged under the auspices of the UN (which is usual) or not, the planning and preparation of such missions is crucial as they inevitably provide a framework for establishing the institution. While there are a number of wider issues to be considered, including the necessary legal instruments and political accords, a planning mission should also focus on the logistical and administrative challenges presented.

The life of planning missions is usually short, often no longer than two weeks. It is important that the time available be used effectively, and many practical arrangements should be made in advance, such as a schedule of meetings and site visits. Because of the nature and variety of the issues to be addressed during the mission, it is also important that its composition is carefully considered to reflect all the areas of expertise required.

All those involved should be sufficiently senior and experienced to feel comfortable about acting on their own initiative when meeting with a range of government or international agency officials, especially as it is likely that mission members will have to operate either bilaterally or in groups to make the best use of the time. The mission team should, therefore, possess good leadership.

In addition to a pre-mission briefing that clarifies the objectives of the mission, regular briefing and debriefing—before and after meetings or other events—should take place each day with all members present.

B. Composition

While the issues to be considered during a planning mission will vary there will be a number of core issues to be addressed and on which the composition of the team should reflect. With that in mind, consideration should be given to the following format:

- Team leader: senior legal officer (from UN Office of Legal Affairs).
- Members: senior diplomats (with a selective representation of states contributing to the institution's funding, and possibly a senior diplomat representing any state that is a co-signatory to an agreement establishing an institution).
- Experienced advisers in the following areas:
  - Court administration
  - Security
  - Building management
  - Media/communications
  - Outreach

There are arguments for also including advisers in the areas of witness protection, finance, personnel, and so forth. But it is important that the mission does not become too unwieldy; only those areas that are key to the *initial* establishment of the institution should be covered. However, because it is important that the issue of legacy be considered from the outset, every effort should be made to include an experienced legal professional to make an assessment of the national judicial and legal capacity.[1] Other preliminary legal issues may include contact with national authorities on possible headquarters agreements and other memoranda of understanding. One of the mission members could be selected to fill this role.

None of this prevents the advisers on court administration from playing a role in any of the other areas, especially when assessing the existing or potential scope of national or international infrastructures that the institution could use. Some planning missions have included a prosecutor to assess the investigative work required to identify and prosecute those alleged to be responsible for the crimes. Additionally, while there is usually no finance or budget officer on the mission team, the budget should be recognised as an important issue to be addressed—whether by way of confirming any preliminary budget already in place, or using the mission to contribute to the construction of a budget. This is an issue for which it is suggested that the senior administrator present should be responsible.

It could be argued that one of the main objectives of the planning mission—apart from making preliminary assessments on prosecutions and discussions or negotiations on the necessary legal instruments—is to make an assessment of the administrative viability of establishing the new institution in the location concerned, and producing preliminary operational plans.

Finally, it is important that the mission team has a specific national liaison person identified from within the government of the potential host country with whom to ensure effective coordination.

C. Factors to be Considered

While the factors to be considered during the planning mission will vary according to the circumstances, it is suggested that the following matters be addressed:

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[1] The issue of legacy is addressed in further detail in Chapter X below.

- The security situation, including the location of the proposed site of the institution, living accommodation options for institution staff and local and international travelling arrangements.
- The capacity of the host government's military and civil policing capabilities; infrastructure in terms of providing local utilities such as effective electricity and water supplies, refuse collection, medical facilities including hospitals and, more generally, the presence of those government ministries which may be required to facilitate the institution's operations (such as foreign affairs, customs and excise, justice, interior, and works).
- The presence of international and national banking and postal/courier facilities.
- The availability of both a professional and non-professional labour market: for example, lawyers, court administration staff, accountants, technicians, trades people, security staff, drivers, and so forth.
- The commercial/private sector infrastructure in terms of the availability of construction, telecommunications, information technology, media, and transport services.
- The availability of educational facilities, such as schools, colleges and universities of a reasonable standing (should the institution's staff members be allowed to bring families).
- The presence of any established international organisations and their capacity and willingness to assist the new institution in some or all areas important to its establishment and support, whether or not on a cost-reimbursement basis.
- The presence and organisational capacity of civil society, non-governmental organisations (NGOs), both national and international, and human rights groups.
- The presence or otherwise of an effective road and rail network.
- The presence of public service broadcasting services.
- The presence of any environmental factors that may contribute to making the institution's international recruitment requirements difficult, such as extreme heat or cold or intemperate weather conditions generally, or the presence of indigenous health risks or diseases such as malaria, dengue, yellow fever, and so on.[2]

[2] WHO assessments may also be of use prior to the mission on these issues.

D. Check List of Key Players to See

As recommended above, scheduling meetings with key players in the location of the proposed new institution should be arranged as early as possible. Those meetings should, broadly, look to address the factors outlined above. The following organisations and agencies should be included in any scheduling of meetings, depending upon their presence:

- Host government
- Relevant ministries (i.e. foreign affairs, justice and interior)
- The United Nations and associated agencies (UNDP, UNICEF, UNHCR and so on)
- Peace-keeping/peace-building missions
- Major international diplomatic presences in the form of embassies or high commissions
- International development agencies
- Relevant NGOs (international and national)
- National bar association
- National media outlets, including radio and television and press.

E. Mission Report

It is vital that the planning mission attempt to formulate a preliminary opinion on the viability of setting up the new institution, and produce a 'start-up plan' addressing as many of the relevant administrative issues as possible.

When an institution is associated with the UN, a formal report to the Security Council (through the Secretary General) may be required. In any other situation a planning mission will, inevitably, be expected to make a formal report to whoever is supporting the creation of the new institution. A crucial part of any such report will be an assessment of the likely timescale involved in setting up the institution. It is important that any such an assessment be realistic, and takes all the prevailing circumstances fully into account. In particular, it should not be dependent on promises of assistance by outside institutions that may or may not materialise.

Where any such offers are made, or where the potential for offers is identified in the course of the mission, they must be followed up with agreements or memorandums of understanding as soon as is practically possible. These can then be highlighted in the mission report.

It is extremely useful to make a video record of selected parts of the mission's visit, in order to provide a background to the mission's activities and for use with potential

donors. While this initiative cannot be regarded, in itself, as a formal requirement of the reporting process, it may subsequently prove invaluable to the institution concerned.

What will need to be discussed in more detail elsewhere is the reporting process that is a fundamental part of the internal and external audit function. Institutions will need to be audited from a financial and systems management angle, as well as assessed on their progress towards a completion strategy. While it is likely that the internal audit function will be provided by the United Nations, the issue of external auditors will be a matter for either the United Nations or other oversight body, such as a management committee.

III. THE REGISTRY AND THE REGISTRAR

A. General Commentary

Given its responsibility for the wide range of administrative functions, especially in the areas of personnel and finance, the registry should be seen as the ‘engine room’ of any criminal justice institution. Whether the term ‘registry’ is retained or not in future institutions (it can be misleading to those from a background in a common law jurisdiction), the nature of its business is almost entirely administrative. It could perhaps be better described as either the ‘court administration’ and the registrar's post entitled the ‘court administrator’. It should, however, be noted that the administration and management of a court is a highly specialised function, which will differ in key respects from the administration of other public institutions.

While there have been and will be occasions where there is international involvement in strengthening and supporting the operation of a national court, even within a national system, there is still a need to consider the benefits of creating an independent registry outside any national court administration system in order to support the international contribution.

The fact that, until in recent years, registrars appointed to the existing tribunals or courts have almost invariably been lawyers may spring from the origins of the post and its development. While there will be past and present registrars who will fundamentally disagree with this view, there is no good reason why anyone appointed to the post of registrar should be required or expected to be a lawyer. That is provided that any non-lawyer appointed has access, within his or her administrative structure, to independent legal advice and support. Indeed, this is also the practice where the registrar and deputy registrar *are* lawyers.

Given the nature of a registrar’s responsibilities in an array of matters, especially in the areas of court management, finance, personnel, procurement, security, and press and public affairs—it is in fact more crucial to have an experienced administrator, preferably with experience of running a criminal tribunal or court. If an institution is fortunate enough to be able to appoint a lawyer with that experience, legal experience can be a bonus. But as can be expected, it can be counter-productive to appoint someone who lacks administrative experience to a post that is largely administrative.

Appointment procedures are essential to finding the right candidates, and it may be necessary to conduct a robust review of existing UN procedures, to ensure that the application and appointment process results in the nomination and consideration of the best qualified and experienced candidates.

In the chapter addressing the appointment of judges (chapter VI), it is suggested that an international appointments commission be created to deal with the appointment of senior posts in any newly created institution (for instance, prosecutor, principal defender and registrar). The commission need not have permanent membership, but it

should be supported by the UN's Office of Legal Affairs and include the legal counsel to the secretary-general as chairperson. Ad hoc appointment panels drawn from a roster of experienced judges, prosecutors, defenders, and registrars should assess all applications, construct short lists and hold interviews. This should be followed by recommendations to the Secretary General and, in the case of hybrid institutions, in consultation with the government concerned.

Every attempt should be made to construct a standard job description for the post of registrar. While each situation will depend upon its circumstances, there is a significant commonality in the core responsibilities of the post. With that in mind, a proposed job description is annexed to this manual. While the question of the supervision or line management of the registrar's performance is addressed later in this chapter, in conjunction with the construction of a job description, thought should be given to mechanisms to assess the performance of registrars.

B. The Role and Responsibilities of a Registrar

The registrar has a key role to play in the overall success of any institution. It is suggested that an ineffective and inefficient registrar or administrator can result in significant damage to an institution's development and overall operation. However, it must be made clear that no institution can operate successfully unless all the 'organs/pillars' of that institution work in a cooperative and coordinated manner.

In addition to his or her prime function as a senior administrator, the registrar has a crucial role to play as coordinator, mediator, facilitator, and communicator across the institution. Given that many of the areas considered the 'life blood' of any institution—such as personnel, finance and logistical support—are the responsibilities of the registrar, his or her role in providing a solid platform on which the other actors can build should not be underestimated.

As a coordinator, the registrar should be responsible for ensuring that the necessary support required by each of the other organs is identified in time and available when needed, within the overall constraints of the institution's budget. To that end, it falls to the registrar to put mechanisms in place to ensure that there is continuous dialogue between the registry and the other organs in order to identify and discuss respective priorities.

The registrar can play an important role in mediating inter-organ disputes across a wide range of issues, including issues of budget, logistics, personnel or court management. There will inevitably be numerous occasions when it will be seen as inappropriate for one organ to have significant contact with another on matters impinging on the trial process. In such circumstances, the registrar, who is neutral and independent, can play a useful role as a 'go between' in addressing the matters concerned.

Facilitation is another key part of a registrar's role. There will inevitably be a significant number of occasions when the registrar will be expected to act as catalyst in

facilitating desired outcomes on behalf of judges, prosecutors and defenders. Again the scope for such matters is wide, and can range from the urgent and immediate provision of support and protection to witnesses suddenly and unexpectedly required by the prosecution, to negotiations with other courts or tribunals on urgently releasing a needed member of staff.

The registrar can also be regarded to some extent as the 'channel of communications' within the institution. In addition, the registrar may be considered the 'official conduit' when communicating with the host country and other states, and may be the primary point of contact on diplomatic issues such as arranging transfer of accused persons or witnesses. None of this prevents either the prosecutor or the defender from making statements to the media or more generally advancing their views on issues as and when they see fit.

However, it is likely that the judiciary in particular will be extremely careful or reluctant about communicating directly with the media or any other external body seeking dialogue with the judiciary. It is suggested that the registrar has an important role to play here too, by ensuring that, without jeopardising the institution's primary objective (the effective conduct of the trial process), there is transparency in, and a wider understanding of, the institution's purpose and progress.

As will be mentioned elsewhere (chapter IV: J), it is also likely that the press and public affairs office will be located in the registry. It is recommended that the registrar, together with the chief of media and public affairs, strive to ensure that the institution has a coherent and accepted media policy in place which has the support, in principle, of all the other organs.

Finally, while this may be a contentious matter, it is suggested that the registrar should be—and should be seen to be, entirely independent of the line management arrangements of any other appointee(s) in the institution, including and especially the judiciary.

It is neither unusual nor inappropriate (especially in UN-backed institutions) for the ranking or grading of judges, prosecutors and registrars to conform to the pay scales of an under secretary-general and assistant secretary-general of the UN. But this should not denote any line management responsibility. In the same way, neither the prosecutor nor the registrar has any line management involvement with each other's mandates. It is suggested that there should be a very clear demarcation between judges and registrar in terms of line management or supervisory functions.

It also appears inappropriate that either the appointment or renewal of the appointment of a registrar should be in the gift of a judge or judges. Such an arrangement is likely, from time to time, to put a registrar in an extremely difficult position in the course of his interaction and relationship with the president and other judges.

None of that, of course, ignores the fact that a registrar has both a duty and a responsibility to provide effective support to the president and other judges at all times,

and to recognise that such support is always likely to be his or her first priority. Indeed, it is suggested that one of the major challenges faced by all registrars is their success, or otherwise, in managing effectively their relationship with the judges in the institution concerned. This aspect of the role and responsibilities of a registrar will be explored in chapter VIII.

However, this issue does call into question the mechanism required to ensure that registrars are held accountable, not only in financial terms, but also in terms of overall performance. It could be argued that, when the Secretary General makes an appointment, the appointee is ultimately responsible to the Secretary General or his/her representative within the UN system. Alternatively, where there is a monitoring body such as a management committee, it is suggested that this body should take responsibility for advising the Secretary General on the performance of those appointed either prosecutor or registrar.

C. Experience, Competencies and Qualifications Required of a Registrar

It is likely that the experience, competences and qualifications in respect of any future appointments of this nature will continue to be based on the current requirements that apply to registrar posts in existing international courts and tribunals. In particular, where the UN is involved, there is already a standard approach in terms of grade and salary levels.

However, given that there now appears to be a general acceptance of both the nature and range of the duties and responsibilities set out earlier, it is suggested that rather less emphasis be given to legal qualifications and experience, and rather more to managerial and organisational experience, especially in the context of managing courts and tribunals.

With that in mind, the following criteria are proposed as both relevant and appropriate to the post of registrar, whether sought individually or by way of a combination.
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1. Experience

The appointee should have a minimum of twenty years' experience in court/tribunal administration in either a national or international jurisdiction. Experience in both can be combined to meet the minimum years required. In addition, there must be supporting evidence of a proven track record in senior administrative or managerial positions, preferably in a court or tribunal-related environment.

2. Competencies/Skills

Evidence of the following should be available:

- An ability to work with and relate to colleagues and stakeholders from a wide and diverse cultural and working background.

- Excellent communication skills and effective interaction with external organisations, either national or international, including government departments.
- An ability to oversee the construction and implementation of an effective budgetary process.
- Effective leadership skills, to include providing a clear vision for the registry in supporting the institution as a whole.
- An ability and willingness to facilitate and coordinate the wider activities of the institution in conjunction with the judiciary, prosecution and defence and, where necessary, mediate in any matters requiring resolution.

3. *Qualifications*

- Possession of a university degree in a related field, such as law, together with any work-related certificates of professional competence, is desirable in addition to (but not in place of) the required experience.
- Fluency in English and possibly French as a basic language requirement; the addition of other languages is desirable (and dependent on the official and working languages of the institution concerned).

D. The Registrar's Office

This office supports the registrar (and the deputy registrar, if there is such a post). It will usually include a special assistant to the registrar, a small secretarial capability, a legal adviser's office and possibly, as in Sierra Leone, one member of staff responsible for coordinating work on the court's completion strategy, and another for coordinating work on legacy and any associated funding initiatives (if these are not covered by the ordinary budget).

It is necessary here to say a few words about what the function of the legal adviser may entail, particularly in situations where the registrar is not a lawyer. The legal adviser's office will have primary responsibility for advising the registrar on all legal issues within his or her mandate. A senior lawyer is required for the post, in part because some of the duties may require prolonged interaction and negotiation with senior counterparts in the foreign ministries of other countries. These include particularly the need to negotiate enforcement of sentencing and witness relocation agreements, which will be an essential part of the work of the legal adviser to the registrar. The negotiation of a Headquarters agreement, too, will closely involve the legal adviser when the court is being established in-country, albeit that it is likely that preliminary and ongoing work will have been carried out by the United Nation's Office of Legal Affairs. Strong drafting skills will also be required for contribution to various court practice directives and internal regulations. These may include, for example, drafting rules of detention, codes of conduct for staff or counsel, complaints and dismissal procedures, or other quasi-legal regimes that fall under the registrar's mandate. Review of contractual

obligations with external actors will also fall within the ambit of the work of the legal adviser, as will internal contractual issues, for instance with staff. Complex legal issues may arise in respect of relationships with other institutions on the national level, as with Sierra Leone's Truth and Reconciliation Commission. The legal adviser will also provide the registrar with general advice on the legal implications of miscellaneous issues that may arise in the course of the registrar's role.

Thought should also be given to the employment of a political or policy adviser to the registrar, especially where the institution is operating in-country. The effective understanding of political issues, both nationally and regionally, is important in assisting the institution in a number of areas.

E. Management Structure

While it would be unusual and, to an extent, surprising to find any significant differences between the respective administrative structures of existing tribunals and courts, given the commonality of the core functions concerned, the size of the institution and other factors may well result in some differences.

It is important, from the earliest stage in the planning or creation of a new institution, to give careful consideration to both the mandate and the funding position of the institution concerned. For example, does the mandate identify the likely scope of the institution based on an estimate of the numbers to be prosecuted and the time scale for those prosecutions to take place?[3] Similarly, on the funding front, there may well be an expectation that the administrative structure in the new institution will be similar in size and structure to that of previous institutions. The reality is that you must 'cut your suit according to the cloth available' and look for innovative solutions to developing an effective and efficient structure.

In doing so, attention must be given to the experiences, good and bad, of existing institutions in this respect, and, especially how such institutions evolved from their respective early stages to a point of relative organisational maturity. There are many issues to be considered when establishing an institution from scratch, such as numbers and mix of staff, international and national and if, for instance, the institution will

[3] This is a simple planning exercise which should not have an impact on the exercise of prosecutorial discretion. For instance, in Sierra Leone, while no official figures have been given for the numbers of indictees expected, unofficially it was presumed that the mandate of "those bearing the greatest responsibility" meant that the Special Court would try between 15 and 20 accused. Similar planning is taking place at the International Criminal Court.

operate in the country where the conflict took place. This and other related issues will be dealt with more appropriately elsewhere in this manual. However, in general, the imaginative use of recruitment techniques and a determination to recruit only those staff, international and national, with the energy, commitment, desire and potential to serve the institution well, are crucial features.

One issue that may be relevant is whether there is already an international presence in the location chosen to be the seat of the newly created institution. A common example may be the presence of a UN peacekeeping mission, as there was in Sierra Leone at the time of the creation of the Special Court.[4]

There may well be political and other reasons, such as differences in mandate, which result in the new institution not being seen as 'a perfect match' with a UN peacekeeping mission. But if achievable, there are sound reasons and potential for an established UN presence to play a crucial administrative part in the start-up phase of the new institution, even on a fully 'cost reimbursable' basis. This will save the duplication of structures.

If there is a possibility of making use of the presence of an established international organisation, a formal agreement or memorandum of understanding should be put in place before firm decisions are taken on the structure of the new institution. Above all, given the nature of the development of new institutions—including the start-up phase, investigations, arrests, pre-trial, trial and post-trial phases leading to completion—the management structure needs to be sufficiently flexible to meet the varying demands of all those stages. Especially against a background of uncertain funding such as voluntary contributions, it is important to ensure that the administrative overhead costs can be justified and kept at a reasonable level in the context of the overall budget.

It must also be recognised that the prime purpose of any registry is to provide effective support to the three other pillars of the institution concerned: the judiciary, the prosecutor and, where in place, the principal defender. It is therefore important that the organisational and management structure of the registry provides an effective foil to the necessary demands of those respective pillars.

An organisational chart should be drawn up at an early stage, setting out (albeit in outline) the intended shape and structure of the entire institution, not only to serve as an

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[4] Similarly, this was also the case in Rwanda when the ICTR was initially established, and the presence of the UNPROFOR in the former Yugoslavia greatly facilitated the establishment of the field offices there.

informative document internally and externally, but also to act as a flexible template against which any number of administrative, particularly financial, decisions and developments can be made. For example, in institutions set up in a country where there is conflict, there may well be justification for creating certain specific posts to respond to the context, such as a political adviser to the registrar or an increased emphasis on outreach and legacy issues. Such posts may not be required in externally located institutions. A sample organisational chart is annexed to this manual.

F. Reporting Mechanisms

1. Internal Reporting

Whatever the size of the institution concerned, it is important for everyday line management that there are mechanisms in place to ensure that, while managers have the flexibility and authority to manage their respective areas as appropriate, they do so within a cohesive framework overseen by the registrar and his or her deputy.

It may be realistic to expect the registrar of a newly created institution to have a 'hands on' approach during the early stages of the institution's development, but that prospect becomes less realistic as the institution grows and becomes busier on a day-to-day basis. Thereafter, there should be a regime whereby the registrar or deputy registrar is able to 'plug' into the areas for which they are responsible on a regular basis, ideally week by week. A weekly management meeting of chiefs of sections, chaired by either the registrar or the deputy, should be put in place, and a note of the meeting should be taken by the registrar's secretariat and circulated to those that attend.

This meeting need not be overly formal or structured as it serves a number of purposes. First, it enables the registrar to hear at first-hand, not only of the progress made by the respective sections but, as importantly, the difficulties facing respective areas of the organisation. It also gives all section managers an opportunity to interact with colleagues whose responsibilities may 'overlap' in some respect and where coordination and cooperation are important. The meeting also allows the registrar to keep his senior colleagues updated on matters within his or her own area of responsibility, especially reporting back on external matters and events and, particularly, on those issues arising from his interaction with the judiciary, the prosecutor, the principal defender and any external bodies. It also allows the registrar to share his thinking on and approach to the key challenges facing the organisation, set out his or her priorities and invite discussion.

Finally, the meeting is an opportunity for the registrar to identify at an early stage any interpersonal difficulties that may be surfacing between his or her colleagues, perhaps due to limited resources, and to 'nip in the bud' any potential unrest or disputes. It also assists the registrar in the course of his ongoing assessment of his colleagues' performance.

In summary, this meeting must be participatory and 'dynamic', in the sense that it is the chair's responsibility to encourage participation and discussion and to be alert to any tensions between colleagues and/or him or herself. This is not a 'talking shop' and every effort should be made to resolve any issues that arise on the spot. Accordingly the notes of the meeting should be 'action' notes, recording briefly the issue raised and the decision taken on the way forward. Attendance at such meetings should be obligatory and, where it is not possible for the chief of section to attend, a deputy system should be in place. In addition, consideration should be given to inviting representatives from the other parts of the institution—chambers, prosecution and defence and, occasionally, a representative of the staff council.

It is also recommended that a senior management board be created at an early stage in the life of the court or tribunal, with a small but representative membership. The board should be chaired by the registrar and include the prosecutor, the principal defender and a senior representative from chambers, if the president of the court is content with that arrangement. The registrar's secretariat should take on the support arrangements and note taking. The board should meet monthly, unless there is no business to discuss. Also, depending on the agenda, the board should feel free to invite or co-opt senior colleagues to attend the meeting and present on various matters. Matters within the province of this board may include the proposed budget, draft completion strategy and so forth.

There are those who may feel ill at ease about the existence of such a board, not least because of the quite separate and distinct roles of each of the members. But it should be remembered that the success of the institution, with its overriding purpose of providing a transparent, effective, efficient and just process, depends entirely on the contributions made by its respective parts—namely the judiciary, the prosecution, the defence and the administration (the registry). This is despite the different roles these sections play. The major players will, inevitably and expectedly, find themselves in disagreement with one another from time to time, either in court or outside. However, this does not justify an absence of effective dialogue on the direction and progress of the institution as a whole. Nor does it remove from those major players the joint responsibility for consistently putting the interests of that institution and those it serves first—and before their own (all too often) personal interests. The importance of such relationships and their management will be addressed in chapter VIII of this manual; the registrar has a significant and crucial role to play in this regard.

The registrar should hold a weekly meeting of colleagues within his or her immediate office to ensure that all concerned are aware of their respective workloads and current priorities. Given the relationship that should exist between the registrar and his/her immediate advisers and support staff, no notes need be taken.

The respective chiefs of sections within the registry are responsible for ensuring that their own staff members are kept informed of progress and wider developments within the institution. However, the registrar also has a responsibility to brief all the registry staff on his/her personal perception of the challenges to be faced and progress made. Circumstances in different institutions will inevitably dictate the mode and regularity

with which such gatherings are held, but sight should not be lost of the importance of this. Registry staff should have the opportunity to meet with the registrar and be encouraged to feel some 'ownership' of the process to which they all contribute, as well as an *esprit de corps*. There need not be any regular schedule for such meetings, not least because of the logistical challenges involved. It is, however, likely that there will be events in the life of the institution—such as visits by a head of state, the Security Council or the commencement of trials—that provide a good reason and opportunity for gathering the staff together.

It should be emphasised that the major advantage of meetings is to bring face to face those who have a responsibility, interest or stake in whatever issue is being addressed. Such meetings must be focused and chaired effectively and, wherever possible, result in clear actions being agreed.

Care must be taken not to hold so many inconclusive meetings that participants become disillusioned, disinterested and non-participative. The arranging and holding of meetings can be hugely resource intensive and the institution concerned must not necessarily see meetings as the solution to every difficulty. They should therefore be kept to a relative minimum.

It has been mentioned that a representative of chambers should be invited to attend chiefs of section meetings and meetings of the management board, subject to the president's agreement. The purpose of this is to ensure that chambers have an opportunity for a regular update on the challenges and issues facing the rest of the institution. This will also ensure that colleagues responsible for supporting chambers and the trial process are aware, where necessary, of the judicial schedule and the need for their sections to respond to the priorities, requirements or changes dictated by that schedule.

The importance of maintaining the independence of the judiciary must not be overlooked. But it is also important that all concerned are made aware of the issues in play on a regular basis and, in that limited regard, the senior chambers' representative is both an observer and an interlocutor in this process. None of this removes the responsibility of the registrar to meet regularly with the president, if he or she is located within the institution, and with the judges presiding over trial chambers.

It should be pointed out that it can be extremely useful for the president to be based on site from the outset. In that way, judicial leadership can be established and visible from the start. This also promotes an effective working relationship between the president and registrar.

While there will always be a need for ad hoc meetings as and when certain issues arise, the registrar should seek to meet either with all the judges involved or, if they prefer, with either the president or presiding judges on a regular basis. The purpose of such a meeting is two–fold: (a) to hear the views of the judiciary on any issue touching on the administrative support to which they are entitled; and (b) to allow the registrar to bring the judges up to date on internal and external developments (whether or not these affect

them) in which they may be interested and desirous of being kept informed. It is recommended that the secretarial support to the chambers keep a brief note of the issues raised at such regular meetings and circulate that note to all the judges and the registrar thereafter.

In conclusion, there will always be a need for a network of ad hoc or semi-regular meetings within the registry, in order to address issues as they arise and ensure effective coordination and cooperation.

The crucial role of the court management section will be dealt with specifically in chapter IV:C, but mention should be made of one further important internal meeting. The creation of a judicial support and coordination committee at an early stage, in anticipation of the start of the trial process, should be considered. The purpose of this committee is to ensure that continuing effective support is provided to the judges and the trial process throughout that process and beyond. The committee should be chaired by the chief of the court management section, and the membership should be representative of all those involved in the trial process—including chambers, security, prosecution, the language section, defence, court reporting, witness protection, technical support, and the detention unit.

Reference is made specifically to the functions of the sections on languages and court reporting, to ensure that the importance of involving those functions is not overlooked. However, it is likely that both those functions will fall under the overall line management supervision of the court management section and be automatically involved as part of the process. The main function of the committee is to put on the table for discussion every aspect of the trial process—the scheduling of cases, timetabling, handling of witnesses, security, detention issues, and so forth.

While the committee will need to sit fairly regularly, the key stages for meetings should be in advance of the trial session and after a session has ended to evaluate how that session went and if there were areas for improvement in terms of the provision of support. Thereafter, it is for the chief of court management, in consultation with the major participants to the trial process, to assess when a meeting may be useful.

2. External Reporting

The nature of external management mechanisms will inevitably depend upon the manner in which the particular institution has been set up. In the case of a tribunal established and funded by the United Nations, the president and senior management will be required to report on a regular basis to a combination of the Security Council and the major budgetary or financial bodies (such as the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Fifth Committee of the General Assembly). There may also be auditing by the Office of Internal Oversight Services. In addition, it is likely that the secretary-general will require, as part of the legal instruments of the institution, an annual report to be presented by the president to

the Security Council or General Assembly in addition to the eventual presentation of a completion strategy.

While it is likely that the final approval for the annual report will rest with the president, in reality it will be the registrar who takes responsibility for the major aspects of its production, including the coordination of those sections dealing with the work of the chambers, the prosecution and the defence. This is a significant task and it is recommended that the responsibility to organise and coordinate the annual report be given to the special assistant to the registrar, under the registrar's supervision. There are numerous examples of annual reports available on file in the various tribunals and courts, and it is recommended that all the various styles and formats used be considered. Every attempt should be made to ensure that, while the annual report must be comprehensive in terms of the information it contains on performance and progress, it must be user friendly. Otherwise it will not be read and an excellent opportunity to inform donors and supporters of the institution's progress, challenges and plans for the future will be lost.

In other institutions that may have international support but are not accountable to the Security Council, the reporting arrangements may well be different. For example, the Special Court for Sierra Leone is monitored by an external management committee, made up of representatives of those states that contribute financially to the court and the parties to the agreement that created it. That committee is, in essence, responsible for monitoring all non-judicial aspects of the court's performance and offering support and advice to its senior officers. It is chaired by a representative of one of the contributing states.

The registrar of the court is responsible for reporting to the management committee every month, by way of a written progress report. This is forwarded to the group of interested and contributing states. By these means, especially when an institution is operating geographically at a distance from the committee, those principally involved in the funding and management of the court are kept informed.

In addition to these formal reporting mechanisms, it is recommended that institutions do everything possible within their budget and capabilities to produce ad hoc reports or brochures and leaflets. Such exercises increase awareness of the court, and may translate into political or financial support.

IV. OPERATIONAL SECTIONS OF THE REGISTRY

A. General Commentary

While there are likely to be some structural differences between existing tribunals and courts, there will inevitably be far more similarities in terms of the core functions of a court or tribunal. The main operational sections of the registry are likely to be the following and, except where indicated, are addressed in this chapter:

- Personnel
- Finance
- Budget
- Procurement
- General services
- Press and public affairs
- Outreach
- Court management
- Language Services
- Communication systems and information technology
- Detention facility
- Security
- Witness and victim management/protection/support
- Defence office
- Court reporting

There may be occasions when circumstances dictate that some of these sections should be amalgamated with others for line management purposes and operational effectiveness. For instance, accommodation, transport, supplies may combine under general services and court reporting and languages under court management.

B. Personnel

1. General Commentary

As in all organisations and institutions, the quality of the personnel given responsibility for daily operations is absolutely vital to the success of the institution concerned. Mention has been made elsewhere of the need for a transparent, robust procedure to deal with the selection and appointment of senior officials in the institution (such as the

prosecutor, registrar and defender). No less importance should be attached to the recruitment, appointment and assessment of all staff, whether national or international.

Circumstances will vary but, in most existing institutions, the United Nation's staff rules and regulations are either in place in their entirety or, as in the case with the Special Court for Sierra Leone, substantially adopted with some adaptations along the way. Although it is generally agreed that these rules and regulations can be cumbersome, they do at least inspire some confidence in the institution's stakeholders, particularly financial, as being a safe and established, if a somewhat conservative way to manage the institution's human resources. It also makes sense to adopt an established mechanism rather than for the newly created institution to attempt to draft an entire set of new rules and regulations, with all the time, cost and inevitable delay that would cause.

That being said, it remains important for the senior administrator and his or her senior staff to be given some flexibility and authority to adapt UN rules and regulations to meet the specific operational challenges of the institution concerned. Any such adaptations should be made in a transparent manner, with a full justification lodged in the institution's personnel files, not least for audit inspection. The sections below will deal in more detail with the various aspects of personnel policy, practice and procedure. Some of that which is suggested may be seen as questionable or controversial or both. It follows the approach adopted by the Special Court for Sierra Leone rather than that of other tribunals. However, the views expressed are offered by way of inviting debate and discussion, and are intended only to demonstrate that the differing nature of the various institutions may require differing approaches. They do, nevertheless, also represent the views of a number of people outside Sierra Leone. For example, the intended length of an institution's mandate (inevitably linked to the funding being offered) may require a different approach. Permanent or semi-permanent institutions located in stable, well-facilitated cities will have a different tempo and set of priorities to those in ad hoc temporary institutions located in the countries where the conflict took place, often with the associated insecurity and damage to infrastructure.

The length and nature of the contracts likely to be on offer and the availability or otherwise of a pension and other sundry benefits will all, to an extent, be dictated by the time and money available to the institution concerned. In certain instances, it may be counterproductive to follow established rules and regulations intended for differently constructed and developed institutions. However, every effort should be made to rely as far as possible on established rules and regulations, although, in certain circumstances, procedures will to a large extent depend on the nature and experience of the staff recruited to implement them. In other words, it can take time to become acquainted with UN procedures and, if excess caution and hindrance to daily progress are to be avoided, it may be necessary to recruit experienced UN staff to operate the rules and regulations. Such experienced staff may not, however, be readily available.

Finally, it must be recognised that an institution's staff are its most important asset and, while the recruitment process is vital, so is the ongoing effective assessment of those staff and the institution's commitment to treating them with consideration and respect.

To this end, it is important, as far as possible, to retain experienced personnel to avoid high turnover and the associated costs of recruitment, training and loss of institutional knowledge.

2. *Recruitment of Staff*

The potential pool of those likely to be candidates for appointment will vary in terms of national and international staff, depending perhaps on whether an institution is located in-country or not. That being said, it is incumbent on such institutions to develop recruitment policies that recognise both the need for and the advantage of recruiting competent national staff wherever possible. To expand briefly on this aspect, there are a number of important reasons for ensuring, so far as is possible, a balanced representation of national staff within the institution.

First, it is important that the true 'stakeholders' in any such institution—that is, the victims and national population at large—feel a connection with the institution. Second, especially when an institution is 'in-country', there are advantages to employing national staff with language capabilities and deep knowledge and experience of their country's infrastructure, ineffective or otherwise. Third, as emphasised in the chapter on 'legacy' (chapter X) in this manual, every effort should be made to build and develop the potential of national staff for the future. In addition, there will be cases when the criteria of equitable geographical representation and gender balance are firmly established and provide a central element to the recruitment process.

Whatever the prevailing circumstances, there is a common raft of core principles involved. First, all recruitment processes should be (a) visible; (b) transparent; (c) fair (d) consistent (e) non-discriminatory. It is maintained that, in addition to those core principles, there are further considerations. These are (f) the expeditious and timely nature of recruitment (g) cost effectiveness, and (h) efficiency (where the candidate selected for appointment is regarded as the 'best' candidate for the post on offer from amongst those who applied).

It is when those latter considerations come into play that there may be difficulties in finding a balance between geographical representation and gender balance and the need to select the 'best' candidates. In the case of an institution with a limited time frame and budget, as was the case with the Special Court for Sierra Leone, every effort must be made to recruit the 'best' staff available (in terms of experience, qualifications, energy and commitment). To do otherwise would, especially in the eyes of the staff themselves, be paying lip service to political correctness and, in effect, run counter to those core principles set out above. Moreover, such an approach does little to enable the institution concerned to meet its objectives and challenges with the best staff available. It should be noted that the Special Court for Sierra Leone (without formal requirements) managed to achieve a geographical representation across 37 countries over and above its predominantly Sierra Leonean representation, albeit that many Sierra Leoneans were not necessarily in senior positions.

While it is maintained that any institution should do its utmost to employ the highest standards when recruiting its personnel, its chosen approach may well depend on the circumstances and primary objectives of that institution. Ideally, the institution will have at the heart of its mandate, a prime purpose or objectives involving a wider commitment to identifying and developing potential, together with a comprehensive training strategy as part of a commitment to legacy. This is far preferable to placing people in jobs for which they are unprepared as a symbolic gesture. However, the focus of the international community of funders, stakeholders and donors has generally been on results and the costs and time involved in the operation of existing institutions. This has not always allowed for a broader commitment to capacity building.

Turning to the basics of the recruitment process, it is important to be aware that most existing tribunals have developed policy papers that cover, not just recruitment, but many other core functions—such as staff contracts, appraisals and assessments, conduct and discipline and so forth. Before deciding on the most appropriate or relevant approach to be used, it is recommended that newly appointed administrators consult with the respective administrators of existing tribunals and courts with a view to considering the usefulness of existing policies. Details of the relevant and respective websites and contact points are to be found at the rear of this manual. However, the following elements should be considered when recruiting, especially for international staff posts.

- Ensure that the post(s) to be filled feature(s) in the institution's staffing table and budget and that the classification is confirmed. Although the classification of posts is the subject of a well-established process within the UN, in a new institution a staffing table may be created, in advance of the appointment of senior administrators, in order to help produce a preliminary budget. Should that be the case, such tables need to be treated with caution and reviewed as soon as possible—especially when assessing which posts can be classified as appropriate for national staff and which for international staff.

- Ensure that there is agreement with the section manager (or line manager) concerned on the job description to be included in the vacancy announcement. Also check that any potential internal candidates are aware of the vacancy.

- Check the desired timescale in terms of the urgency involved in recruiting (this may have an impact on the length of time the vacancy can be advertised).

- Consider the degree of exposure to be given to the vacancy announcement: that is, will posting on the institution's website (if it has one at the time) and on a system such as the UN's GALAXY be sufficient? Should there be wider circulation to national and international newspapers, specific professional associations or networks to include government and non-governmental organisations?

- Agree the deadlines for receipt of applications.

- Ensure either that receipt of all applications is acknowledged or, depending on resources and time constraints, make it clear in the vacancy announcement that only those short-listed for interview will be contacted.
- All completed applications received should be checked and listed by the personnel section, and short lists should be drawn up in consultation with the line manager concerned. Particular attention should be given to checking relevant experience and qualifications. At the same time, caution should be exercised against relying entirely on the possession of a set of qualifications, such as degrees. Possession of relevant experience over a period of time frequently proves more useful, especially to an institution where the circumstances of its creation and development may mean that staff will 'hit the ground running'.
- Interviews should always be held, either by telephone or face to face if circumstances and budget permit. The composition of the interview panel will, to an extent, depend on the nature and grade of the position advertised. The line manager and/or appropriate representation from the area of the institution where the post exists should ideally be on the interview panel.
- A representative from personnel and a representative from, perhaps, a section or area of work that interacts with the post or area concerned should be on the interview panel.
- The size of panels can vary from three to five; the latter is more appropriate where the post holder to be selected—such as chief of press and public affairs—will have regular involvement and interaction across the institution, including the prosecutor and defenders' offices. However, in most circumstances, three members will be sufficient.
- Should an institution be at the stage of its development where a staff council is in existence, it may help give transparency to the recruitment process to invite a member of the staff council to sit in on interviews as an observer.
- References in respect of any candidate selected for appointment should be taken up, at the very least by making contact by telephone. One warning here is that it is not unknown, especially in some UN peacekeeping circles, for glowing performance assessments to be given to a staff member, despite continued poor performance. The aim may be to assist that person's appointment or promotion elsewhere, thereby transferring a poor performer to someone else's organisation. For such reasons it is important to proceed on more than a documentary file.
- Care should also be taken in automatically interpreting a set of excellent performance assessments as necessarily justifying selection. Again, some regard should be given to the possibility that the standard of performance assessment may not be as robust as it should be. Experience in Sierra Leone, confirmed by others in other existing institutions, has been that some line managers consistently 'overmark', to avoid confrontation with a staff member or deal with the laborious processes required in response to under-performance.

- For this and the earlier reason, it is crucial that robust use is made of the usual three-month probationary period after appointment to ensure that the early signs are that the person appointed can do the job. It is also important that those appointed understand at the interview stage that their appointment is subject to acceptable performance during and beyond the probationary period and that probation will be taken seriously.

- To ensure continued transparency and consistency in the recruitment or selection process, it is recommended that all panel members have access to a set of interviewing guidelines as individual interviewing techniques may well vary according to experience. In addition, it is important that a report be produced by the selection panel and signed by all the members.

- The interview notes made by the panel members should be kept by the personnel section, together with a note by the chairperson as to which candidates were the panel's second and third choices.

- For senior appointments such as a chief of section, where the registrar or deputy registrar is not involved in the process, the panel's recommendation should be submitted to the registrar for approval.

Finally, it is recommended that, as part of the institution's recruitment policy for international posts (whether or not the institution is located in the country affected), every effort should be made to ensure, where possible, that at least one national applicant is automatically included in the short list for interview—whether or not he or she appears as qualified or experienced as other candidates short-listed. Second, if that candidate is unsuccessful, he or she should be offered feedback on the application and interview to provide pointers for the future. In this way, the institution concerned can make some contribution, albeit small, to the legacy it leaves behind. It also has to be remembered that, because of the nature of the conflicts that have occurred in the countries concerned, there are frequently nationals living either inside or outside that country who will not have had an opportunity to be exposed to recruitment and interview procedures to which many who are more fortunate will have become accustomed.

3. Contractual Arrangements

There are a number of options available on contractual arrangements but, principally, a decision has to be taken as to the length of contracts to be offered. It is recommended that posts should initially be the subject of a one-year contract, renewable on the basis of satisfactory performance. It is likely, however, that the most senior positions (such as the prosecutor, the defender and the registrar) will involve contracts of at least three years. Again a great deal will depend on the nature of the mandate and funding arrangements pertaining to the institution concerned.

It has to be recognised that some potential candidates may not see the offer of an initial one year contract as offering sufficient security of employment to attract them to leave current postings, where they may well have a longer tenure of employment and,

perhaps, greater benefits (such as pensions). This in itself may result in fewer well-qualified or experienced applicants coming forward.

Nevertheless, whatever the source of the institution's funding, donors are likely to be particularly sensitive to the appointment of what some would regard as 'standing armies' of staff at an early stage in the institution's life, whose salaries account for a major part of the institution's expenditure. This is particularly true for institutions with limited life spans. This concern comes increasingly into focus as the institution develops and expands, and especially if donors become restless at what they may perceive as no visible progress in the trial process. While it may well be unfair of donors to adopt such a stance—given the need for proper preparation before trials start—it is a fact of life with which the institution will have to deal.

There can be no easy solution. Experience in Sierra Leone demonstrated that there were any number of excellent applicants willing, for a variety of reasons, to 'throw in their lot' with the Special Court on the basis of one year contracts, but it is a challenge that has to be met. There may be some advantage in the senior administrator adopting a very robust and transparent dialogue with the donors in this respect. Part of that dialogue should be to articulate the very nature of the challenge at an early stage, to ensure donors understand the issues and the administration give an undertaking that appointments will not be made earlier than required.

Thereafter, it is incumbent on the institution's administrators to produce a 'game plan' that seeks to make the most effective use of the available funds. This would include:

- Staff costs, ranging from length and content of contracts to the benefits on offer such as leave allowances and so on.
- The imaginative use of short term contractual agreements (for instance, for three months), to address a particular project.
- The use of interns and 'gratis' staff.
- The balance between the employment of national and international staff.
- An overall policy that attempts to ensure that staff members at all levels are appointed only when the progress of the institution justifies their recruitment.

In fairness, the 'just in time' recruitment policy, as it became known in Sierra Leone, will inevitably have its disadvantages. There is an element of risk involved in ensuring that tasks that need to be done within a certain time frame (so that the institution can move forward) are not delayed, either because the right staff cannot be found when the time comes, or because those appointed were not released by their current employers on time. All that being said, every effort should be made to identify at an early stage posts that are so crucial to the institution that it would not be considered a luxury to recruit as soon as possible, as against those that can be left closer to the time. Experience shows that delays in recruiting against an agreed staffing table until certain posts are actually needed results in a significant saving both in salaries and associated costs such as travel and living allowances.

Elsewhere, the use of contractors (whether small firms or individuals) to address a particular task for a specified sum and over a specified period—with carefully built in objectives, performance criteria and, as necessary, penalty clauses—should be used whenever appropriate. Again, there is significant experience and expertise available in all the existing institutions to cover almost all eventualities.

4. Performance Assessment

It is important to set up a robust, non-bureaucratic system to assess the performance of staff as early as possible in the life of the institution. Ideally, having such a system available before the institution convenes operations is far preferable, but may well be unlikely.

Again, there are examples of such systems in all the existing institutions, but care should be taken not to copy and import a system that is not necessarily 'tailor made' for the new institution. That being said, the major elements of such systems have a commonality that can provide a robust measure in the early days of operation.

It cannot be over-emphasised that, as with every aspect of the personnel function, transparency, consistency and a common understanding by all involved is crucial to the effectiveness and morale of the institution concerned. It is therefore important that an effective link be made between post vacancies, contracts of appointment, job descriptions and performance assessments. While the availability of funds for the training of staff varies among institutions, this is one area where it is vital that all concerned are trained in the purpose and operation of the system.

As will be mentioned in the section on communication and IT in the chapter on court management, the availability of a personnel information system to facilitate and support these key functions will be important at the earliest stage of the institution's development. However, should such a system not be readily available, a simple paper system can play a role, although this can be laborious and cumbersome across the whole institution.

5. Training

Experience varies in the existing institutions and—although seen in almost all major organisations around the world as one of the bedrocks of an organisation—a training capability needs careful planning, setting-up and maintaining. It also can be seen as an expensive administrative overhead.

Inevitably, the potential for the inclusion of a training margin in any new institution's budget will depend on the nature of its funding. As with the Special Court, the temptation will be to make savings in that area by omitting training costs and, instead, concentrating on appointing staff from the outset who can 'hit the ground running' without the need for training. In addition there is always the potential for staff to 'learn

as they go along' through daily contact with more experienced colleagues. However, even the best staff (in terms of experience, qualifications and commitment) need to keep abreast of developments in their chosen field, whether on the administrative or legal front. Employment with the new institution should not result in their losing touch with new techniques or approaches. In addition, the transfer of skills from one member of staff to others in the course of working together, often in a pressurised environment, cannot be either guaranteed or effective without a structured programme being put in place. For that reason, it is recommended that, wherever possible, a focused training programme should be considered necessary.

Before leaving the issue of training and the chosen approach with regard to skills training, one vital aspect should be raised. Inevitably, the institution will, either by design or by natural process of development, be multi-racial and diverse in its make-up. It is therefore important that every effort is made to ensure, at the induction level, that staff receive some form of 'familiarisation' diversity training. International staff should be given an understanding of the local culture and environment and the importance of respecting their local, national colleagues. Similarly, local staff need to recognise that their international colleagues come from different backgrounds and cultures that, equally, deserve respect and understanding.

The availability of a training course at the induction stage is therefore recommended. Such training has been provided on an ad hoc basis at the Special Court for Sierra Leone and details will be available from that institution if required. It will also be worth looking at the proposals in place with regard to the Extraordinary Chamber in the Cambodian Courts, which, while primarily addressing the needs of the judges, also touches on training for administrative staff. It should be noted that, from a legal perspective, there are often outside institutions and NGOs willing to offer training free of charge, such as (for judges) conduct of a trial, gender issues and advocacy skills and (for lawyers) international law and jurisprudence and (also for non-lawyers), outreach and legacy issues.

6. Staff Conduct and Discipline

Similarly important to the quality and performance of staff is their conduct at all times during their employment with the institution concerned. The conduct of staff and the discipline they show is important, not only for the effective operation of the institution, but also for its overall reputation, wherever it is located. It is particularly important that, where an institution is located in the country where the conflict occurred, efforts are redoubled to ensure that (particularly international) staff members are fully aware of their responsibilities towards one another, national colleagues and the civilian population at large. Particular areas deserving emphasis include: the specific confidentiality requirements that apply to all staff who work in criminal jurisdictions; the insistence on sanctioning all sexual harassment, abuses and misconduct, including with the local population, and ensuring there are clear procedures to be followed when staff are granted functional immunities (such as clarifying what the conditions for waivers will be).

It is important that a code of conduct and discipline is drawn up as soon as possible. This should set out precisely what is expected of staff and, especially, the sanctions that apply should a staff member be found to be in breach of the code. Such codes are available in existing institutions and should be considered against their respective backgrounds before any further work on a code is contemplated.

There should also be a very clear set of procedures in place within the institution—published and available to all staff—setting out the process to be followed if a staff member is alleged to be in breach of the code of conduct. A very necessary part of that process should focus on the institution's responsibilities in respect of the involvement of the national authorities where an allegation against a staff member involves the possible commission of a criminal offence contrary to national legislation.

In that regard, specific efforts should be made to draw the attention of international staff members to any course of conduct that, although not considered a criminal offence in their country of origin, is likely to result in arrest, criminal proceedings and even imprisonment in the event of a conviction in the host country. In particular, international staff members should have a very clear understanding of where the line is drawn in respect of their immunity from proceedings and the institution's commitment to work sensitively with the national enforcement agencies and legal and judicial systems.

It also needs to be mentioned that the creation of a staff council is important, to work with senior management to ensure that the best interests of both the institution and its staff are recognised. An effective staff council (usually elected from amongst the staff) can often serve as a useful 'barometer' of staff morale.

Mention has been made of the need for transparent, well-publicised procedures for dealing with internal alleged breaches of conduct and discipline. These inevitably involve the staff member's right to representation and, if necessary, recourse to an appeal mechanism.

Again, such sets of procedure are well documented and available in the existing institutions and are too voluminous to reproduce here. However, one issue that may need to be raised is the role of the institution's judges in an appeals procedure that is, predominantly, an administrative process. In some institutions, either the president, or a judge to whom the president has delegated the responsibility, is involved as the ultimate arbitrator. It is suggested that some consideration needs to be given to that approach. Although there is a need for an appellate process that provides both the appropriate independence and, perhaps, distance from any earlier disciplinary proceedings, the involvement of a judicial presence in the process can present difficulties. First, many judges will not be prepared to become involved in such a process or will have no experience of such a role or both. Second, there is an argument that says that judges should not be deflected in any way from their prime purpose within the trial process.

A good deal will depend on the nature of the institution concerned—whether it is inside or outside the immediate remit of the United Nations. For example, the Special Court for Sierra Leone is 'overseen' by its management committee in New York, which is, in broad terms, responsible for dealing with 'non-judicial' matters. Conceivably this role could be stretched to encompass serious disciplinary matters, although it might appear both inappropriate and unwieldy for the committee to become involved in this way. One alternative would be a procedure that allows the registrar to act in an appellate capacity, although he/she may find that difficult when dealing with disciplinary matters that involve senior members of staff and where the chain of command may be very short. Any allegation involving a registrar or other senior figure may well have to be dealt with according to the method of his/her appointment (for example, by the Secretary General).

7. Downsizing and Redundancy

Finally, although a major part of this chapter on the personnel function has concentrated on the recruitment and management of staff, it may be helpful to touch on the challenges of managing staff towards the end of the institution's life.

None of the major existing institutions has yet reached the stage where there has been a need for a large-scale downsizing exercise. The Special Court for Sierra Leone is likely to be the first such institution to complete its business. That being the case, proposals were made at the Special Court in September 2005, in the form of a personnel policy paper to address the need to downsize the numbers of staff, both national and international, as the trial phase was nearing its end.

The proposals outlined in that policy paper were eventually approved by the management committee and are being taken forward. While the full proposals can be obtained from the personnel section of the Special Court, it may be of assistance to outline some of the issues and proposals that may find favour with the other tribunals, or at least assist with their planning on this front.

First, the ability to continue with the recruitment process must inevitably remain, but the emphasis will shift to the issue of retaining staff as they see an end date for their employment. That may mean that the emphasis will also shift to filling posts from within the institution. The International Criminal Tribunal for the Former Yugoslavia (ITCY), for example, has produced a proposed policy paper on the payment of a staff retention bonus, which is useful to consider.

Inevitably, the main driver will be the need to contain salary costs for the duration of the institution's lifetime. With that in mind, it is recommended that one of the first tasks should be to identify those posts across the institution that can be permanently deleted—such as investigation posts in the prosecutor's office and, on a smaller scale, posts in the procurement area where activities will have reduced. The advantage of identifying posts for deletion is that it will provide, in part, resources to finance any schemes required to encourage retention. In addition, most institutions operate with an

ongoing vacancy rate, which, not always intentionally, provides an opportunity to reallocate the savings available.

Elsewhere across the institution, there may be some scope to target particular posts on a short-term basis. An example may be court reporters, when a trial chamber adjourns for any reasonable period of time to consider its decision and produce a judgment. This may or may not be an option for the ad hoc tribunals, but it is an approach used in the Special Court for Sierra Leone with useful results.

C. Court Management

1. General Commentary

If the registry or administrative section of an institution can be said to be its 'engine room', the court management section is undoubtedly the section with the prime responsibility of supporting the legal and judicial process. As such, it is absolutely crucial to the institution as a whole in terms of achieving its overall objectives.

The court management section will probably consist of a number of related sections or units under the overall supervision of the chief of section, who should report directly either to the registrar or senior administrator or, depending on the size of the institution, to the deputy registrar.

For example, at the ICTY, the court management section falls under the supervision of the deputy registrar, while at the International Criminal Court (ICC)—where the post of deputy registrar is currently unoccupied—the section is included within the division of court services, which also contains the victims and witnesses unit and the detention section. In Sierra Leone, due mostly to the smaller size of the institution, the chief of court management reports directly to the registrar.

Whichever structure is preferred, the core principle is to ensure that the court management section either contains, or liaises extremely closely with, all sections or units with a part to play in support of the legal and judicial process inside the courtroom. It is crucial that no half measures be taken in resourcing and supporting this area of work.

Again, there is absolutely no reason for any new institution to 'reinvent the wheel' when considering its internal organisation, especially where the court management function is concerned, because there is significant experience available across the existing institutions. Mention has been made elsewhere in this manual (chapter IV: C) about the important role court management can play and the need for an internal committee or working group to convene all parties relevant to the court process, under the chairmanship of the chief of court management or equivalent. Effective working relationships are required, but it is necessary to emphasise the particular importance of the relationship between court management and the chambers. This relationship will ensure that court management is able to respond effectively to all the requirements of

chambers in general and the judiciary in particular. For this reason, while there is a need for the registrar or deputy registrar to have regular dialogue with the judiciary, especially at presidential and presiding judge levels, the chief of court management should also establish a regular presence in chambers. This will help ensure that he or she is kept updated on the views and needs of the chambers in all respects and that there is a regular flow of information to and from the chambers.

As ever, this suggested arrangement will depend upon the size of the institution and the personal preferences of the judges concerned; but it cannot be overstated how crucial it is for all parties concerned that chambers or the judges are not 'isolated' from the mainstream administrative court process.

Inevitably, with the court management section responsible for the receipt, filing and efficient archiving of all relevant court documents, there will be a need for an effective database and electronic system to maintain evidence and transcripts in an easily accessible, organised format—to avoid having to maintain cumbersome paper files.

Again, the size and nature of the institution, including the budget available, will determine the extent to which such electronic databases and systems are feasible, but this must be an area that demands priority in budgetary terms.

In addition to the necessary working requirements of the institution itself, proper regard must be had for the legitimate interests and needs of those observing the court process externally and wishing to have access to a range of court documents. Therefore, in implementing electronic or, if unavoidable, paper-based systems, the significant challenge is to ensure that all such documents as can be provided appropriately for public scrutiny are available on demand, and that those that are designated as confidential are treated accordingly.

There are numerous examples of documents that should be readily available to external organisations: rulings and judgments handed down by the tribunal/court, whilst there are others such as filings by prosecution or defence with regard, perhaps, to a protected witness where confidentiality is crucial.

In this respect, there may well be some resistance to the introduction of electronic tools —either because of a reluctance to operate them or because of misgivings about their ability to preserve confidentiality. Such resistance can be addressed only with patience and efforts to demonstrate the benefits and confidentiality to those concerned. If possible, it always helps break down resistance if someone influential (such as a judge) is prepared to be a role model or 'champion' by using the tools available and demonstrating the benefits in practice.

While touching on the presence and use of electronic tools and systems, mention should also be made of the necessity for a website for the institution as a whole, with particular focus on the court management section's work. Again there is considerable experience available in existing institutions on the creation, operation and maintenance of websites—ranging from those well honed and developed over years and those that

are rather less ambitious. A number of existing institutions have revised their websites with the benefit of experience and advances in technology. There are also commercial organisations that are prepared to offer both advice and assistance, sometimes free of charge if the institution is prepared to allow them to be publicly associated with the project. There is also a need to keep staff skills under review in this respect—to ensure that websites are not allowed to become out of date technically or in terms of the information displayed.

Finally, before dealing in more detail with some of the topics mentioned earlier, the related issue of constructing an effective archive for all the institution's records must be considered from the outset. The temptation for any newly created institution—in the face of any number of other pressing challenges and expectations—is to include the issue of archiving some way down its agenda, secure perhaps in the knowledge that the institution's basic record keeping and document preservation will be sufficient to meet its needs in all respects. However, current experience, especially with Sierra Leone in mind, has shown that the absence of a comprehensive strategy for all issues related to effective and efficient archiving in the early days of an institution can prove troublesome later.

2. Court Management Issues

While there are numerous aspects involved in the provision of an effective court management capability, some inevitably play a more significant role on a daily basis. Amongst those that require specific attention are the following:

- Provision and focus of courtroom statistics
- Judicial support mechanisms/procedures
- Scheduling/listings of cases
- Languages: translation and interpretation
- Handling of motions/applications/responses and so on
- Archiving
- Public access
- Media relations
- Electronic support to trial process
- Court reporting
- Library
- Experience and competency of staff

3. *Provision and Purpose of Courtroom Statistics*

It is absolutely crucial for any organisation or institution to be in a position to demonstrate, internally and externally, how effectively and efficiently it has used its often hard won resources in terms of matching 'outputs' (results) with 'inputs' (resources). However, it would be unrealistic not to recognise that the whole issue of 'performance' is extremely sensitive in some people's minds, including those of some international observers.

There has been ongoing debate for many years—principally between the judiciary and the administration and fuelled frequently by those responsible for financing the legal and judicial process on a national or international scale. That debate is often or to an extent over-simplified by typifying it as a struggle between justice and financial expediency. Expanding that description slightly, the debate from the justice side has raised the concern that there should be no constraints of any kind, especially not financial, when it comes to the proper delivery of justice to those principally involved in, and affected by, any legal and judicial process created to address alleged wrong doings.

It has to be said from the outset that such a concern is inevitably based on sound and legitimate grounds. Equally, it can validly be said that no process, whether judicial or otherwise, should be immune from regular inspection and, as necessary, constructive criticism, especially if the institution concerned does not appear to be meeting its objectives.

It is not necessarily the role of this manual to launch into that debate, other than to acknowledge its existence and flag the main arguments. However, as with everything in life, it is important to establish a proper balance, and it is suggested here that the court management section has a crucial role to play in 'defusing' such situations by adopting a sensible yet sensitive approach to the whole issue.

First, it has to be recognised that the legal and trial process cannot, and will not, be effective unless there is a clear understanding of the importance of coordination and cooperation by all concerned. That entails a ready exchange and flow of information between all the parties. To that end, it is important that there be a recognition of the considerable resource a courtroom represents, not only by way of initial building costs and maintenance thereafter, but also by the ongoing cost of the trial process, whether the courtroom is fully used or not.

It is suggested that it is the chief of court management's responsibility to ensure that there is effective dialogue between him/herself and chambers, the prosecution and the defence in order to support the trial process fully and make effective use of the courtroom(s) available. Part of that responsibility is to ensure that all concerned in the process, including the judges, are aware of the impact on the institution in terms of the use of resources of adjournments, recesses, delays caused by not adhering to sittings times and so on. In addition, some observers would say, delays are also likely to have an impact on the institution's wider and long-term reputation.

Inevitably, decisions about days and times ultimately fall to the judges concerned, due to their overall responsibility for the conduct of the trial process. However, in exercising that responsibility, it is incumbent on the court management section to ensure that the judges are aware of all the factors in play and the ramifications when courtrooms are not used.

It follows that judges should not see the collation and publication of courtroom utilisation statistics as intrusive, but as a very necessary contribution to the overall efficient conduct of the trial process. It is also the responsibility of the court management section to ensure that, when collating, appropriate weight is given to the time spent by judges in chambers and elsewhere, dealing with motions, applications, researching and writing judgments and decisions. All these activities can consume a significant amount of a judge's time in ways not readily seen or appreciated by external observers. Hence, when recording and producing statistics, the court management section should consult with the president and presiding judges on the format and content of the forms used to collect such information, to ensure that there is a comprehensive coverage of all work and time expended.

4. Judicial Support Mechanisms/Procedures

Mention was made in chapter III of the need for a working group or committee that focuses on each and every aspect of the trial process and represents all those involved in that process.

While the precise title of such a group or committee should not be regarded as too important, it should reflect its purpose, particularly because experience has shown that there are some who regard such committees as impinging on the independence of the judiciary. It is recommended that a title such as 'judicial support committee' or 'courtroom coordination committee' be used, as its prime purpose is to ensure that the judiciary receives the maximum support it requires in the conduct of the trial process. The chief of court management should chair that committee; its composition is as set out in the section on the registry's internal mechanisms.

It is also important that (through the court management section in coordination with the witness protection section) all necessary arrangements are made for the witnesses required by the court to be prepared and ready to give evidence. Steps should also be taken to try to meet all eventualities, such as the non-attendance or illness of a witness, or a witness taking a shorter time than expected to give his or her testimony. All these factors may result in the court having to adjourn unless there is a reserve of witnesses available.

Court management must also ensure that, each and every day that the court sits, the judges not only have all the relevant papers and documents, but also all the details they require on the identity and status of each counsel appearing before them. The early proceedings of the Iraqi High Tribunal in the trial of Saddam Hussein demonstrated the

difficulties that can arise when this does not happen, resulting in delays in proceedings and confusion in both the court and for observers.

5. Scheduling/Listing of Cases

The scheduling of cases is an important feature of the trial process, and one that requires the timely gathering and sifting of all available information involving the prosecution and defence. Inevitably, the number of defendants involved and the total number of trials involving those defendants will have a significant impact on the nature of this challenge. For example, the numbers involved in the tribunals for Rwanda and the Former Yugoslavia are vastly different to those in Sierra Leone, although the principles involved are similar.

Likewise, the number of courtrooms available will play a significant part in the scheduling of trials. The key to effective scheduling is the quality of the information made available to the court management section in terms of its accuracy, reliability and timeliness. It is therefore crucial that the court management section work hard to develop and maintain an extremely effective working relationship with both the prosecution and defence. The prosecution and the defence have an obligation to provide all relevant and appropriate information in respect of those trials in which they are involved. However, the reality is that, sometimes due to ineffective communication or a lack of understanding of responsibilities or other factors, information that would have been extremely useful to the court is withheld and not shared.

Part of that information sharing process will take place through the usual channels, such as telephone, fax and e-mail. However, case conferences (from time to time, and when all parties can be represented) offer a significant advantage. They not only ensure that the necessary information is made available, but also provide an opportunity for constructive dialogue on a range of related issues and, on occasions, the flagging, resolution and referral to judges of potential difficulties.

While there will be the usual pre-trial reviews and conferences or hearings where a judge or judges will preside, according to the rules of procedure and evidence, the process discussed here is an informal one that is intended to identify and resolve as many issues as possible without taking up valuable judicial time.

6. Handling Motions, Applications, Responses and So Forth

Similarly, it is the responsibility of the court management section to create an effective system for handling all motions, responses to motions and applications. The rules of procedure and evidence will address the legal aspects of filing motions in terms of time limits, format and so on. What is needed in addition is a clear administrative procedure that is established and circulated to all concerned—setting out how such matters are to be dealt with, especially in this time of electronic communication. Where relevant, the impact of differing time zones has to be taken into account, as does the institution's

schedule of public and religious holidays, so that motions are filed within the prescribed time limits.

Also important is the extent of authority, in terms of flexibility, vested in the court management section by the president and presiding judges with regard to scrutinising documents filed by parties before accepting them. Experience has shown that, while some judges are comfortable with a court management section pointing out obvious errors to those filing all documents, there are those judges who feel that all documents, perfect or imperfect, should come before them without involvement by the administration. That is an issue that needs to be clarified as soon as possible after the judges are appointed. Finally, court management needs to keep a central register of all document details received, from receipt through to disposal.

7. Language Unit

There are differing views (and different approaches) across existing institutions as to where a languages unit or section should be located. In the ICTY for example, the conference and language services section is separate from the court management section. At the International Criminal Court, there is a court interpretation and translation section within the court services division. In Sierra Leone, the languages unit is part of the court management section. However, all such sections are located in the administrative structure of the institutions concerned, and are not dispersed to either the prosecution or defence, although, at the ICC, the prosecutor's office does contain a language services unit. As ever, a good deal will depend upon the size of the institution, its mandate and the background to its creation, but it is important to recognise the major issues in play. For example, in Sierra Leone, there are 23 different languages, a number of which are non-codified, standard languages that make it difficult to find interpreters who can interpret accurately. The challenge facing an institution like the ICC can be seen to be even more significant.

A decision that will have a significant impact on an institution will be the number of official working languages used. While every effort should be made to ensure that the institution concerned takes account of the particular circumstances surrounding its creation, very careful consideration should be given to the choice of a working language or languages. It has to be remembered that the sheer volume of documentation likely to be passing through an institution can quickly become unmanageable if everything has to be translated into multiple languages.

Inevitably, the institution must be prepared for any eventuality so far as the languages spoken by potential witnesses are concerned, but the reality in most circumstances is that it will be clear from the outset what the situation is on that front. With that in mind, it is important to seek out the best qualified staff, giving attention to the appropriate pay levels as the expertise required can be hard to find. It is suggested that a well-qualified and experienced chief of languages be recruited as soon as is possible, so that they can put their team together and identify training needs. Decisions also need to be taken on the composition of that team in terms of interpreters and translators and the

ratio between permanent staff and short term contractors. It is also important that the chief of a language section be consulted on, and involved with, such issues as the choice of microphones and recording equipment to be used in courtrooms, and in the construction or arrangements for the layout of a courtroom; in fact anything about the trial process that impacts on the section.

Wherever the institution is located, there is likely to be a need to recruit and train nationals as interpreters. Because the vocabulary of trials is quite specialised, it may in some situations be difficult to find sufficient qualified and experienced national interpreters and training may be necessary. Thought should also be given to the wider training needs of all interpreters in terms of understanding and responding to issues of cultural diversity.

Similarly, as it is likely that both the prosecution and defence will require support from the language unit—for example, their assistance in interviewing witnesses—it is important that interpreters and translators are also trained in the protocols followed in the interviewing process. It is also useful for those who need to avail themselves of the language unit's services to understand the challenges faced by such units and assist them in meeting those challenges. The need to plan regular breaks for interpreters in court is important.

It is also recommended that newly appointed chiefs of language units seek and take advice from other institutions, whether or not they are operating in the same line of work, as there can be benefits to looking at, for example, how certain terminologies are used. As with other units or sections, it is also important to produce written procedures that provide both interpreters and translators with clear instructions and protocols to ensure consistency and high standards.

One issue that is frequently overlooked is that of recognising that interpreters can and will, from time to time, find themselves suffering from the cumulative effects of dealing with harrowing accounts by witnesses or victims of atrocities. It follows that the institution should have a counselling capability to meet such needs.

8. Archiving

Mention has been made elsewhere of the need for the earliest possible consideration to be given to the adoption of an archiving strategy—providing an effective archiving service for the institution's documents, both administrative and legal. While existing institutions have all made provision for the archiving of their documents, approaches vary and at the time of writing of this manual, there is constructive dialogue between a number of the institutions and international experts in the field as to how to tackle the matter in terms of a number of issues such as follows:

- Consistency of standards across the institutions.
- Confidentiality while also allowing access to a variety of the interested parties.
- Strategy beyond the lifetimes of the respective institutions.

- Ownership by respective stakeholders.
- Recognition that both hard copy and electronic formatted records may have to exist for some time.
- The central repository versus decentralised options debate.
- The overall role of the United Nations.

The dialogue around these issues continues, but it is recommended that any newly created institution should, first, contact the UN archivist at headquarters to take advice on how to plan and prepare for the archiving of documents from the outset. Thereafter, the archivists in the existing institutions, especially those at ICTY and ICTR, should be contacted for detailed practical advice.

9. Access to the Public

Security will be a paramount consideration in terms of allowing public access to courtrooms to attend trials or other court hearings. It is the responsibility of the court management section to ensure that everything possible is done to facilitate public attendance at court hearings, subject to consultation with the judges concerned. This is especially so where an institution is located in the country where the conflict took place. It is also a legal right of the accused, who is entitled to a public trial.

To that end, the court management section must ensure that details of all open sessions of the court are published in a timely manner and, in consultation with the press, and public affairs and outreach sections, efforts should be made for those details to be communicated to the public. This may be done by television, radio, press and other means thought appropriate in the particular circumstances.

10. Media Relations

It will be for the press and public affairs section to coordinate and cooperate with the local, national and international media in accordance with its media policies and strategy. At the same time, the court management section must ensure, in consultation with chambers, that there is an effective working relationship with the institution's press and public affairs section on access arrangements for the external media—in terms of numbers permitted at any one time and requests for photographs.

The press and public affairs section should arrange and organise press conferences or events as necessary, but the chief of court management should be made aware of such events and their purpose.

11. Electronic Support to the Trial Process

While assistance to judges and staff by electronic means is available across the institutions, it varies in complexity and expertise. Significant efforts have been made at the ICTY, ICTR and ICC to produce a comprehensive judicial database. In addition,

there is an ongoing project at ICTY and ICC to develop an 'e-court' system, with all court documents provided in electronic form for use by all the parties concerned. As with most innovations, there are inevitable teething problems and reluctance by some to embrace the change from hard to electronic copy.

However, increasingly such systems are being developed in national court jurisdictions such as Belgium. Given the advances made on this front, this is an innovation that needs to be pursued and developed. Any new institution would be well advised to seek advice on the scope, potential and, as importantly, cost of such systems before it considers its own strategy on this front.

There is also significant experience amongst the existing institutions about the use of 'video link'. Care needs to be taken not to rush into technological solutions without examining all possible non-technical options, and cost will be a driver in such decisions. There are, however, a number of benefits to be gained from the use of this particular technology both internally and externally. For example, as occurred in Sierra Leone, there will be occasions when defendants may choose not to attend their trial for any number of reasons. Should the court decide that it is in the best interests of justice for the trial to continue in their absence, it may well feel more comfortable about making that decision if the defendant(s) concerned have access to the court proceedings through a video link to their place of detention.

Externally, and especially if an institution is operating in-country—perhaps with travel difficulties for defence counsel or witnesses—a video-link can assist with events such as case conferences or related meetings. If approved by the judges concerned, a witness can give his/her evidence that way if there are good reasons why he /she cannot attend according to legal standards. In such cases, the judges are still able to observe the demeanour of the witness.

More generally, where significant time and travel may be involved, an institution can conduct a number of other events using a video-link. Inevitably there needs to be careful planning for such events, with equipment of the appropriate quality and thought given to time zones and locations—as there are certain times of the day when there may be natural interference with both sound and vision.

12. Court Reporting

Court reporting is a function that should be firmly located within the court management section, as it provides vital support to the trial process and related matters. As with the interpretation/translation function, it is important that all parties to the in-court trial process understand and appreciate the role and responsibilities of court reporters and the challenges they face. The pressure of having to report accurately on in-court proceedings, often in tense situations, can be considerable and, as with interpreters/ translators, court reporters need to have sensibly scheduled breaks and access, if required, to a counselling service.

It is suggested that, just before an institution begins its trials, all the parties concerned will benefit if the court management section organises a ‘courtroom seminar’. This will involve representation by all parties and in-court support services, and run through the respective roles and responsibilities of all concerned, in an attempt to understand the importance of effective coordination and cooperation.

Methods of court reporting can vary from the use of pen and paper, stenography, audio tapes to ‘real time’ reporting such as 'Livenote' or a combination of those methods. If at all possible, real time reporting is favoured. However, experience has shown that there can be difficulties in the presence of a number of local accents. Also, when there is a lack of control in court from the bench, a number of parties may speak at the same time.

As with the language function, it is important that the recruitment of staff is handled carefully, putting an emphasis on attracting staff with significant experience. Consideration also has to be given to the prevailing environmental circumstances of the institution concerned. For instance, in situations where tropical diseases are rampant, extra measures have to be taken. It may, for example, be necessary to recruit more staff than would appear to be justified in the first instance, simply to ensure that there is adequate cover to guard against large scale absences due to illness.

Many court reporters will have an employment history of working either for a company or freelance and will have gained experience across a number of different assignments, both nationally and internationally. In addition, some reporters will be accustomed to working on short term contracts while others will prefer longer assignments. It is suggested that an ideal mix would be to recruit the core number of reporters on a minimum of a year’s contract (with scope for renewal, subject to performance), and to employ the remainder of the reporters on a short term basis, again with the possibility of renewal subject both to their performance and the requirements of the trial process.

This approach can prove particularly cost effective if, for any reason, a trial or trials are halted or adjourned and there is a delay to the recommencement of proceedings. Many court reporters are used, in effect, to being ‘self-employed’ and working on their own. Nonetheless, there will be a need for the pool of reporters to be under the direct and daily supervision of a coordinator or supervisor. He or she will be responsible for the day-to-day management of the pool and the allocation of duties, training and performance assessment, as well as recruitment. In particular, the supervisor will be responsible—in consultation with the chief of court management and representatives of the chambers—for producing short term and long term plans to meet the institution’s court reporting requirements.

Other issues to consider are, for example, the proximity of court reporters to the courtroom(s) in terms of their offices and an editing room. Every effort should be made to reduce the need for reporters to carry their equipment to and from the courtroom. Efforts should also be made to ensure that reporters have access to a network that allows their work to be edited or checked by colleagues outside the courtroom. This facilitates the more effective and quicker production of transcripts of proceedings. In

addition, a 'scopist' should be employed to proof read and fine-tune the final transcript. To this end, it is important that the coordinator or supervisor is trained to understand how the various institutions' communications and information technology sections have set up networking for reporters and how it operates.

Training should also be available to court reporters in respect of local languages, dialects or accents: the language section can play an important role in this regard. Similarly, there are those who feel that court reporters should spend some time working with investigators (prosecution and defence) to give them a basic understanding of the background to cases when they are asked to assist in the taking of witness statements.

13. Library

While little needs to be said about the importance of an effective, comprehensive library service, a number of issues should be considered. First, it needs to be recognised that the development of good quality library facilities can be expensive and time-consuming. The Internet provides access to a range of international jurisprudence and research material, but there is still likely to be a demand for ready access to a range of reference books and materials.

The availability of funding will be crucial to the provision of space for the library and its contents. For example, in Sierra Leone, the library (and other court offices) were accommodated in a simple prefabricated block, with little scope for expansion. In addition, the vast majority of books, periodicals and other materials, such as CD-ROMS, were donated to the court by a variety of sources. Had that not been the case, the court would have had to work with an extremely limited library facility, as there was little funding available from the regular budget.

It follows that adequate provision should be made in an institution's budget (especially in the first year) for a library facility with a small number of staff, including an experienced librarian. Thereafter, the extent to which that facility needs to be expanded will depend on the nature of the institution and its ability to attract funding from outside the regular budget.

Inevitably, the requirements of any library facility will also depend on the number of working languages in operation in the institution concerned. One aspect that may attract additional funding is the part a library can play in the institution's overall legacy strategy.

Finally, and a related point so far as the legacy aspect is concerned, is access to the library. While a library is provided primarily to serve the needs of the institution and, accordingly, is likely to be located within the institution in easy reach of its main users, some thought may need to be given to permitting or encouraging wider use. Again the location of the institution will influence the approach to be taken in this regard and, whatever the circumstances, security concerns will feature. However, it should be recognised that there can be benefits to permitting external use by selected groups or

individuals—such as the local judicial and legal sectors as well as accredited civil society and human rights groups—more especially when the institution is located in a country in which the infrastructure may have been destroyed or seriously damaged.

14. Experience and Competence of Staff

As can be seen from the range of responsibilities and functions that fall to a court management section, a wide variety of experience and competence will be required, especially in the senior posts. Again views will differ, but there has been a tendency in some existing institutions to look for staff with legal qualifications or, at the least, university degrees or both. While those requirements in themselves may, and do, produce good quality candidates, care should be taken not to regard them as exclusive.

It could be said that the clue to what is principally required is in the title of the section: court management. This suggests the need for effective management of all aspects of the court process. Beyond that, there is little requirement for legal skills, other than a knowledge and understanding of the process and the general legal issues in play. Experience of working in a national or international court environment—whether as a lawyer or an administrator—is probably more important in the long term. Most, if not all existing institutions are well provided for in terms of the number of lawyers on their staff, and the availability of legal advice is widespread in any case. Experience has shown that the large scale recruitment of lawyers with varying backgrounds and experience to posts that do not require them to use their particular skills, competences and qualifications leads in the long run, to dissatisfied staff members and, frequently, poor performance.

15. Court Capacity Model

Finally, it may be useful to mention that, in an attempt to capture the many and varied aspects of the court management function, and with the purpose of identifying all the necessary elements required to support the trial process from start to finish, senior managers in the registry of the ICC are working on a 'court capacity model.' Such a model will help map existing caseloads and expected demands on courtrooms against existing resources to enable efficient planning and resource allocation. The availability of such a model—albeit that the circumstances of respective institutions will always differ—would be a significant step forward not only in informing an institution's budgetary process, but also in assisting the planning process generally.

D. Finance

1. General Commentary

With increased pressure on internationally-assisted criminal justice institutions to operate in an efficient and cost effective manner, it becomes ever more crucial for an institution to be able both to handle its finances effectively, and to demonstrate that fact to its financial backers and the international community at large.

The nature of an institution's funding base will inevitably play a significant part in how its finances are handled. The difference may be between a fully fledged UN-backed institution, financed by assessed contributions from the UN budget, and an institution funded by voluntary contributions from a group of interested states or, as with the Special Court for Sierra Leone, an institution primarily funded by voluntary contributions, but the recipient of UN financial assistance when the voluntary funds dried up.

As in other areas of work, the United Nations organisation possesses well-established mechanisms and procedures for handling its finances centrally and in the field. It is therefore unsurprising to find that the international tribunals for Rwanda and the Former Yugoslavia both operate their finances in accordance with UN financial rules and regulations—an integral part of which provide both control and reporting mechanisms.

In addition, the ICC, as well as the Special Court for Sierra Leone and the Extraordinary Chamber in Cambodia, have all adopted the UN's finance rules and regulations, either in their entirety or partially. Indeed there are significant advantages in doing so, not least the fact that it avoids 'reinventing the wheel', which can lead to delays and unacceptable risks. It also helps provide donors with the assurance and confidence they need in the particular institution's ability to handle its funds effectively and appropriately.

Other advantages are that there are well developed reporting and accounting mechanisms and finance software packages and databases designed to operate in accordance with UN rules and regulations: for example, the Sun System. Additionally, where the UN auditors have an auditing function to perform in an institution, there is the benefit that the auditors understand and relate to the accounting and reporting systems in place.

All that being said, it has to be recognised that there may well be circumstances in the future where an institution, for a variety of reasons, may not be in a position to adopt the UN rules and regulations and decide to create its own system. The Special Court for Sierra Leone, to an extent, found itself in that position. It was unable to avail itself of the UN's Sun System in its early days, even though the court had partially adopted the UN rules and regulations. Obviously, in such a situation, alternatives need to be considered. However, extreme care should be taken when choosing operating systems and accounting and reporting packages. All in all, it is suggested that, unless there appears to be no alternative but to look for a non-UN solution, it is well worth adopting UN finance rules, regulations and related systems.

That being said, there are those with experience with UN rules and regulations, who believe that greater flexibility is required in their operation. Some claim that adherence to those rules and regulations can, on occasion, inhibit expeditious and effective performance. On such occasions, it is suggested that there is no good reason why common sense should not prevail—provided that every effort is made to adhere to the

rules and regulations and that any departure from them is supported by a well documented justification, not least for audit inspection.

The relationship between the finance and budget sections is dealt with elsewhere, but it is worth repeating that there must be effective cooperation and coordination between these sections.

With regards to the staffing of finance sections, the likelihood is that—due to the experience required to work in accordance with the UN finance rules and regulations—the chief of section will be from an international background. But, for legacy purposes, every effort thereafter should be made to recruit nationals if the institution is located in-country. However, experience has shown that there have been some difficulties recruiting nationals in this area of work. In any case, it is important for a training programme to be put in place at an early stage, to ensure that the finance staff have a sound knowledge of all the working policies and, particularly, the database system selected.

2. Finance Issues

While the UN finance rules and regulations are comprehensive and provide a sound platform on which all the major aspects of a finance section can be based, there are inevitably some issues that need to be noted as potentially presenting a challenge, especially in the early days of an institution's development.

3. Banking and Cash Handling

Inevitably the standard of the banking facilities will depend on the location of the institution concerned. However it should be noted that, even where good banking facilities are available to an institution, there may be staff whose country of origin does not possess such facilities and who will be reluctant to have salaries or other payments made to an account in that country. Similarly, the absence of a reliable banking sector in a country where an institution is located will require careful consideration, because of inherent risks when large amounts of cash are brought into and handled within the institution, even though there will be a need for some cash to be available on a daily basis.

That being said, there is likely to be at least one reliable bank where a local account can be opened and that can be used for the usual range of transactions, especially the cashing of salary cheques or payable orders for local staff and the regular provision of a cash 'float' for the institution. In that respect, it is in the institution's interests to encourage the bank concerned to provide some of its services in the institution's premises from time to time, to avoid the risks inherent in transporting cash to and from the bank.

It is always advisable to open the institution's main account with a major international bank to ensure the efficient handling of finances. In the case of UN funded institutions,

the arrangements are more straightforward and well established. Also ensure that there is an adequate banking mandate and that sufficient senior members of staff are authorised as signatories so as to process requests for payments and so on. This will enable the institution to operate if some senior members of staff are absent for whatever reason.

4. Payments

It will be important to ensure that an effective set of payroll and payment procedures is created as soon as possible and that, where payments are made in the field (for example, to prosecution or defence witnesses), there are robust practices in place to cope with as many eventualities as is it is possible to visualise. For example, in the case of witnesses in remote areas of a country, it is likely that some on the spot cash payment may be needed to help a family to survive while the major breadwinner is away, either being interviewed in readiness to give evidence or giving evidence.

It is also likely that a number of such witnesses may be illiterate and unable to sign a receipt for any cash payment. In such circumstances, it is important to take all possible steps to ensure that there is a clear audit trail involving relevant documentation, including receipts for payments signed or marked in some way so as to confirm payment has been made.

Notwithstanding the usual issues of confidentiality and sensitivity when dealing with witnesses in the field, there must also be a level of transparency, consistency and, of course, justification. Experience has shown that auditors are alive to such matters and quite prepared to recognise difficulties, as long as the institution has demonstrated a desire to do its best to record all payments. It is not unusual for documents involving payment of expenses to protected witnesses in the field to be kept under lock and key and marked 'for audit eyes only' where there is a justification to keep his or her identity totally confidential, even within the institution itself.

There should be a set of expense guidelines—including fixed rates against which payments are made—in respect of both prosecution and defence witnesses. But it is as well to remember that a finance section should avoid being too rigid and recognise the challenges experienced by those in the field. A small but important point to make is that, where making payments in the field is unavoidable, payment could be made perhaps from a branch or satellite office, and a good quality safe purchased and installed.

It should also be remembered that, while it is the registry or administration's responsibility to account to donors and auditors for the institution's finances (including those funds deployed to the prosecution and defence budgets), it is the responsibility of both prosecution and defence to use and account for any expenditure in an appropriate manner. Investigators in the field must be particularly careful not to make payments or promises of payments that cannot be justified or these may become the subject of litigation.

5. *Audit function*

Brief reference has been made elsewhere to this crucial function. Almost inevitably the United Nation's audit services will feature in some respect, predominantly as internal auditors. But, especially where an institution is not funded from UN assessed contributions, arrangements should be made, in addition, for an external audit function to be in place. It will usually be for a body such as a management committee to approve such arrangements.

E. Budget Office

1. *General Commentary*

The budget is usually a small but highly important area of work in any institution—given that it plays a major part in the institution's planning process as well as its subsequent control process.

The general approach and activities of a budget office within an institution will depend on the nature of the funding arrangements of the institution concerned. Should the institution be fully funded from United Nations assessed contributions, the financial procedures and reporting mechanisms will be controlled by the UN. Should the institution, as with the Special Court for Sierra Leone, be funded primarily by voluntary contributions, there is likely to be more flexibility both in the budgetary process itself and the reporting or control mechanisms in place.

That being said, there will, as with other areas of administrative work in such institutions, inevitably be commonalities in a budget office function, whatever the financial background of the institution. Principal amongst these will be the need for a rigorous budget planning process and in-year control. While there may be differing views on the most effective approach to be adopted, the 'bottom-up' approach has a number of advantages during the planning and preparation stage of constructing a budget. What is meant by this approach will be discussed later in this section.

Experience in the past has shown that first year budgets for existing institutions prove the most difficult to construct and adhere to. Quite simply, whether or not the institution concerned is financed by the UN or located in-country, it is almost impossible to estimate precisely what expenditure will be incurred in that crucial first year. This is especially so (as has happened in the past) if the budget is produced from outside the institution itself, for instance within UN headquarters.

One of the core activities of any planning mission should be to work on an initial assessment of what level of expenditure will be necessary and can be justified in the first year. This should take into account as many aspects as possible of the circumstances surrounding the creation of the institution concerned—for example, location, availability of equipment, staffing levels and likely national to international

ratios, emerging prosecutorial strategy in terms of speed of investigations, and the impact on the commencement of trials. Inevitably, the amount of funding available both in the first year and across the estimated life of the institution will dictate what level of budget will be made available.

Naturally a start has to be made somewhere, and the varied experience of current institutions can assist in the estimating process for the first year. However, any newly created institution, together with those responsible for funding it, must be prepared to take a flexible approach to the construction and operation of that first year budget and the funding available. That does not mean that there should be room for deliberate over-provision or the inclusion of large contingency margins; every effort must still be made to construct a budget that, so far as is possible, is transparent in terms of the process used and the thinking 'behind' or justification for every expenditure heading.

Inevitably both under-spends, over-spends and unanticipated expenditure will occur, as in any financial year. The institution needs to be able to respond and adapt—for instance, by building in a capability to allow for the reallocation or redeployment of funds across the institution—without being restricted by undue bureaucratic process. In some situations, this will entail recognising in advance the need to bring forward some funding from that set aside for the second year of operations.

Those responsible for providing such funding must be prepared to recognise the challenges faced by an institution operating in its first year, and need to have confidence in the ability of the senior administrator and his or her team to meet those challenges. None of that excludes the institution from the responsibility for taking every opportunity to keep costs down, look innovatively at all aspects of its operations and keep its donors fully and regularly informed on financial performance throughout the year. Indeed, if the institution concerned is to retain its credibility and support over subsequent years, it can be argued that its first year will be crucial to establishing a pattern that goes some way to meeting its donors' expectations.

In doing so, the institution must move quickly to a position where it can point to a budget that, on all known evidence, can be justified. It must also ensure the presence of controls and reporting mechanisms that will provide an effective platform for assuring donors that their money is being used both effectively and appropriately. The role of internal and external audits in participating in and overseeing such controls and mechanisms has been dealt with elsewhere.

Before looking at the responsibilities of a budget office and the importance of the budget process as a whole in a little more detail, one further matter should be raised—the position of a budget office within the administrative structure of the institution.

In some national court jurisdictions, it will not be unusual to find the budget function brigaded within the overall finance function. The latter provides the institution concerned with all the relevant and necessary financial services: from the construction of the budget estimate and the handling of and accounting for all payments, including payroll, in-year financial forecasts and profiles, finance instructions, and audit liaison.

There is, to some extent an attraction in adopting that structure, if only because of the close relationship between the budgetary and financial processes, although this is not an arrangement favoured by the United Nations. However, and based only on the experience in Sierra Leone, there is a persuasive argument for separating the functions to allow both disciplines to focus on their respective responsibilities. This also removes the tendency for those responsibilities and priorities to become blurred. The finance section too must work within the agreed budget. It is interesting to note that the International Criminal Court has chosen to adopt such an arrangement—with the finance and budget sections separate from one another.

2. The Budget Process

First, it is important to ensure that the appointed budget officer has significant experience of budgetary work and preferably, if UN funding is involved, a good working knowledge of UN procedures, including particularly its finance and budgetary controls and reporting mechanism.

Second, it is important in any institution where the senior managers (for example, chiefs of sections) may come from different backgrounds, including non-UN posts, that they are provided with some training on the budgetary process. That training should take place as soon as is possible in the life of the institution and be repeated as necessary. A key element of training must be to ensure that staff and senior managers across the institution fully recognise the importance of the budgetary process, its centrality to the mainstream operations of the institution and the essential need for good communications and transparency in all dealings between its respective sections. In a sentence, the budget office must be aware that each and every decision taken by the institution may impact upon the budget in some way. In effect, there are few decisions that will not do so.

Reference was made earlier to the ‘bottom-up’ approach which, principally, involves all areas of the institution making a rigorous assessment of their likely operational needs over the next financial year. This is done in accordance with, and guided by, the senior administrator’s assessment of the institution’s future programme, and needs to include its main objectives and priorities. It may be that the presence of the aforementioned internal senior management board within the institution will serve to discuss and agree those objectives and priorities.

However, the construction of budgets for a first year, especially where the institution is in-country, is unlikely to benefit from this approach, due to the likely initial absence of some of the key operational players concerned. However, with the benefit of the first year behind it, operational players will need to look rigorously and innovatively at what activities they need to undertake and when, in order to underpin the institution’s mandate and make progress against its objectives. In adopting this approach, they will have do some detailed work and be prepared to explain and justify literally every activity and proposed expenditure head to the budget office.

In this way, detailed bids are prepared and submitted to the budget office, initially for an overall institutional bid to be pulled together for discussion. While, as was the case for the Special Court for Sierra Leone, there may well be an indication of the level of funding likely to be available for the year in question, in other instances like UN-funded institutions, there is unlikely to be such an indication. It will be known though that any bid will attract considerable scrutiny within the UN budgetary process in New York. Additionally, in that latter case, there will also be an expectation that any bid will be based on the previous year's activities and that any proposed increase will have to be justified and tied closely to activities during the year in question.

In those institutions where there is an indication of the likely level of funding available—perhaps year to year over a set period—the temptation should be avoided of inflating any bid to match or nearly match the amount on offer. Any contingency element in the bid should be kept down to no more than 1 to 2 percent.

While scarcity of funding can concentrate the mind, it should not constrain the inclusion of properly constructed and justified bids in respect of activities that are key to the institution's success. It is one thing to 'cut one's suit according to one's cloth', entirely another to finish up with a suit with one trouser leg and one sleeve.

What can cause real difficulties on the availability of funding is not so much the amount of funding available, but an uncertainty as to when it will become available. That situation renders the ability to plan ahead effectively almost impossible and should be avoided at all costs.

Once a draft budgetary bid has been assembled, it will usually be for the registrar or senior administrator in the institution to discuss the bid with the budget office. He or she will take into account any areas the budget office has preliminary concerns about—for example, the construction of the particular bid and any perceived lack of justification where the budget officer has already have raised initial concerns with the section concerned.

High level discussion may result in a decision to accept the bid in its entirety, but this is most unlikely. It is more likely that certain areas will be identified as questionable. The senior managers concerned will be invited to put their respective cases to the senior administrator for a decision on whether reductions will be made or otherwise. Thereafter, the draft budget can be finalised and presented to the external body responsible for its approval. In institutions with an internal management board, the bid is likely to be discussed and approved before being referred externally.

In submitting the finalised proposed budget to any external body, due consideration needs to be given to the nature and background of the audience to whom it is being presented. The bid should be clearly and effectively formulated, with as many explanatory notes as are necessary to explain specific activities or the relationship between activities. Similarly, any activities appearing for the first time or which require additional staff resources should be highlighted. Attention should also be drawn to

activities where there is some uncertainty about when they will be undertaken or a possibility that they may not, but where financial provision is required as a safeguard.

It is likely that, amongst all the questions that donors may ask on presentation of the budgetary bid, the main question will be what reductions can be made and where, should there be insufficient funds or a reluctance to fund up to the extent of the overall budgetary figure. With that in mind, those presenting the budget should always be prepared not only to defend the bid, item by item, but also to have a range of options ready to deal with any call for reductions. It is suggested that these options should be based on reductions from between 5 and 20 percent, and should make it clear what the operational impact of any reductions would be.

In presenting options for reductions, every effort should be made to avoid 'across the board' reductions that may appear simple but could be extremely damaging to the institution's progress as a whole. It is far better to identify what can be managed and contained.

3. The Budget Controls

Hand in hand with the budgetary preparation process are the control and reporting mechanisms, both internal and external. Mention has been made of the factors in play when an institution is entirely funded by UN-assessed contributions or a similar arrangement. In such instances, the control and reporting requirements of the controller's office in New York are well-established and clearly set out in a number of relevant instructions. It is also likely that, in the course of setting up the institution concerned, the existing UN finance rules will have been adopted by the institution—either in their entirety or by way of providing a significant baseline. In that scenario, it is likely that many of the administrative support systems of the UN will be imported into the institution to assist in the management of data and production of regular reports.

Should this not be the case, the institution concerned will have to decide at an early stage how it intends to handle, amongst other matters, its budget and finance activities. It will also have to decide which system(s) it intends to create, using either an entirely novel software package or adopting an 'off the shelf' accounting package. Both those options carry elements of risk as well as the possibility of difficulties further down the line if, as is likely, the UN auditors provide the internal audit service.

What is important for both internal and external control and reporting is a transparent, easily available system that is able to provide, regularly and on demand, a comprehensive but robust monitoring facility for individual senior managers, as well as the budget and finance sections. It should be sufficiently comprehensive to be able to provide details not only of past expenditure, but also of future expenditure programmed and, more generally, expenditure profiles.

4. *Specific Budgetary Challenges*

While all organisations face a number of challenges in managing their operational costs effectively, some particular challenges face internationally-assisted criminal justice institutions in meeting their mandates in a cost effective manner.

First, it is vital that the senior administrator ensures that the institution's judiciary, prosecutor and principal defender are all represented or involved in the budgetary exercise, and that the perceived needs of those respective areas are adequately taken into account. Thereafter, the senior administrator should ensure that all parties to the process are regularly brought up to date with the financial position of the institution generally and, more specifically, their own respective areas.

That being said, from experience, there are likely to be judges who, although recognising the need for their input to the budgetary process (either directly or via representatives), will be reluctant to participate too fully in what they see as a purely administrative function and one which may, in some way, compromise their judicial independence.

That approach should not, to any great extent, concern a senior administrator and he or she can proceed without it, as judges typically do not have much experience in constructing budgets. But there is a need for the senior administrator to ensure that the judiciary, preferably through the president or presiding judges, is regularly made aware of expenditure patterns in their own and related areas. This is necessary in the overall interests of the institution of which the judiciary are very much a part.

While it is comparatively easy for a senior administrator to ensure (through a number of actions including, ultimately, the use of sanctions) the effective financial performance of his or her senior managers, it is far less easy to be as directive with judges, who may believe that their financial needs and requirements are exempt from similar scrutiny.

The importance of effective working relationships is addressed in chapter VIII. This is but one example of the narrow line that must be negotiated between the administration and the judiciary. It is suggested that the senior administrator should focus, from a very early stage, on engaging the judiciary on the importance that the institution is seen to be run in an efficient and cost effective manner. Indeed, it could be said that this vital aspect of an institution's operations should be included in an induction seminar for judges on their first appointment to an international tribunal or court.

It is also likely that both the prosecutor and the principal defender will see the need to mount rigorous defences in respect of their respective budgets, especially in-year, with regard to overspends. Their positions, while inevitably very different from one another, do not entitle them to be treated any differently from any other area of the institution. Again it is likely that neither the prosecutor nor the principal defender will have significant experience of, or expertise in, constructing or handling major budgets from the domestic front. Their early involvement, as with judges, in workshops or seminars

dealing with the importance of the budgetary process and the mechanisms involved can be crucial.

However, in fairness to the judiciary, prosecutors and principal defenders, it has to be recognised that the many vagaries and uncertainties involved in the entire trial and appeal process, from the investigation stage to the conclusion of proceedings, make it extremely difficult to predict resource needs with any precision. That being said, it is permissible to take account of that imprecision and make sensible allowances, especially in the light of experience that inevitably shows that, while there will be unexpected expenditures, there will also be unexpected savings.

What should not happen—in the best interests of the institution and all principally concerned with its performance and reputation—is for effective 'no-go' areas in terms of discussion and negotiation on financial needs and performance to emerge, nor an unwillingness to provide justification for supplemental in-year bids. In accepting this accommodation, all concerned should be prepared to recognise that one of the senior administrator's primary responsibilities is not only to handle the institution's resources effectively, but also to prevent and protect the judiciary, prosecutor and principal defender from being the focus of any warranted criticisms as to their use of the institution's resources, especially from the auditors.

Finally, and not unsurprisingly, there are sharply divided opinions on the 'justice-v-cost' debate. On the one hand, the judiciary, most prosecutors and principal defenders will tend to argue strongly that the quality of the justice delivered through any relevant institution, international or national, must not be constrained by the availability of resources, particularly when it threatens to have an impact on the proper conduct of the trial and appeal process. Taken further, one could argue that any attempt by either the administrator or, more widely, by the relevant funding authority (be it the United Nations or states making voluntary contributions) to influence the nature of the prosecution, defence and trial of an accused, by imposing arbitrary time or cost limits, is a direct attack on the necessary independence of the legal and judicial process. While that argument remains and continues to be compelling to a point, it is suggested that, as with all aspects of life and work in general, a balance needs to be struck.

It has to be remembered that, even in the conduct of investigations, prosecution, defence, trials and appeals, those processes should be carried out in the most efficient and cost-effective manner. To do otherwise is to lose sight of the fact that, without the support of the international community as a whole, such institutions would not exist. Indeed, the recent reluctance of the United Nations to fund various institutions such as the Special Court for Sierra Leone and the Extraordinary Chambers in Cambodia from assessed contributions demonstrates that issues of cost and time and perceived delays are capable of having an impact when requests are made for the setting up of such institutions in the future.

Moreover, an institution that is inefficient or ineffective when handling legal and judicial processes will inevitably have an impact on the basic rights of those appearing before it, who have the right to have their cases dealt with expeditiously and efficiently.

It follows that, in each and every area of its work, the institution concerned must concentrate its efforts to ensure that all its various functions and processes are streamlined to support the legal and judicial process effectively, and that those responsible for these processes must recognise the need to do likewise.

F. Procurement

1. General Commentary

The procurement function within the registry or administration is crucial to the effective progress of any institution, particularly in the early stages of its lifespan. As with the financial and personnel areas of work, it is also likely to be heavily dependent on existing UN practices and procedures. Unsurprisingly, a number of the specialised agencies of the United Nations have developed their own manuals to meet specific emergencies: for instance, how to set up a refugee camp in Sudan with all the attendant issues to be addressed. Inevitably, such administrative practices remain under regular review and anyone responsible for procurement in a newly created institution, whether directly or in a supervisory capacity, should take the preliminary step of considering existing administrative practices.

That being said, a tribunal or court will have specific specialised requirements depending on a range of factors, such as the availability or otherwise of premises, equipment and facilities. As indicated in chapter II, the planning mission and its subsequent report should serve to identify the nature and the scope of a number of prioritised requirements, and the procurement process should, in the initial stages, be planned around those requirements.

Demands on the procurement process will be significant and, while there will be any number of different considerations, two major aspects should be considered. First, every effort should be made to recruit a chief of section and deputy who have solid experience of procurement procedures and techniques, preferably within the United Nations. Second, an uncomplicated, robust set of procedures should be put in place as soon as possible in order to ensure that all concerned understand the process and importance of adhering to it.

With that in mind, and because many of the institution's staff are unlikely to have experience of procurement procedures (or at least those of the UN), it is suggested that a series of half day seminars be arranged at an early stage for the institution's chiefs of section and, especially, for representatives from chambers, the prosecutors office and the defence office. In particular, efforts need to be made to educate the users or customers of the procurement process to recognise that a well formulated 'user specification' at the outset is absolutely crucial if what is eventually purchased and provided is to match the needs of the user or customer. Experience has all too often shown that user imprecision at the requisitioning stage leads not only to a waste of resource in terms of time and money, but to frustration all round. The level of frustration is likely to be significantly increased if the institution is operating in an

environment where most, if not all, equipment/goods/services have to be purchased from outside the country—resulting in long 'lead-in' times.

It is therefore important that, as in some other areas of a newly created institution's development, an early decision is taken on the approach to be adopted for the procurement process; will an element of flexibility be built into that process in order to meet all eventualities, or will the rules operated by the United Nations be sacrosanct? The recommendation is that, while it is recognised that there must be a robust set of effective procedures, sight must not be lost of the need, at all times, to have the overall best interests of the institution in mind. It follows that, as long as any departure from the usual process is transparent, justified and documented, there should be no legitimate concerns about taking all necessary steps to expedite any particular procurement exercise.

2. Planning

Whatever the stage of development of a new institution, the procurement process must be 'plugged into' the planning process. While it is particularly important that this should happen in the start up and completion phases, that arrangement must be ongoing throughout the life of the institution.

The ready availability of a range of items (from major to minor) is crucial to the progress of the institution. As with the other 'service' sections, there needs to be an involvement with, and clear understanding of, the need to ensure that a specific piece of specialised equipment or a consignment of office equipment (such as desks, computers or other similar items) is available when the institution needs it, and that other core activities are not delayed due to its absence. To achieve that result, it will be necessary for those responsible for procurement to be involved in every aspect of the institution's planning, including the recruitment of staff, the erection and furnishing of buildings/offices and the provision of transport, communications and other services. To that end, it is important that the local presence of potential contractors and suppliers be identified early, preferably during any planning mission. The availability of that information will assist significantly with early planning, especially in terms of the probable timescales and lead-in times that will dictate the arrival of equipment and so on.

As mentioned earlier, there is within the United Nations and its agencies a repository of information and experience on dealing with a range of suppliers and the related contractual issues. It is recommended that those responsible for procurement in any new institution should look carefully, not only at the type of contracts used elsewhere, but also at the availability of discounts and the performance of respective suppliers.

3. Contracts

Whether following UN procedures (such as the UN procurement manual) or other protocols in place in national institutions (in the public service or indeed the private

sector more generally), all recognise the importance of engaging in a transparent and legitimate contractual process. It is not surprising that this is one of the key areas for scrutiny by auditors. While there are templates available to meet almost every type of contractual arrangement, it is important that the institution makes effective use of its legal resources to ensure that all potential contracts are scrutinised and checked before any arrangements are entered into. To that end, it may be useful to have someone employed within the institution (for example, on the registrar's legal support team) with experience of contract law.

Although it is inevitable that all major purchases will be the subject of contractual arrangements, there must, with the timescale constraints that nearly always accompany a major purchasing exercise, be some flexibility. Not only should it be possible to purchase smaller items quickly from a specific budget held for that purpose, it should also be possible to respond to any urgent and unexpected but justified requirement. Again the meeting of any such requirements must be transparent and well-documented: providing a well supported and justified business case together with further justification for bypassing or short cutting the usual procurement process.

While this is to be avoided if at all possible, there may be circumstances at the very earliest stage in an institution's development on the ground where decisions involving the procurement of basic equipment (for example, mobile/cell phones, furniture and other equipment) must take place before a formal, structured capability can be established. This was the case in Sierra Leone. On such occasions, the senior administrator must ensure that all decisions involving the purchase and, especially, the letting of short term, temporary or emergency contracts are well documented and submitted for consideration ex-post facto by a contracts committee or similar body.

There will also be occasions when specialised equipment or a service is required by an institution that is unlikely to be in general supply, and where there may be only a handful of potential contractors or, in some particularly specialised cases, only one or two reliable potential suppliers. In such cases, it may not be in the best interests of an institution to get involved in a time and resource consuming tendering exercise when it can be demonstrated from the outset that there are only one or two potential suppliers or contractors. In ensuring that every effort is made to document such a procurement exercise in a transparent manner, it is both sensible and cost-effective to identify such suppliers—even if only one is capable of meeting quality, cost and time restrictions—so that a contract can be offered to them. While not an approach adopted frequently, there will be occasions when a 'single source' supplier can be identified and utilised.

Finally, great care should be taken to create an asset register to record items of equipment and furniture purchased for the institution concerned. In some institutions, such a function would be assigned to a facilities manager. The register is crucial, not only because of its contribution to effective operational management, but also because the institution concerned has an obligation to its donors (whether the United Nations or a group of voluntary funders) to be able to account for all its assets at any stage in its lifetime. The register should be introduced as soon as possible in the institution's

development; to do so later not only risks the omission of some assets, but also results in time-consuming efforts to trace assets retrospectively.

G. Security

1. General Commentary

In the same way that issues of finance and personnel are key to any institution, so the crucial aspect of security will play a significant role in its daily operational life, especially with regard to its judges and staff.

As with other areas of importance, there is already a body of experience and expertise available within the UN system and existing institutions, both in-country and externally. Information on policies and procedures can be obtained from a variety of sources, the details of which will be appended to this manual. It is strongly recommended that no decisions be taken on security issues until due consideration is given to previous and current experience. That being said, it may assist if some of the major factors to be considered are outlined in this section, with particular emphasis on considerations from an in-country location.

It is likely that an assessment of the overarching security situation will have been made, even before a planning mission is completed, not least because preliminary decisions will have had to be taken as to the options available for the eventual location of the institution concerned. That assessment will be based on a number of factors and will involve input from a variety of sources, both national and international. In most cases, the assessment will have been conducted by the relevant UN security section (DSS) in coordination with any international presence in the country concerned and with the cooperation of the host government of that country. Indeed, depending on the context, it may be possible to obtain security support from the UN, the UN Department of Peacekeeping Operations (DPKO) or a regional security force if one is present.

The inclusion of a security expert is crucial at the planning mission stage. Any initial security assessment should be used as the baseline for future planning. The person with responsibility for security will address the relevant major issues in play during the lifetime of the institution, particularly during the start-up phase when, inevitably, the institution may be at the greatest risk, especially if located in-country.

Circumstances on the ground at the location where the institution is situated will have a significant effect on the nature of the measures required. For example, providing security for the judiciary, staff, detainees and witnesses in a location outside the country concerned, or in a modern city with a sophisticated infrastructure, will pose very different challenges to providing similar security in a country where the conflict occurred. The conflict is likely to have resulted in a total collapse of any infrastructure and an ongoing threat of either renewed hostilities between warring factions or, at least, a general hostility towards the institution from some quarters of the population.

In the latter situation, as in Sierra Leone, there may be a significant UN or other form of international peacekeeping force to provide a stabilising effect so far as the general security situation is concerned, and to enhance the institution's specific security capabilities, subject to negotiation.

Whatever the situation, newly created institutions should be prepared to commit a significant part of their budgets to security and security-related issues. In Sierra Leone some 20 percent of the budget was required for such issues.

2. Security Issues

The provision of security is likely to be required on a number of specific fronts, including the following:

- The institution's personnel.
- The institution's main premises (including a detention facility if integral to those main premises).
- The institution's equipment, wherever located.
- Those premises occupied by judges and staff outside the main premises (living accommodation) if local circumstances require that that measure be taken.
- The detention facility if not integral to the main premises.
- The transfer of the detainees to and from the detention facility to the institution's main premises for court hearings.
- The transfer of detainees on any ad hoc occasion requiring their attendance outside the main premises (for example, for medical treatment not available in the detention facility).
- The close protection of judges and senior staff, should the local circumstances require measures to be taken.
- The transfer of any accused person from the location of his/her arrest to the institution's detention facility.
- Support (and advice) to the witness and victim protection and support section.

As can be seen, there is a wide range of varying responsibilities. In an ideal situation, the security section would wish to bring significant influence to bear on number of aspects of the institution's physical infrastructure—especially the location of the court premises and detention facility. In addition, in an in-country situation, it would also want to encourage the institution's judges and staff to live in secure areas.

However, and especially with institutions located in-country, the reality is that the institution will have to make the best of less than ideal conditions and, even when an institution is located out of the country, there are almost certainly going to be constraints. While it is important that all the well-established security policies and

procedures are followed from the start, there will inevitably be a need to meet each challenge innovatively at the very earliest stage in an institution's development on the ground.

In Sierra Leone, the government provided a piece of land for the development of the institution's site, including a detention facility. With that in mind, it is important that effective technical advice is available at the early stage of constructing the user requirement from a security standpoint, and ensuring that, for example, an integrated security system is part of the physical infrastructure and architecture.

Care needs to be taken when selecting a security adviser or consultant where there is no immediate access to any UN capability, not least because any number of companies will offer solutions that are likely to be both extremely expensive and less than effective. There is experience across the existing institutions and this should be considered before any decisions are taken.

3. Site Layout and Visitor Control

While circumstances, or even preferences, may dictate the choice of an institution's court site and detention facility and its preferred layout, there may be some advantage to putting all the institution's 'eggs in one basket' and opting for one site only; the different sides of the 'sole site' versus 'multiple sites' debate needs to be considered.
One of the major challenges faced by an institution's security capability is the daily control of visitors. This includes the safe and efficient movement of judges and staff in and out of the site as necessary, as well as likely visits by high-profile diplomatic delegations. The range and number of visitors likely to be seeking entrance to the institution for a range of purposes is significant. If the detention facility is to be located on the site as well, there will be additional considerations. The nature of the institution's work and its interface with those who regard themselves as stakeholders will, to a large extent, dictate the security policy adopted. For example, public access to court proceedings should be seen as essential to meeting the legitimate expectations of the institution's purpose. Accordingly, every effort must be made to encourage and ensure that those members of the public who wish to witness the trial process can do so without undue hindrance or obstruction.

There will also be witnesses (prosecution and defence), visitors to detainees (family and friends), contractors, trades people, media (national and international), organised parties (such as schools or groups of students), national and international monitors and a number of other visitors with a legitimate interest in the institution's work, such as the International Committee of the Red Cross.

It is not appropriate here to consider each and every detailed aspect of the security measures that will need to be in place to address all instances. However, it is obvious that, to support the integrated security system mentioned earlier, there must be a robust and sensible set of security procedures in place, together with a well-trained security force. An effective pass system that not only identifies the category of visitor admitted

but, where necessary, places restrictions on the areas of the institution that should not be visited, will be crucial.

The security section's task is made easier if those areas of the institution that receive visitors regularly—such as outreach, the defence office, press and public affairs—could be located outside more sensitive areas of the institution, including the judges' chambers and detention facilities. Consideration at the planning stage would facilitate this objective.

Similarly, the construction of separate entrances to the institution's main site and, if appropriate, the detention facility, will facilitate more effective screening and vetting of the various categories of visitors, allowing a better flow of visitors to less restricted areas. But it must also be recognised that multiple entrances require the allocation of more resources.

In respect of the vetting of visitors to the detention facility, it is particularly important that there is effective cooperation and coordination between the security section and the national police and intelligence services. These should share any information that may assist in identifying those who should be refused entrance, while confirming the identity of those who can be admitted. In that respect, it is suggested that a trained intelligence analyst be included on the security staff. Such a person could interact with the national or international intelligence agencies in vetting visitors to the detention facility and other gaols. It is also worth noting that, in the light of any decision to refuse entry to, or ban someone from, the premises, it will be necessary to provide sound justification should that decision be challenged.

In dealing with entrance to and movement within the institution's premises, all personnel must posses identification cards bearing their photographs and, again, be easily identifiable as to their function by the use of colour coded segments on each card (for example, red for judges, blue for administration, green for prosecution and so on). ID cards must be worn at all times on the premises and, if an electronic system is available, the cards can be programmed to enter and exit the various restricted areas.

All the institution's personnel, including the judges, must be made aware of the absolute necessity of keeping their ID cards with them at all times and immediately reporting any loss and the circumstances of that loss. However, they should also be advised not to display or reveal their ID cards when outside the premises, unless required to do so by a legitimate national authority

Circumstances may make it necessary that senior personnel (for example, the judges, prosecutor. registrar or senior administrator and principal defender) be allowed unhindered access to the premises at all times. This is to prevent any of those personnel who are usually regarded as high risk having to wait outside the entrance gates, and thereby constitute a more vulnerable target. Some will feel that there should be no such exemptions in the interests of total security, given the potential threat of allowing a person or persons and vehicles into a secure area without going through the standard check. However, if an institution is located in-country, the reality is that the threat to

high profile personnel is likely to be greater, and it is therefore likely that they, their living quarters and their vehicles will have been under constant surveillance while outside the premises. In any event, there is always the alternative of admitting such personnel through an outer entrance and then subjecting them to the standard check within an inner perimeter, as happened in Sierra Leone.

4. Close Protection of Principal Personnel

Turning to the close protection of individual personnel such as judges and the senior officials, the respective circumstances will again dictate the procedures and arrangements to be put in place. For example, it is likely that judges appointed to an institution located in-country will require close protection while judges elsewhere may not; this will depend on an ongoing security assessment and the intelligence information available.

With regard to the close protection capability within an institution, there are differing experiences. One approach argues for the close protection unit in-country to be made up mainly of local, national protection officers, supervised and mentored by international supervisors. There are a number of benefits to this approach, ranging from providing an intimate knowledge of the environment, surroundings and mood of the local population, to the contribution to a lasting legacy by training and developing national officers. In addition, the cost of a predominantly local protection unit will be far lower than that of a unit dominated by international protection officers Circumstances will vary from country to country.

The experience in Sierra Leone was that, while the majority of close protection officers were nationals, they were on secondment from the police service and not directly recruited and paid by the court. This did lead to some difficulties on issues such as selection and discipline. There were also some concerns—which provide the basis for the argument for not adopting this approach—that the national officers lacked the necessary experience to provide an effective close protection capability, and that 'learning on the job' or gradually developing potential through mentoring was not acceptable in a situation where the principals required protection from day one.

There is a further argument that it is unfair to put national officers literally in the 'firing line', when there may be all kinds of pressure exerted on them and their families by those with an interest in disrupting the institution's purpose.

In conclusion, it may be important to strike a balance and provide a mix of national and international staff and international supervisors, while recognising that there will be occasions or events when it will be more appropriate to err on the side of providing protection predominately by internationals. In this case, it is important that international security staff be familiar with local culture and customs that may have an impact on their work.

Moving to the responsibilities for the protection of residential accommodation, again, the scope of this issue will depend on the in-country situation.

5. Staff Residential Security

First, the security section, as part of its preliminary and ongoing general security assessment, should be in a position to cooperate with other national or international agencies to identify areas suitable for residential accommodation for personnel. In some cases, there may be a specific need for staff to live in restricted compounds or even at the place where they work.

Ease of access to the institution's personnel when off-duty, and the availability of 'escape routes', will inevitably form part of the security section's evacuation plan for the institution. However, it is always likely that an unavailability of residential accommodation in the areas preferred by security will result in personnel having to look elsewhere. This will mean that the security section will have to come up with alternative strategies.

It is important to put a policy in place as soon as possible to guide personnel on the type of accommodation to be considered: for instance, within secure compounds with good access and especially effective standby power supplies which will provide perimeter security lighting in the absence of a reliable national grid. In addition, if feasible, residential accommodation should possess an effective alarm system and be guarded by a reputable private security company from any available list of such companies. In the case of high profile personnel, there is likely to be a requirement that the host government provide protection for their residences.

In addition, it is advisable to engage the local police service by requesting regular police patrols in the vicinity of residential accommodation, to supplement any roster of visits made by the institution's own security personnel.

The Special Court in Sierra Leone decided to assist its personnel by meeting their expenses on fuel (for standby generators) and guarding by subsidising their expenditure up to an agreed level—provided they demonstrated that all relevant precautions had been taken to make their accommodation secure in accordance with a checklist provided by the security section. This approach was based on a well established standard set by the United Nations.

There is one further accommodation-related matter that may be of interest to those responsible for setting up a new institution, especially in-country. International personnel may find it difficult soon after arrival to look for and find suitable accommodation. With that in mind, the Special Court for Sierra Leone, in the early days of its establishment in Freetown, rented a couple of apartment buildings for occupation by staff when they first arrived. Hotel accommodation was either non-existent or extremely expensive, and the availability of clean, safe and reasonably priced accommodation provided staff with some much needed 'breathing space' while

they looked for their own accommodation. The period of occupation was usually around four weeks and a contribution to the cost of the accommodation was deducted from the staff member's daily living allowance.

6. Evacuation Planning

Mention has been made of the need for an evacuation plan to address measures to be taken in the event of any emergency, such as serious civil disturbance or, perhaps, an attack on the institution's premises.

That plan needs to be both detailed and capable of being adapted to meet changing circumstances. It will have to cover a wide variety of possible scenarios—from the evacuation of the institution's premises (due, perhaps, to fire) to a situation where the institution and its personnel are under serious threat, necessitating the evacuation of all personnel and detainees from the location in question (including the detention facilities), perhaps even to another country nearby.

All that will require careful planning. The United Nations has significant experience in such matters and every effort should be made by those responsible for security in a new institution to look at examples of model evacuation plans used by UN peacekeeping missions and existing international tribunals and courts. Circumstances are always likely to vary, but the major issues to be considered will doubtless be covered in such plans.

Once an evacuation plan has been drawn up, every effort should be made to inform the institution's personnel of its existence—not only for their peace of mind but also because their participation is likely to be required when considering regular practices. Evacuation plans must be kept under constant review.

Finally, there are those with experience of dealing with security issues who firmly believe that the line management of a detention facility should be the responsibility of the chief of security, and that the chief of detention should report to him or her. There are some persuasive arguments supporting that approach, such as the need for all security matters affecting the institution to be under the immediate command of those with the relevant experience and expertise. However, the handling of detainees must in all situations be the responsibility of the chief of the detention unit.

That being said, as in other instances, there will be a need for significant and effective cooperation and coordination between the two sections, with particular emphasis on the specific procedures to be included in any evacuation plan with regard to the ongoing protection, movement and transfer of detainees in an emergency.

Finally, on the line management issue, it remains important that the chiefs of security and detention report directly to the registrar and senior administrator, who will ultimately be responsible for any major decisions taken on those two fronts.

H. Detention

1. General Commentary

This is, inevitably, a particularly sensitive area of a new institution's responsibilities and will frequently be the subject of both national and international scrutiny, comment and criticism.

First, it must be made clear that there is a significant difference between a detention facility and a prison. The major purpose of a detention facility is to detain those arrested and charged with allegedly committing crimes, pending their trial. It is, therefore, important to recognise that, as unconvicted detainees, the accused are entitled to be treated accordingly, and especially in accordance with the institution's rules of detention. Guidelines are available from any of the existing institutions and it is vital that rules be drawn up as soon as is possible.

The location of an institution and, as a result, its detention facility, will play a major part in a number of issues to be resolved on this front. First, the physical infrastructure is obviously important from the standpoint of the security of both the detainees and those civilians located near to the facility.

In the case of institutions located in a country other than where the conflict took place, the host country may be prepared either to provide a facility or make use of an existing facility. In this situation, the facility should be checked to ensure it conforms to the international standards for adequate light, space and so on. In the case of institutions operating in-country, as with the Special Court, there may be no suitable facility available and one will have to be built.

While it is likely that the responsibility for internal security and the provision of detention staff will fall to the institution concerned, again depending on location, the question of external, perimeter security may arise. In that event, there will be a number of issues involving the possible use of UN peacekeeping troops, if available, or the use of the host government's military or police services or, even, consideration of hiring a private security company's services. Each set of circumstances may require different approaches, but it is recommended that the involvement of either the host government's military or police services (where the institution is in-country) or a private security company should be approached only with the greatest caution and based on an assessment of security or confidentiality risks.

For institutions in-country, it is likely that the host government may have difficulty, as in Sierra Leone, in providing an effective military or police presence due to the ravages of conflict and its impact on the security sector. In addition, even if the capabilities of the military and police are adequate for the purpose, there are likely to be issues of security to consider. Not uncommonly, both services may have figured predominantly in any conflict and past and future loyalties may be in question. That apart, it is both unfair and unwise to place nationals in a position where extreme pressure can be

brought to bear on them and their families by those who may have a vested interest in causing disruption to the institution's wider purpose.

As already emphasised, earliest consideration should be given to the location, design and construction of a detention facility, preferably at the planning mission stage. Circumstances will vary depending on a range of issues such as:

- Perceived threat, to include an assessment of likely attempts to break out of or into the facility.
- Preferred location (that is, proximity to the court premises and scope for inclusion in those premises)
- Estimated number of detainees.
- Potential for existing premises to be used or for existing structure to be adapted, or need for a new build.
- Resources likely to be available (such as finance and timescale).
- Potential for future use of whatever is eventually provided by way of a legacy if in-country or if not, scope for alternative use thereafter

One consideration that may be challenging to address is that of providing a facility that is not, in terms of construction, appearance and maintenance, too out of keeping with local surroundings and conditions, while serving its main purpose of providing a secure environment. Another important issue when dealing with detention is that of the respective perceptions of both the national and international communities. It is likely that the standards required for the operation of an internationally assisted institution's detention facility will exceed by some way the standards and conditions in national detention facilities.

The local public perception may well be that those seen as responsible for the dramatic decline in the population's standards of living during a conflict are, in fact, a good deal better off in custody than those facing the daily challenges of survival outside the facility. In particular, the availability of a balanced diet, medical services and recreational pursuits may be seen as akin to luxury. That perception needs to be addressed by the institution concerned, if only to convey an understanding of the various responsibilities that detention in compliance with human rights standards entails. As with all other aspects of an institution’s operations, transparency and a willingness to recognise and address issues of public concern are vital.

Turning to the perception of the international community, the issues may well differ. First, any disparity between local detention or prison conditions and the institution's facility will not necessarily be a matter of concern. Indeed there is likely to be pressure to enhance or upgrade the standards in the detention facility. Some of this pressure may well be justified, but much may be generated by complaints by the detainees themselves.

While an effective avenue must exist for detainees to make and register complaints about any aspect of their conditions and the regime within the facility, it has to be recognised that they will have a variety of motivations for complaining. Not all of these will be well balanced or justified. It is an accepted fact within well-run and maintained remand and prison institutions worldwide that detainees held for indeterminate or determinate periods find that time drags, and that even the smallest issue soon develops into a major irritant. Examples of issues that consistently arise are the quality and quantity of meals, the portion of the day or night available for recreational pursuits, freedom of communication and, inevitably, conjugal visits. The list can be long.

All the existing institutions will have faced similar issues and, in some respects, dealt with them in different ways according to the particular circumstances. However, this does underline the importance of having a set of agreed rules in place as soon as possible. There must also be agreement between the president of the court and the registrar on where the responsibility lies for the implementation of those rules and any challenges to them.

2. Independent Inspections

It is inevitable that there will be any amount of ill-informed or occasionally malicious criticism of the conditions and regime in place. Thus every effort should be made from the outset, first and most importantly, to engage with the International Committee of the Red Cross (ICRC) to seek their advice and, subsequently, their assessment of the institution's detention facility and associated arrangements.

It is sometimes frustrating, however, to be in possession of a detailed written assessment by officials of that committee following a visit to a detention facility. This occurs when the report provides a complete answer to, and rebuttal of, ill-informed criticism of that facility, yet the ICRC restricts dissemination of its assessment as being confidential and not for publication. The justification for that caution is, however, based on ICRC's long experience and should be respected accordingly. It is for the institution concerned to look at other ways of ensuring transparency and independent assessment of its detention facility to counter the more extravagant claims likely to be made either by detainees or external bodies.

One approach is to use any opportunity afforded by the visit of a recognised body, such as a deputation from the Security Council, a senior UN official, local parliamentarians or even a representative group from the national or international press or national or international civil society to inspect the facility. In Sierra Leone, for example, a number of local journalists were invited to inspect the detention facility's daily menu and to sample the food. Care, however, needs to be taken not to allow a visit to the premises to turn into a full-scale media event, with all that entails. This may make it difficult to protect the privacy of the detainees or, more likely in the case of some, to prevent them from mounting a sideshow of protests.

3. Construction Requirements

It would almost be impossible to address here each and every critical aspect of the construction of a detention facility. As mentioned earlier in this chapter, a good deal will depend upon the location of the institution and the scope for using or adapting existing premises. That being said, it is suggested that the following matters be considered—noting that a number of the features included are based on the construction of an in-country facility:

- It is best to form wings around a central exercise courtyard. This quadrangle construction should be self-contained and secure. The exercise yard should be big enough for physical activities such as five-a-side football, volleyball and so on. The importance of the exercise yard cannot be understated. The sole purpose of detention is to deliver physically and mentally healthy detainees to trial, and incarceration often has a devastating effect on the mental health of even the toughest individuals.
- There need to be adequate areas for family and legal visits. These will take place in separate areas. Ordinary or family visits must be within sight and hearing of a detention officer, while legal visits are within sight only, due to the privileged relationship with the court-appointed defence attorney.
- It is advisable to use concrete for construction. This is because a block construction is very vulnerable to attack, and blocks are often made with the wrong mixture of aggregate, sand and cement ratios, making them very weak. Floors and ceilings should also be concrete. Ceilings should be at least 2.5m high and preferably higher than a person can reach even when standing on their furniture.
- All furniture should be in steel and fixed to walls and floors.
- Light switches should be outside the cells and there should be no electrical outlets inside the cells. The lights inside the cells should be encased in heavy gauge steel with Plexiglas lenses and preferably recessed into the concrete ceiling.
- Provision of a prayer room and storage facilities for the personal effects of detainees should be included.
- There should be adequate natural light coming through a barred slot window at the top of the cell wall and out of reach of the detainee. All windows should have mosquito screens if the environment requires it.
- The door to the cell should be a heavy steel construction with a communication aperture and flap mounted on downward opening hinges. The aperture should be lockable in both the open and closed position. There must be no spy-hole as a detainee can use this to cause serious injury to an inspecting officer with a sharpened pencil. The cell door must be lockable in the open position so that it cannot be used as a weapon. Each point of ingress and egress must have an airlock system and only the staff inside the wing must have keys to the cells. The guard in the airlock system has only the key to the inner gate and only the outside guard has the key to the outer compound gate. These standing operating procedures will

differ slightly from place to place, but their impact on construction will be the same.

- Locks must be from a licensed key system. The key blanks and equipment needed to duplicate must not be available locally.
- All ablution equipment, including mirrors, should be in stainless steel, and there should be no requirement for individual ablutions to meet international standards.
- All external lighting should be constant during the hours of darkness and there should be no dark areas up to the outer perimeter.
- There must be 24-hour electrical power with emergency back-up supply.
- All detainee communication must go through an institution's telephone switchboard (PABX) and must have the capability to be recorded and monitored.
- There should be an x-ray machine and walk-through metal detectors for visitors, staff and mail.
- There should be search areas for visitors and detainees in the visiting area. Contraband can have very serious consequences, particularly drugs or 'traditional remedies'. Even if they are harmless in themselves, they may displace the detainee's belief in medication prescribed by the institution's doctor. The independent investigation of the death of ICTY indictee Slobodan Milosevic considered this possibility.
- There must be sufficient cells for segregation and isolation.
- All vegetation is to be maintained lower than 15cm high.
- The detention facility's perimeter is not the same as that of the whole complex. It is a complex within a complex. The outer perimeter should be a reinforced concrete wall around 4m high, 30 cm thick and topped with razor wire. The inner perimeter should be made of 6m high non-climbable fencing topped with razor wire and protected internally at the base by a minimum of two coils of razor wire. The base of the fence is to be a minimum of 45 cm below the ground in laterite or clay areas, 1m in sandy soil areas and contoured and bolted with concrete covers in rocky areas.
- Panic alarms and CCTV should be installed in all corridors, visits areas and exercise areas. This will not only improve security but will be invaluable in the event of allegations of abuse or an assault on staff. Consider an observation cell
- If detainees are to be detained in the country where the conflict took place, such as in Sierra Leone, international supervisors must be on duty at all times at the majority activity hubs during the day, and at least one duty international supervisor must be on duty during the night. The main reasons for this are:
  - Local prison staff will often be operating under a different paradigm *vis-à-vis* treatment of those on remand than would be expected of an international institution. This requires intense training and supervision.

- The number of posts to be filled makes the need to employ local prison staff inevitable. The Special Court drew staff from the national prison service on a six-month rotational basis. There is a good deal of excitement about capacity building, but this should not be overestimated. Once local officers return to the national system, there is little they can do to change the system and they will more than likely revert to their old ways. This is normal and natural. In other words, training only has a role in true capacity building if it is a part of reform that is addressing top down management and policy at the same time.
- Also, local staff may be more vulnerable to bribes and threats.
- Finally, local staff structures are vulnerable to infiltration by former comrades from their factions.

- An institution should seek to employ only staff with experience of working in a detention, remand or prison environment. This may not seem obvious, but a number of security personnel apply for such posts and, while security is important, it is only part of the requirement. Dealing with detainees on a daily basis—their families and children, their attorneys and so forth—all add up to a skill-set that security personnel normally do not possess. Experienced prison staff will spot potential problems such as substance abuse, smuggling of contraband and suicidal tendencies while security personnel may not.
- Have a clinic with a doctor and enough nurses to provide 24-hour cover. This should be level 1+ (in UN terms) and be an integral part of the detention centre and not in another part of the compound. Have access to up to a level 4 medical facility and practise by moving a detainee substitute by different modalities and routes frequently.
- Build a heli-pad but protect it with anti-helo wires.
- Write down standard operating procedures and post orders and paste on laminated cards. Conduct regular training, especially on humanitarian restraint, cell searches, body searches and dealing with visits sensitively.
- Staff should leave their mobile/cell phones in their lockers and use walkie-talkies only. If they need to phone out they should go to the office and use the landline. The handy-talkies would ideally be secure such as sabers.
- Have a kitchen and laundry outside the detention centre but inside the main perimeter.
- No weapons whatever should be kept inside the ‘wire’. In the event of a disturbance, they may end up in the hands of the detainees. This also allows an intervention force to plan in the knowledge that detainees will have no access to weaponry.

4. Detention Regimes

Moving on from the physical construction, the regime to be employed within a detention facility is one in respect of which there is a good deal of debate. There is a range of opinions amongst those experienced in operating detention facilities, remand wings or prisons. There are those who regard unconvicted detainees as posing a very different challenge to that of convicted prisoners, because of the mindsets of those respective categories. Whatever the position is, it is likely that frustration will surface at some stage of the process.

In dealing with such frustrations, there are those who believe that the creation and fostering of a relaxed regime is the most effective way of maintaining an acceptable atmosphere and avoiding confrontation unless it is absolutely unavoidable. In pursuing that approach, the intention is to recognise the level of frustration that can build up amongst detainees, many if not all of whom protest their innocence. Those detainees have been taken away from family, friends and the privileges that freedom offers. They may channel that frustration into disputes with fellow-detainees or, more specifically and in the long term more likely, identify their 'captors' as representing the source of their predicament and react accordingly, often violently.

The mindset and patience required when dealing with that potentially volatile situation is born of experience and, in any event, still relies on a robust and firm approach by the detention staff, based on a clear understanding by the detainees concerned of the rules that apply. The other regime is to maintain a very visible strict regime from the outset, which recognises that the detainees, by the very nature of their alleged crimes, are high security by definition and should be treated accordingly at all times. Especially, they should be made aware that any breaches of discipline will be dealt with robustly and consistently. This view argues that detainees know exactly where they stand and are not confused by a more relaxed regime where they may gain an impression that the facility is run on a 'collegial' basis.

In any case, a blend of the two regimes is inadvisable. Inevitably, the number of detainees will have a bearing on the approach chosen, as detaining a relatively small number, as in Sierra Leone, rather than 50 or 60 detainees may give rise to different considerations. Again there is a significant amount of experience and expertise available in the existing institutions; this should be drawn upon when creating and planning a new institution. This is especially important to note as that experience covers the creation and operation of detention facilities in very different circumstances.

In addressing some of the main aspects common to the detention capability in all institutions, emphasis is given to an in-country institution. In particular, issues surrounding the segregation of detainees, visitation rights and the visits process require some consideration.

In the construction or provision of a detention facility, regard must be given to the nature of the conflict concerned and the likelihood that those detained will represent different warring factions. Where this is the case, it is sensible to plan for the need to

segregate detainees and provide self-contained areas, including meal and recreation facilities. In Sierra Leone, three alleged factions were involved and while it turned out that all three managed, for the most part, to co-exist reasonably amicably, that may well not be possible or appropriate in other situations. The provision of segregated areas will, inevitably, add to the cost of the facility.

Turning to visitation rights and the procedures governing visits, the rules of detention should provide an overview of what will be permitted when assigning the responsibility for drawing up operational procedures and policies to the chief of detention under the authority of the registrar. All concerned with the process—from detention and security staff to the detainees, their families and their attorneys—should have a very clear understanding of those procedures:

- Visiting days and times
- Those permitted to visit and maximum numbers
- Items and materials permitted/not permitted to be brought in and taken out
- Search requirements
- Conditions under which visits will be conducted (such as clarifying the differences between family and legal visits)
- The sanctions that will apply if there is a proven breach of the visitation procedure

The Sierra Leone experience with visits demonstrated the difficulties of 'vetting' or screening those wanting to visit detainees, especially when there is no reliable means of identification, criminal records or generally credible information or intelligence. This resulted in some visitors being found subsequently not to have been who they claimed to be. The principal defender has the significant responsibility of coordinating the activities of defence attorneys.

The individual defence attorneys must cooperate with the chief of detention in ensuring that all legal visits are conducted both within the letter and spirit of the rules of detention. That responsibility includes ensuring that no one is allowed to visit their clients under the pretext of being someone else, especially a defence witness. Experience in the past has been that some defence counsel appeared to overlook the fact that they were 'officers of the court', with a responsibility to ensure that all aspects of the defence's wider contribution to the trial process are handled appropriately.

5. Location of Detention Facility

Another more general issue relates to the location of the detention facility and, again, opinions are likely to vary. The experience of Sierra Leone perhaps demonstrates both the advantages and disadvantages of a detention facility built within the overall court complex.

The major advantage of having a detention facility integral to the court complex is the removal of the significant security risk involved in transferring detainees to the court for hearings and the trial process. The manpower required and the potential for disruption and delay when any number of detainees travels any distance along public routes to the courtroom cannot be overemphasised. In addition, the inclusion of the detention facility in the court complex enables far more effective access by defence attorneys to their clients; this can impact favourably on time in the overall trial process. The security of attorneys should also not be underestimated (a sad lesson from the Iraqi High Tribunal).

While the security aspect will also have disadvantages, it should also be noted that, aside from the 'eggs in one basket' syndrome, there can be genuine advantages to concentrating the institution's external and internal security capabilities in one location. This was especially so in Sierra Leone, where the deployment of UN troops inside and around the perimeter of the whole court complex, including the detention facility, provided a very effective and visible deterrent effect.

However, while the arguments may be less strong for a separate location for the detention facility, there are those who feel more comfortable with an entirely separate site on the grounds that this provides a far more 'hermetically sealed' facility. The attention of the security forces is not divided between the everyday activities of a busy court and office complex—with judges, staff, witnesses, visitors and others entering and exiting the court complex throughout the day, usually six if not seven days a week. All that 'human traffic' takes place within striking distance of the detention facility and, admittedly, puts additional strains on an already stretched security capability.

In any event, all relevant circumstances have to be taken into account when reaching a decision on location. But, on balance, the recommendation is for a detention facility at least in close proximity to the main court complex, if not as an integral part.

6. Rules of Detention

Reference was made earlier to the need for rules of detention to be drafted and agreed at as early a stage in the institution's life as possible. In part, this will be a legal matter. Ready examples of what is required are available at all the existing institutions. It may be of assistance to consider, not so much the rules themselves, but the procedure for applying them.

Again, approaches will differ in existing institutions. However, it is recommended that consideration be given to the approach adopted in Sierra Leone, where the intention was to reduce the potential workload on both the president of the court and his colleagues. This approach also vested in the registrar the responsibility for the effective implementation of the rules of detention on a daily basis, in consultation with the chief of detention.

It should be made very clear that it remains the responsibility of the president, in conjunction with his or her colleagues in plenary session, to approve the rules of detention. This involves making, as necessary, any alterations or amendments—either of their own volition or on the basis of submissions made to the plenary meeting by the registrar, prosecutor or principal defender.

However, the responsibility for operating those rules on a daily basis was delegated by the plenary meeting to the registrar who, in concert with the chief of detention, had the primary duty of maintaining good order and discipline in the detention facility.

Given the multitude of issues that can arise in a detention centre from day to day—ranging from detainees' menus, exercise regimes, communications, visits, medical issues major and minor and, more generally, detainees' complaints—it seems sensible for the chief of detention, under the supervision of the registrar, to deal with all such matters in the first instance.

This arrangement applies particularly to the handling of any issues raised by defence attorneys, which are, otherwise, likely to surface by way of motions to the court. It is totally unnecessary for a court to have to deal with such matters in the majority of instances, and is also likely to distract the court from its more important responsibilities.

None of this means that serious detention issues are kept away from the judiciary. There is a requirement in the rules for the registrar to consult with the president in respect of such issues—especially any aspect that has an impact, or is likely to have an impact, on a detainee’s freedom of movement within the facility. Similarly, if defence attorneys are not satisfied with the manner in which their concerns have been dealt with, they have a route through the registrar to chambers—but it is for them to provide sound reasons why they are dissatisfied with the administrator's action.

I. Witness Protection and Victim Support

1. General Commentary

Witness protection and victim support is probably one of the most challenging areas of work in any international or national criminal justice institution, not least because of the impact on the trial process if an institution is seen as unable to protect, as required, those willing to give their testimony. The loss of a witness, either prosecution or defence, can have an incalculable effect on witnesses waiting to give evidence, and may seriously damage the ability of the prosecution or defence to present their cases in their entirety.

But, while the protection function is vitally important, there is a good deal more to the overall responsibilities that fall to a witness protection and victim support section. Indeed, across the existing institutions, there is a formal obligation to provide all such arrangements as are necessary: including protective measures, security arrangements,

counselling and other appropriate assistance, especially in respect of those traumatised by their experiences, particularly women and children.

There is a wealth of experience and expertise across the various existing institutions and, in a number of instances, there are policy papers addressing a variety of issues such as witness expenses, confidentiality agreements with staff, threat and risk assessments and other practical guidelines. Contact should be made with those institutions at an early stage in order to consider the detailed advice available. However, it may be useful to highlight a number of issues that need to be considered, with particular focus on the protection and support of witnesses located in the country where the conflict took place.

The effective protection and support of large numbers of witnesses (prosecution and defence) will, inevitably, be both expensive and resource intensive. However, that aspect must be balanced against the expense and general unacceptability of delaying the trial process or, worse, bringing it to a halt as a result of a witness or witnesses being prevented from giving evidence.

With that in mind, it is crucial that, beginning with the chief of section, only the most experienced competent and reliable staff be considered for appointment in this field of work. As mentioned earlier, there is a wealth of expertise available at international level, but it tends to be concentrated in a small number of people. And, while there will always be expertise available in national jurisdictions, the nature of the challenges involved in these kinds of trials can be quite different.

It is important that this section be set up as soon as possible, not least because of the need for those involved to liaise with investigation teams and ensure that witness procedures are dealt with properly from the outset, and to avoid certain difficulties that may surface at a later stage in court. It is also important that as many as possible of the protocols involving witness handling, protection and support be produced at an early stage of the section's development. For instance, it is critical that investigators are aware of, and understand, what witness expenses may be covered (such as providing them with the means to travel and so on) and what may not, to avoid unrealistic expectations. In this respect, both the prosecution and defence have a responsibility to ensure that their respective investigators work within acceptable and transparent guidelines. Sight should not be lost of the fact that witnesses are human beings, many of whom may be traumatised and vulnerable. While the section has any number of significant responsibilities to perform, it should work hard to project a sincere, caring approach, and be prepared to err on the side of humanity.

2. Witness Protection Issues

a. Decision making

Given the volatile nature of the task, it is important that the chief of section has significant discretionary authority to make urgent decisions as the need arises. Potential

crises involving witnesses will frequently arise outside office hours and decisions will need to be made. More generally, it is suggested that the chief of section and his or her colleagues should be encouraged, within reasonable limits, to act innovatively when confronted with unusual situations involving witnesses and their welfare. For example, where a victim who is a witness under protection needs minor surgery that, although not life threatening, would improve his or her quality of life, consideration should be given to finding the resources to have it done.

However—and an indication of the general difficulties facing those responsible for witness protection and support—any assistance given to a witness has to be carefully considered. One needs to ensure that there can be no justifiable claim at a later stage that such assistance formed any part of an inducement to the witness concerned to give evidence on behalf of either the prosecution or defence.

An integral part of decision-making is the process involving the assessment of threats towards a witness and the level of protection, if any, the institution concerned has a responsibility to provide. This will necessitate gathering as much relevant information as is available from a number of sources, and sifting through it with due regard to the reliability or otherwise of each source. The overriding duty is to err on the side of the witness's best interests.

It is therefore crucial that an institution's witness protection and victim support capability is involved at the earliest possible stage after the prosecution or defence have identified a potential witness. Not only is this important from a threat assessment perspective and the need to categorise witnesses generally; it is also important to have the witness concerned examined by a trained psycho-social professional at an early stage. It is sometimes overlooked that each and every witness may well react differently to the constraints of protection.

Similarly, and in terms of the level of protection to be made available from an accommodation angle, it will be for the section to make a decision on how best to accommodate a particular witness and his or her immediate family. There may well be a number of options—ranging from a hotel, a safe house, a larger facility (as in Sierra Leone), to protection within the witness's own home. All such decisions can be crucial and may have far reaching effects.

With the lessons of the past available, progress has been made in this area. For example, the ICC has carried out a good deal of work on guidelines to aid such decision making. These address the various stages outlined earlier, including the measures to be taken in relocating or resettling a witness after the completion of his or her testimony.

Finally, in erring on the side of the witness's own interests, it must be recognised that—even where a risk or threat assessment appears to suggest that comprehensive protection measures may not be required—it is the perception of the witness about the threat that will need to be addressed; a frightened witness is unlikely to assist the trial process.

b. Preparing to give evidence

It significantly assists the trial process if witnesses for the prosecution or defence feel as comfortable as circumstances permit when they come to give evidence. Many of those giving evidence before international criminal justice institutions will have been traumatised by events that have left them either victims or eyewitnesses or both. Additionally, witnesses will almost certainly never have given evidence in a courtroom before and, in some instances, may have difficulty reading and writing. In such circumstances, giving evidence can be a terrifying ordeal, and anything that can be done to ensure that the witness is fully prepared for what is likely to happen can only be in the best interests of the trial process and justice more generally.

With that in mind, it is suggested that the witness protection and victim support section makes every effort to arrange a familiarisation visit to the courtroom before a witness gives evidence. This visit should take place as close as possible to the time the witness is required to appear and whenever the court is not sitting. During the visit, the witness should have the layout of the court explained (that is, who sits where and does what). This should include an introduction to what various pieces of equipment are for: such as cameras, sound systems, recording devices, and TV monitors. This is especially important in respect of a protected witness, who may be fearful that his or her identity cannot remain protected in the face of such technology.

Similarly, the witness should be informed of the likely procedure in court. It may vary according to whether a common law or civil law procedure has been adopted. For instance, in the case of a prosecution witness, a lawyer on behalf of the prosecution will take him or her through the evidence. The witness needs to know that there may be interruptions to that process, perhaps because a judge may want to have something clarified. Also the defence may object to the nature or manner of the evidence being given, which could result in a discussion (either in the presence or absence of the witness). The witness will have to be prepared for proceedings to be adjourned from time to time.

Witnesses should also be made aware that, in addition to reaching a decision(s) about the guilt or innocence of the accused, the judges also have a responsibility to ensure that the proceedings are conducted fairly, and that witnesses for either the prosecution or defence are treated with dignity and respect. But it should be made very clear to witnesses that none of this means that they should not expect to be challenged (and challenged fiercely on occasion) by one side or the other in respect of the evidence they wish to give, but that there are strict procedural rules that govern such matters.

Witnesses should also be made aware that the court will realise that a witness may, on occasion, find giving evidence distressing, distasteful and generally traumatic. When this happens, and if the witness needs to take a break from giving evidence to compose him or herself, he or she should not be frightened to ask for that to happen.

That being said, the witness protection and victim support section should be extremely careful to focus on the evidence-giving process and not allow itself to be drawn into any discussion whatsoever on the nature or content of the evidence the witness has to give. Any last minute 'nerves' by a witness about giving evidence, or any issues on the evidence itself, must be referred immediately to either the prosecution or defence. However, it is the responsibility of the witness protection and victim support section to bring any concerns about a witness's mental or physical state to the attention of the court and either the prosecution or defence as necessary.

c. Post-trial care

It is obvious that there are, broadly speaking, three distinct stages involved in the protection and support of witnesses/victims once they have been identified: pre-trial, trial and post-trial. The last of those three stages may be the most challenging to address and, on occasion, easy to neglect.

It is tempting, for a variety of reasons, for an institution to focus on those giving evidence or about to give evidence. As has been mentioned earlier, the costs involved in protecting, supporting and generally monitoring the welfare, health and well being of any number of witnesses can be significant both in the short and longer term. In addition, there will, in many instances, be difficulties in re-integrating witnesses back into their original environment in terms of their long-term safety and security. Mention will be made later in this section to the smaller number of protected witnesses whom it will be necessary to protect for the rest of their lives, most likely through relocation in another country.

However, institutions should be aware that successful threats to, or assaults on, one witness will have as great an impact on those about to or in the course of giving evidence as if they themselves had been threatened or assaulted. It is therefore important that institutions produce a strategy that recognises the need for the after-care of witnesses. Whether the institution concerned is operating in-country or externally, there will always be the challenge of witnesses returning to their former homes and livelihoods after giving evidence. If their evidence has been given openly in court, it may be likely that the threat assessment is either low or non-existent. On the other hand, there have been witnesses who have made a courageous decision to 'stand up and be counted' no matter what the threat to their safety may be.

While that will be a matter for individual witnesses, their wishes have to be respected and every effort made to protect their long-term future as far as practicably possible. It is here that the institution faces its biggest challenge.

The very fact that the majority of witnesses will want to return to their homes, families and livelihoods will stretch to an impossible extent the capability of the institution to continue to protect or support them. The fact of the matter is that it will fall to the national authorities in the country concerned to ensure the safety of their nationals. That is, of course, easier said than done. It is argued that none of that, difficult as it

may be, removes or reduces the overall responsibility of the institution concerned to do its level best to ensure everything is done to protect and support past witnesses.

There are two or three steps at least that should be considered. First, witnesses should be briefed on how best to conduct themselves on returning to their homes, and what they or their families might expect. Mostly the witness will have the best ‘feel’ for what awaits them. Inevitably the particular circumstances will vary considerably, from witness to witness. But guidance should be given on sensible steps to take and there should be a contact point or number that can be used in an emergency.

Second—and again circumstances will dictate to a large extent what can and cannot be done—every effort should be made to ensure that the national authority concerned is made aware of its responsibility to protect its citizens. For example, in Sierra Leone extensive efforts were made to train the national police service at middle to senior management level. The aim was to make them understand their role and responsibility in ensuring that witnesses returning to the various districts were monitored, and action taken if there was any evidence that a witness or his or her family was under threat. Inevitably, and especially where some communities had been divided on either tribal or other ethnic grounds, or by support for different warring factions, tensions and long held grudges and prejudices can be difficult to erase or forget.

The third step is for the institution concerned to develop capacity for an ‘after-care’ programme, designed to follow-up on the welfare and circumstances of witnesses. In Sierra Leone, an experienced psycho-social counsellor was employed who, amongst other duties, carried out assessment visits to various districts to check on the welfare of those witnesses assessed as being the most vulnerable. It must be emphasised that the staff member concerned had a number of other responsibilities and was unable to devote herself fulltime to this task. However, feedback on such efforts as she was able to make was extremely positive. Sadly, as ever with some tribunals or courts, these activities were curtailed by a lack of resources.

Before leaving this aspect of the witness protection and victim support section’s work, one note of warning needs to be sounded. This concerns the difficulty of dealing with frequently traumatised witnesses and their families who, over a period of time, can build up dependency on the support they are receiving. It is not unusual for many witnesses to have never, on any regular basis, had a roof over their heads, food, medical attention, and above all, a sense of safety and security. It may therefore come as an unwelcome prospect to return to an environment where none of these things are available. Such instances need to be dealt with sympathetically and with compassion, and everything possible done to address their fears.

Relocation of witnesses and related issues will be dealt with elsewhere in this section. However, there will be circumstances where the witness and immediate family will have no desire or reason to return to the area from which they originate. That will not be untypical where the conflict has displaced large numbers of people. In such circumstances, and depending on the economic situation in the country concerned, a few thousand dollars may enable a family to relocate elsewhere in the country and start

a new life. As indicated earlier, the chief of the witness protection and victim support section must make this decision in consultation with, perhaps, the registrar or deputy registrar. Inevitably there will be issues of finance and budget to consider, but there will be instances where there is every justification for taking an innovative approach to what, for the witness concerned, is a serious problem.

d. Witness relocation agreements

A comparatively small number of witnesses will need to be relocated to another country, together with their immediate families. This will always be a major decision, both for the institution and for the witness concerned. For the institution, it will mean identifying a state prepared to accept a witness and his or her family. For the witness, it will require an understanding and acceptance that he or she may well never see their home, relatives and friends again. Whatever the circumstances surrounding the perceived need for relocation, such a decision, either by the institution or the witness, should never be taken lightly.

For the institution, and on a more practical level, there will be the issue of cost, amongst other considerations. It should be pointed out that the need for relocation could arise before the trial at which the witness is scheduled to appear and after the trial. The circumstances dictating those measures could well mean that the witness concerned may have to spend the rest of his or her life in another country, either with a new identity or perhaps as part of an established witness protection programme in the state where the relocation takes place.

Based on the experience of the Special Court for Sierra Leone, many states may show a marked reluctance to accept witnesses either before or after a trial. This is especially so where there are concerns, as there may well be, that the witness has been a perpetrator of crimes in the past, perhaps at a lower level than those on trial (that is, a so-called 'insider' witness). States may also fear that witnesses will claim asylum.

The status of the institution concerned can also have an impact. The ICTY and ICTR were seen and accepted as fully-fledged 'UN' tribunals, not least because of their funding base and Chapter VII powers. Because the Special Court did not conform to that profile, it was unrealistic to expect cooperation from states. Where there was cooperation, it was often on the basis that any period of relocation would be time-limited and that the court would reimburse the full cost of keeping the witness and family in their protected location. In the case of those witnesses who were relocated permanently after giving evidence, every effort was made to integrate them into their new environment by finding employment, education for any children, language lessons and such, to enable the family unit as a whole to become gradually less reliant on the institution. But the reality is that such integration takes time and the institution may have to cover these financial arrangements for some time.

The time, effort and resources required when negotiating successful cooperation agreements with a sufficient number of states—so as to provide scope for relocation of

witnesses—should not be underestimated. The initial approach can, and should, be made by correspondence, but it is suggested that there is no substitute for personal contact. Institutions should seek to have a senior representative, preferably an experienced lawyer from the registry, who takes every opportunity, including specific visits, to liaise with the appropriate senior officials in exploring ways and means to reach an agreement.

An aside: such opportunities to meet senior government officials should also be used to enquire about the preparedness of the state concerned to consider allowing those convicted defendants ordered to serve a prison sentence outside the country of conflict to serve their sentences in that state's jurisdiction.

Finally, as mentioned earlier, the long term impact on many of those witnesses relocated in another state (especially where the state concerned may be many thousands of miles away from the witness's own culture and environment) has sometimes resulted in their being unable to integrate into their new surroundings and, on occasions, jeopardising the protection measures in place. This can even lead to the state offering protection to attempt to end the agreement; a court or tribunal must have structures in place to deal with such eventualities.

e. Witness expenses

Earlier in this chapter, mention was made of the importance of the witness protection and victim support section becoming engaged with potential prosecution or defence witnesses, not only from a risk assessment perspective, but also to try and ensure that the payments made or offered to witnesses complied with the institution's policy and procedure.

This is not a criticism of investigators, who face significant challenges in the field. The reality is that there will always be the temptation to offer a reluctant, perhaps key, witness some inducement to leave his or her home, travel to court and give evidence. Naturally, some of the first questions a potential witness will ask will focus on such issues as how his or her family will survive while the witness is absent; how his or her livelihood or employment will be maintained, and what can be done about the health and education of any children. In such circumstances, there will inevitably be occasions when, with the best intentions, a witness will be assured that he or she will be 'looked after' in all respects. It is not unusual for a witness to be given a 'down payment' or 'advance' to meet their initial concerns and reassure them of the institution's 'good faith'.

Payments made at this stage, without proper regard to the need for accountability, consistency of approach and overall propriety, can come back to bite whichever party to the proceedings is involved (prosecution or defence). It is not unusual for a claim to be made during trial proceedings that a witness or witnesses were only prepared to give evidence because they were promised payments that are sometimes, it may be alleged, entirely disproportionate to the witness's actual expenses and loss of any earnings.

It is therefore important that, first, a policy on payment of expenses to all witnesses is in place as soon as possible and, second, that all such payments are accounted for in a transparent and efficient manner. As mentioned, where there is a justified concern that the appearance of a witness's name in any court accounts may jeopardise his or her safety, it is perfectly acceptable to refer to the witness by a pseudonym. The original papers detailing payments, together with either the signature or mark of the witness concerned, can then be kept securely marked 'for audit eyes only', pending scrutiny by either the internal or external auditors.

Adherence to this approach is particularly important when it comes to the small number of witnesses who may be located and protected in another state while waiting to give testimony. Again, experience in Sierra Leone demonstrates that complete transparency is crucial with regard to all payments to witnesses. In one example, a key, high profile witness was being protected in the United States, pending his attendance at a trial. The level of expenditure incurred by the court to meet his or her family's basic costs of accommodation and all other justifiable living expenses, together with the cost of his airfare to and from Sierra Leone, totalled many thousands of dollars. The defence lawyers were quick to raise this in court, with all the attendant media coverage.

In such instances it is important that the court can be assured by the registry, if necessary in confidence, that all payments made are justified and consistent, in principle, with the institution's approach to all witnesses.

Finally, every effort should be made to base witness expenses rates—in respect of those witnesses resident in the country concerned and where the institution is located—on the national wage structure and other cost of living indicators. The rates paid to national staff by an international agency or UN peacekeeping mission should also be considered. Where the institution is located outside the country of conflict, other considerations obviously come into play, but regard should still be had to the average costs prevailing in the country from whence the witness comes.

f. Security and communication issues

It may be of assistance to mention a few other specific matters that contribute to the overall protection of witnesses. First, it is crucial that the witness protection and victim support section is able to be in communication at all times with those under its protection, no matter where they are located or what the security measures on the ground may be. To that end, it will be necessary to ensure that some witnesses have access to either mobile/cellular phones or hand-held radios on a set, secure frequency. Equipment such as this can be purchased at a reasonable cost and efforts should be made to ensure that there are sensible amounts of stock in place to cater for theft, loss and damage and so on as necessary. To an extent, while some auditors will react differently, an institution should be prepared for such equipment to be 'written off' and not expend too much time accounting for the return of each and every item, whatever

its fate. Similarly, items of household furniture and equipment provided, mostly, in safe houses, may often will become damaged or even disappear.

While every effort must be made to ensure that there is an effective inventory maintained of all court equipment and assets, experience has shown that auditors will be prepared to make allowances in such instances, as long as an explanation is filed as to how the loss or damage occurred.

One of the most challenging features of protecting witnesses is when they need to be moved either from their homes to a safe location or between that safe location and the court. There will also be occasions when a witness requires medical or dental treatment. With that in mind, every effort should be made to ensure that contact with witnesses is handled as sensitively and discreetly as possible, especially when that contact has to be in their home environment. Experienced investigators will be more than aware of this issue and have their preferred methods for handling contact with witnesses, especially at an initial stage. Again circumstances will inevitably dictate the approach used; contact with a witness in a large urban environment may pose different challenges than, say, with a farmer in a small village many miles away from any town or city.

Whatever the situation, it is best if witness protection and victim support staff do not draw attention to themselves if at all possible. The arrival of a strange vehicle in a town, village or other location will be sure to attract attention, especially if that vehicle is a white 4x4 with distinguishable or identifiable markings, such as *corps diplomatique* (CD) plates or markings on the vehicle's bodywork.

Transport to and from safe houses in the same city or town as the institution concerned poses a similar challenge. In Freetown, Sierra Leone, the predominant form of transport is taxis, apart from court vehicles and those of the UN peacekeeping mission and other international agencies and diplomatic missions. The court purchased a small number of old, used foreign cars (in keeping with the local taxis) and painted them in taxi colours. These were used to transport witnesses to and from court and their respective safe houses. The cost was minimal in overall budgetary terms, and the result was unhindered and unnoticed movement of witnesses around Freetown.

g. Confidentiality agreements with staff in contact with witnesses

There are one or two views on this subject. One view is that every member of staff appointed to a witness protection and victim support section (and any other staff in direct contact with witnesses) should be required to sign a confidentiality agreement far more rigorous in its terms (and sanctions) than any other general form of agreement signed by staff addressing issues of confidentiality and conduct. Another view is that such agreements do little to prevent a ‘rogue’ member of staff from breaching confidentiality, or in any other way compromising the safety of a witness, whatever he or she has signed and whatever the sanctions (for example, immediate dismissal).

On balance it can do no harm to insist on such agreements, but the key may well be to ensure that every effort is made to vet applicants extremely carefully from the outset, especially those who are nationals from the country where the conflict occurred and where the institution is located.

It is important that as much background information as possible on the applicant is obtained. In addition, the period of probation in employment terms should be rigorously applied in the witness protection and victim support section, erring on the side of caution when deciding whether or not to confirm an applicant in a post.

Finally, there is also a debate about the efficacy of employing national staff from the region or country where the conflict took place for the purposes of witness protection. The argument against this is obvious. Especially where a country has been ravaged by a long civil war or other conflict, there are likely to be few families that have not been touched by that conflict, perhaps resulting in the harbouring of a fierce resentment of those eventually accused of crimes or, depending on warring factions, support for one or other of those factions.

The argument 'for' is also obvious. There is significant benefit in a witness protection and victim support section that can use the linguistic, cultural and environmental skills and experience of national staff and their ready expertise and knowledge of the local geography, conditions, attitudes, and customs. For example, in Sierra Leone, 52 national staff and five international staff were employed in supervisory positions in the witness protection and victim support section. That arrangement worked well, with the provisos mentioned earlier—that every step was taken to gather information on potential staff members using all the national and international intelligence information available.

Finally, and by way of explaining those numbers of staff, it has to be recognised that, where a number of a safe houses are involved, there will have to be a number of cooks, cleaners and security staff. All that makes it difficult to suggest any ratios between the numbers of staff and witnesses.

J. Outreach

1. General Commentary

It is difficult to overstate the value of an effective outreach capability to an institution, especially where it is located in-country and the outreach section plays a crucial role. While the section is responsible for supporting outreach events on behalf of both the prosecution and the defence, it must also ensure that the general public understands the trial process and overall purpose of the institution. Outreach needs to engage effectively with all parts of a population. Experience has shown that, in some instances, a traumatised population may find it difficult to accept the importance of the presence of the defence. Equally, it is not unusual for an energetic and focused prosecution to take centre stage from an early point in the development of an institution and initiate

outreach. In such circumstances, it is a difficult task for an outreach section to retain its necessary independence, as it may be seen by some as 'promoting' either prosecution or defence related events. Hence the need for the registrar to support and retain a firm hold on the outreach function from the outset. It is strongly suggested that any attempts either to 'split' the outreach function across the institution or to replicate it in separate sections for the prosecution and defence should be resisted.

This chapter suggests the core elements that should underpin any outreach capability. These are likely to be common to any newly created institution, wherever located. But inevitably many of the issues, activities and lessons to be learned emanate from first hand experience of an in-country situation.

While there are many nuances to the purpose of outreach, there are a number of strategic objectives that need to be considered:

- The creation of a comprehensive understanding of the activities of the institution concerned within the affected society and, in turn, that society's views and opinions of the institution.
- Ensuring accurate and timely information dissemination about the institution.
- The facilitation of genuine dialogue and discussion about the institution and its impact on the society concerned.
- The facilitation of a greater understanding and acceptance of the rule of the law and outcomes of the accountability process.
- The promotion of the people's participation in the judicial processes and activities of the institution.
- The promotion of an understanding of the principles of impartiality, independence and equality before the law, which in turn will promote greater trust between the people and the institution.

More generally, an outreach section should aim to create and maintain a role as an unbiased conduit for information and dialogue, working impartially with all groups within and beyond the institution. An outreach section can also help bring different groups together within society; this is particularly important where people may have been polarised by the conflict.

In undertaking an effective outreach programme, the section should be guided by four principal core values:

  - *Accountability*: to provide accurate information and stimulate discussion on issues, rather than promoting the institution.
  - *Engagement*: to engage in two-way communication with an emphasis on listening to feedback, especially with socially disempowered groups such as women, children and people with disabilities.

- ◈ *Neutrality*: a commitment to work with all parties (the government, the opposition and victims as well as ex-combatants).
- ◈ *Independence*: to remain independent in its cooperation with and promotion of all organs of the institution, especially the offices of the prosecutor and principal defender.

Based on the experience of all the existing institutions—comparing their respective outreach capabilities and recognising, in some instances, the constraints that hindered them in their early days—it is clear that the presence of an effective outreach capability can transform the way an institution is perceived by its major stakeholder, the affected population.

This makes it more surprising that so few resources have traditionally been allocated to the outreach capability. This was true even for the Special Court for Sierra Leone. Even though the need for an outreach capability was identified at an early stage, the institution could not fully use the opportunity afforded by its location in-country. Those monitoring the court's budget were extremely reluctant to approve significant resources to that process. In the event, the limited funding allocated in the regular budget had to be significantly 'topped up' year by year by funding obtained from elsewhere other than the court's main sources of funding.

It is complete folly to ignore, not only the necessity of an effective outreach capability, but also the significant benefits it can bring to an institution. None of that is to say that an outreach section should not have to both justify and compete for funds within an institution, but there must be a presumption that it will seen as a priority area for funding from a regular budget. That being said—as with the extra-budgetary funding of initiatives in other key areas of an institution—there is no reason why every effort should not be made to have specific projects funded from outside the regular budget if that results in reducing pressure on the budget.

Finally, as is mentioned elsewhere, there is a significant wealth of material dealing with outreach issues of all kinds in existing institutions and, especially, at the Special Court for Sierra Leone.

2. Organisation of the Outreach Function

Opinions differ on how an outreach section should be organised, and an attempt will be made to address some of the options based on experience and discussion with some of those principally involved. However, one should not lose sight of the strategic objectives and core values of outreach, especially those touching on independence and impartiality.

First (and again there will be those who disagree), the outreach function should be based fairly and squarely within the registry or whatever administrative structure is in place. The registrar or senior administrator should have overall responsibility for structuring the outreach function and ensuring that it is adequately funded from the

outset. It follows that the outreach function should not be replicated in the offices of the prosecutor or principal defender.

The recruitment and appointment of the chief of section will be crucial to the progress made and success achieved. Whether the institution concerned is located outside or inside the country in which the conflict occurred, every effort should be made to attract applicants who are nationals of the country concerned. This is particularly important where there may be a quite different cultural background in play as well as, inevitably, different languages.

The chief of section, once appointed, should be responsible for putting his or her team together as soon as is possible, with an emphasis on the recruitment of nationals. The size of the section will depend on the overall size of the institution and the resources available but, as mentioned earlier, priority should be given to getting this section up and running.

A good deal will depend on location, but in-country efforts should be made either to build a network of 'grassroots' coordinators, or to build on any existing civil society networks or groups—taking care not to let any particular group 'hijack' the outreach function for its own ends.

For institutions outside the country concerned, the creation of a local network is still important, albeit more difficult to interact with and control on a daily basis. But the establishment of at least one full time contact point, preferably in a satellite office of the institution, is important.

Before moving into the more detailed areas of outreach operations, it may be useful to look at the options within the registry or administrative structure for combining the outreach function with other related areas of work. An obvious option is to brigade outreach with the press and public affairs function, with outreach as a sub-section within press and public affairs, and the press chief as the immediate line manager of the chief of outreach.

Another option is to effect the same combination but, by adding a small protocol unit and court visits unit, create an external communications section. In that way, the chief of that expanded section will have overall control of virtually all aspects of communication going out of or coming into the institution. He or she will also be able to schedule and arrange any visits to the institution and brief or debrief senior post holders accordingly.

In both instances—because of the different experience and skill sets required for the respective posts—it is likely that the chief of the outreach section will be subordinate to either the chief of press and public affairs or the chief of external communications. While this may not present insuperable difficulties, it could result in the outreach function losing some of its identity and, as a result, some of its independence.

On balance, it is suggested that the outreach section should be positioned as a section in its own right, with the chief of section reporting directly to the registrar or senior administrator. This latter must ensure that there is recognition by all concerned of the crucial importance of the press and public affairs or external communications and outreach sections working closely together. To that end, senior management should issue a very clear instruction, putting the respective roles of each section into context, identifying which section is responsible for taking the lead in specific activities and, in particular, the difference between consultation and sharing information.

Finally, while an outreach section is responsible for constructing and operating its own budget, the administration should be aware that outreach must have the flexibility to respond to unexpected events during any given financial period.

Most importantly, bearing in mind the core values and elements that shape and drive the outreach function, it is important that the section move quickly to produce and circulate a mission statement to assist in setting its internal and external agendas.

3. Outreach Activities

The major activities to be undertaken by an outreach section, especially one located in-country, can be summarised as follows:

a. Town hall meetings

Usually upwards of 100 to 400 people gather in town halls or similar meeting places located in individual communities. The aim is to provide basic information about the institution and then to respond to questions that arise. Typically, there is a short (10 to 20 minutes) address by an outreach or other senior official from the institution, followed by 45 to 60 minutes of questions and comments from the audience.

b. Television/radio programmes

Depending on the extent to which the population concerned has access to television and radio, there is significant benefit in producing short, regular informative programmes on the institution, expanding as appropriate to panel discussions, telephone-ins and so forth as the institution’s work progresses.

c. Video screenings

The production of trial video clips has proved particularly useful in reaching those unable to attend the trials. Battery-operated video equipment is used where there is either no or restricted electricity supply.

d. Training programmes

This may involve the dissemination of basic information about the institution and the restoration of the rule of law to specifically targeted groups, such as victims, ex-combatants, police, military, parliamentarians, religious leaders, teachers, women, children, youth, and others. In some instances, those identified in advance as being willing and able to teach individuals in their respective groups or communities are asked to act as 'trainers' themselves. The format is usually a small group with an emphasis on discussion and participation.

e. Production and distribution of printed material

This activity is integral to both general and targeted outreach efforts. Materials can range from illustrated booklets, posters and leaflets to copies of public court records. All such material is carefully reviewed to ensure that it respects diverse local sensitivities and accurately represents the views of the institution. The materials are distributed through a variety of channels, such as outreach events, civil society networks and outreach's local contacts and 'grassroots' coordinators.

f. Consultation meetings

These meetings allow consultation with groups with specific interests. One example is the Special Court Interactive Forum in Sierra Leone, which the Court created to provide civil society groups, international NGOs and other groups with the opportunity to meet regularly (monthly) with senior officials of the court to receive briefings on the court's activities. More importantly, the court encouraged those present to pose questions and put recommendations and concerns to high-level court officials. A note of matters discussed was taken and circulated with a commitment by the court to report back on any action promised. Such engagement also provides an opportunity for civil society to take ownership of matters they need to address. An additional benefit is that this forum also brings together local groups who, hitherto, have not been used to meeting publicly, or at all.

g. Conferences

This is a high profile way of attracting attention to a specific issue, while bringing together diverse groups with similar interests. An example is the regional conferences organised by the Special Court in Sierra Leone to allow, in particular, victims and other groups to express concerns about post conflict issues and the Special Court's work specifically. Significant advance planning is required, as is the careful monitoring of participants invited to ensure diverse representation of all groups—civil society, government and international organisations.

h. Special programming

This activity is aimed at those individual groups likely to have suffered the most in any conflict, including women and children and the disabled. The purpose is to focus on the

difficulties faced by the group concerned and to address those difficulties, if possible, within the context of the court's mandate (for example, to include their particular trauma in the indictments before the court).

i. Cultural programming

This involves reaching audiences not engaged by traditional outreach tools. Efforts could include organising a drawing competition for children in elementary schools, essay writing competitions for students and theatre performances.

j. Networking/partnership

This entails establishing partnerships with groups such as labour unions and professional associations, with a view to training them to conduct outreach activities amongst their members. This helps build ownership of various issues or concerns by particular groups, but needs to be monitored to ensure that other agendas do not conflict with the aims of the institution concerned.

k. Facilitating other group programmes

This entails providing assistance to groups and organisations running their own programmes. While not perhaps specifically focused on the institution's agenda, this may deal with complementary prospects such as the teaching of international humanitarian law.

l. Creating a partnership or legacy structure

The creation of networks and assistance to groups and organisations will continue to operate even after the institution's operations cease. An example is the creation of 'accountability now clubs', which group students at tertiary educational institutions into units that educate communities about the institution and transitional justice generally.

The list of such activities is virtually inexhaustible and will always need to reflect the particular circumstances surrounding the creation of any new institution: willingness and ability to be innovative is key to success.

Sight must not be lost of the need, at an early stage, to ensure that the importance of legacy is embedded in the overall strategy for outreach. While, again, there may be any number of requirements and opportunities to address, some of the individual themes that might be considered from the outset are:

- Promoting the rule of law
- Promoting human rights (including gender issues)
- Supporting the local legal profession, judicial or legal system

- Building capacity amongst civil society organisations

One specific example of how an institution, through its outreach capability, can assist civil society in a facilitation role is the launch of a programme to strengthen existing national radio stations' coverage of justice and rule of law issues.

4. *Issues for Consideration in the Future*

Given the overwhelming acceptance in recent years of the crucial importance of institutions embracing the need for effective outreach, it may assist those handed the responsibility for future programmes if they were to consider the following recommendations, which are targeted at the following stakeholders:

a. The international community

- Support the inclusion of an outreach section in future transitional justice institutions' founding charters or instruments and encourage the early commencement of their operations.
- Explicitly pledge financial and other support to the outreach functions in transitional justice institutions.
- Encourage national governments and international organisations to delineate and differentiate the roles of separate transitional justice institutions, especially when these operate simultaneously in the same geographic area.

b. Future transitional justice institutions

- Consider ensuring that any outreach section created is in a position to start operating before the commencement of other activities or at least as soon as is practicable.
- Recruit and train civil society partners to undertake outreach-type activities in the period before the outreach section begins formal operations.
- Ensure that funding for outreach activities is formally established and guaranteed so that the section's effectiveness is not reduced due to interruptions of, or delays to, its activities.
- Consider at an early stage the efficacy or otherwise of the outreach section being amalgamated with press and public affairs.

c. Outreach sections in future transitional justice institutions

- Develop a structured communications programme that targets its resources and messages at specific audiences, while taking into account the goal of disseminating key information widely and the special needs of smaller groups.

- Take into account local preferences and traditions in structuring outreach events instead of simply using formats that have worked successfully in other geographic locations.
- Ensure that the communications programme facilitates dialogue instead of simply supporting the position of the parental transitional justice institution. This will both increase the section's credibility and provide valuable insights into key concerns of targeted populations.
- Consult with civil society partners on the overall structure of the communications programme, including the identification of smaller target groups.
- Make communications programming flexible and targeted to reflect altered circumstances at either institutional or national levels.
- Use creative methods of communication in order to ensure continued public interest in the activities of a parent institution.
- Ensure good relations and open communication with other sections in the parent institution. This should involve frequent briefings to key stakeholders about the work and findings of outreach.
- Begin early planning for projects that cement a positive legacy for the parent institutional justice institution.
- Establish networks and partnerships with national and international organisations, particularly those working on transitional justice and rule of law issues, for purposes of both coordination and quality control.
- Make effective use of the institution's website to provide information internationally on the outreach function and give early consideration to how that website can function and be kept up to date after the institution ceases its operations.

K. Press and Public Affairs (Communications Office)

1. General Commentary

The name of this office differs in each tribunal as each has been structured differently. In this chapter, the name 'communication office' is used as a generic term for all. All tribunals acknowledge that practices in the communication of international criminal justice procedures are ongoing and, while this section summarises what existing tribunals consider the best practice, evolving technology and the ever-changing global media landscape need to be reflected in the communications strategies of all tribunals and courts, both now and for the future.

It has been demonstrated by the UN funded or backed criminal courts (the international criminal tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone) that communications need to be considered as a core activity. This should be reflected within the initial planning stages of any tribunal, by including a

communications expert on the planning mission. This person should provide a total assessment of the communications strategy that needs to be established to support the institution's mandate.

The initial communications strategy needs to allow for the following factors and be accommodated at the start-up phase of any new institution:

- A budget for all costs in respect of the establishment of the tribunal's communication capacity.
- An assessment of the communications infrastructure in the affected community.
- An assessment of political and social cleavages within the affected community.
- An assessment of the state of the local media.
- Recommendations for staffing (including job descriptions) to enable a communications strategy to be delivered.
- Recommendations for a communications infrastructure within the tribunal to enable information to be produced and distributed. Importantly, this needs to be coordinated with the institution's information technology and procurement sections to enable the purchase of court redaction equipment and appropriate computer hardware and software to enable multi-media information production.
- A plan for a communications strategy: the messaging and framing of all information to do with the planning, start-up and operational phases of the tribunal. Identification of official and working languages must be reflected at all stages of the communications planning.
- Facilities for journalists within the institution (media space within the court, media working facilities, media access).

Once the initial communications strategy has been prepared, there will be a need to develop a communications policy to raise awareness and promote the mandate of the institution. The communications office should be located within the registry and will incorporate and administer the following communications practices:

  - Public relations
  - Media relations
  - Diplomatic communication
  - External relations

a. Public relations

The strategy must take a proactive approach to ensure that every effort is made to engage all stakeholders in sharing information on the key activities of the institution. Such a strategy could encompass a series of regular publications, reporting on the role and mandate of the institution and reporting on progress (for example, newsletters,

targeted press articles, contributions to radio and television programmes and, in consultation with the outreach section, a programme of visits to the institution).

b. Media relations

A strategy must be developed to promote informal interaction with the media, both national and international, the press corps and radio and television companies. Its format will depend on the location and general circumstances of the institution concerned. If there is an established UN presence in the proximity, every effort should be made to liaise with any UN media capability available.

c. Diplomatic communication

It will fall mainly to the registrar or senior administrator personally to ensure that there is communication between the institution and the diplomatic community, keeping them regularly and well informed about the institution's activities and progress. The press and public affairs/communication office should also ensure that there is regular contact with diplomatic representatives, especially when specific events or incidents involving the institution take place. Visits by diplomatic representatives, especially those who have a funding interest, should be encouraged in consultation with the outreach section.

d. External relations

A good number of the aspects covered in the earlier sections of this manual will also apply under this heading, but with a wider focus to include other stakeholders and those with an interest in the work of the institution (for example, NGOs, civil society, national and international academia and other international agencies and foundations).
In this regard, the importance of an effective website must be stressed. Such a website should be both informative and easy for all concerned to access. However, it needs to be kept in mind that, depending on the circumstances of the institution's creation and location, not everyone will be able to access a website, however user-friendly it may be. Before any decision is taken on that front, regard should be had for the experience and expertise in existing tribunals and courts. The press and public affairs/communications office should take responsibility for this task and coordinate the regular flow of information across the institution to ensure the website is kept updated.

2. Composition of a press public affairs/communications office

Inevitably, the number of staff employed in this office will depend both on the amount of finance available from the overall budget and the size of the institution itself.
Assuming that the outreach section will not be part of the office, there will be a need to have a chief of section who has significant media experience—either by way of a background of working in similar posts as a press officer, perhaps with the UN, or someone who has been a journalist or employed in the wider media field. Care should be taken if appointing the chief of section from a journalistic background; not every

journalist can make a successful transition to press officer, after a career-long interest and curiosity in chasing down a 'story'. Unsurprisingly, as in almost every institution or organisation, there is likely to be a background to any particular newsworthy event. It is the responsibility of a press officer to ensure that the reporting of any event requiring or attracting publicity is dealt with in a focused, dispassionate manner while maintaining absolute accuracy.

Beyond the post of chief of section, an experienced, seasoned deputy is also required. The ratio of international staff to national staff, where the institution is located in-country, should be in favour of national staff. A good working understanding of the local/national press and media capability is crucial in enabling a press/communications office to operate effectively.

The recruitment of national staff from local newspapers, radio or television organisations needs to be carefully handled, but can provide significant benefits to the section. On the one hand, there will always be concerns about the level of impartiality that can be achieved by staff recruited from national media organisations, as well as their safety and security. There may be people who resent either the institution itself, the employment of national staff or both. This can be a difficult balance to achieve, and sight must not be lost of the advantages of employing those with a ready insight into local/national affairs and, in particular, the nature of the 'audience'. Sight should also not be lost of the significant benefits, in long-term legacy terms, of developing the potential of local/national staff in this crucial area of work.

Finally, depending on the division of duties within the section, someone (perhaps the deputy) should be responsible for setting up and maintaining the institution's website, while there will be a need for a video/audio editor and a small support staff together with good quality administrative staff. All in all, a section can function on a staff complement of approximately seven good quality experienced people.

3. Key Responsibilities

As discussed in the chapter on 'outreach', there are differing views as to whether the outreach function should be included within a communications office. Subject to any decision taken on that front, it is clear that there must be an effective, close working relationship between the communications office and the outreach section.

While the communications office should be located in the registry, both in physical and organisational terms, it should operate on behalf of, but independent of, the institution's other organs, principally chambers and the prosecution and, where established, the defence office. It is especially important that there be no undue pressure or influence exerted on the communications office by any organ of the court that would result in that office not acting, or being seen to act, consistently in the overall best interests of the institution as a whole.

The following have been identified as key steps for those with experience in prior courts and tribunals:

- ◈ The appointment of a spokesperson authorised to speak on behalf of the institution and reflecting the independent position of the communications office. It should be made clear that the prosecutor and, where appointed, the defender should always retain the right to speak on their own behalf as they consider necessary. Similarly, while chambers traditionally prefer not to become involved with statements to the media, the president of the institution would have the discretion as to if, and when, it is appropriate for a statement to be made on behalf of the chambers.
- ◈ The production of a policy on media and external relations developed in consultation with all organs of the court, to guide the outward flow of information through media releases, media conferences and, more generally, non-legal official documentation.
- ◈ The establishment of effective media relations, providing relevant information to journalists and access to principal officers within the organisation.
- ◈ The development of a mailing list that incorporates all interested parties (civil society, diplomatic representatives, the media, researchers, and academics).
- ◈ The production of accreditation procedures for journalists.
- ◈ The production of guidelines for reporting on the institution concerned.
- ◈ The production of a handbook for journalists.
- ◈ The development of a website (editorially controlled by the communications office, with technical support from the IT section).
- ◈ The holding of regular media briefings in locations relevant to the tribunal's mandate.

4. Communications Outputs

Outputs from the communications department are likely to be grouped into three areas (written, audio and video information). Examples of these outputs, which ought to be considered, are listed below.

a. Written information

- ◈ Diplomatic communications, via a monthly bulletin and newsletter (also useful for civil society)
- ◈ Media releases under the respective letterheads of the different organs within the institution.
- ◈ Case information sheets (providing basic information on cases).

- ◈ Weekly summaries, listing all legal documents that have been filed as well as non-legal communications (such as press releases).
- ◈ The annual report.
- ◈ Basic facts brochures.
- ◈ Other information as considered relevant by all organs of the institution.

b. Audio information

- ◈ The broadcast of redacted trials on radio (as in the case of the ICTY).
- ◈ The in-house production and broadcast of weekly audio segments summarising courtroom activity (considered particularly relevant for remote tribunals, or locations with low literacy rates).
- ◈ Regular interviews with radio journalists.

c. Video information

- ◈ The in-house production of video trial summaries for distribution to regions that are not located near the courthouse (considered particularly relevant for remote tribunals or locations with low literacy rates).
- ◈ Live audio-visual (AV) streaming of proceedings through the website.

L. Communications Systems and Information Technology

1. General Commentary

Whatever the circumstances of the institution concerned, it is crucial that communications and information technology systems, however rudimentary, are in place as soon as possible. In an ideal situation, the administration of the institution should have sufficient time to work on a communications or IT strategy before operations begin, and certainly before the judges, prosecutor and defender are ready to take up their responsibilities. However, this may be unlikely for a number of reasons. First, there may be neither the resources nor the time to work on such a strategy before operations begin and, second, there can be a significant advantage in developing systems that benefit from the input of all the eventual users, especially the chambers. The temptation for IT professionals to innovate where gaps exist in a user requirement, or where internal linkages are not clear, may not always prove to be in the users' interests.

With that in mind, it may well be sensible—using the past and present experiences of existing institutions—to pull together a broad based strategy that addresses the overarching communication and information technology needs of such an institution.

In some of the existing institutions, particularly ICTY, there are formal mechanisms (a committee) that consider requests for technical developments or solutions and the business factors supporting such requests. That committee is chaired by the deputy registrar, with representation from the main organs of the tribunal and those involved in both its budgetary and financial areas. Such a mechanism will undoubtedly bring a degree of control to the development of systems and is to be recommended as a positive step. But it has to be recognised that there will always be significant challenges when it comes to deciding the relative priorities of the major organs of an institution whose funding originates from the same source and which, as a result, breeds an element of competition.

That being said, any attempt by any of the organs of the institution to purchase and develop their own individual system in isolation from the rest of the institution, no matter what the specific application might be, should not be encouraged without proper consideration. There will be occasions when a particular application may be required and advantageous to an organ, such as a witness statement tracking system in the prosecutor's office that is specific to that particular office’s needs. In instances such as this, and where there maybe no formal mechanism in place to consider such requirements, it is important that the organ concerned consults with the registry with regard to a number of considerations—such as finance, security and if relevant, compatibility.

One final word on that aspect. Experience has shown that there may be a temptation, especially when an institution is being funded by voluntary contributions, for the prosecutor or defender’s office to seek to supplement their respective budget allocations by attracting funds or in-kind technological contributions from external sources, with the best possible intentions. While, in most respects an institution that is struggling for funding will be only to pleased to receive additional funding from any legitimate source, the greatest of care must be taken to ensure that no electronic systems, however simple their remit, are installed without consultation with the registry’s communications and IT section.

It should also be recognised that, although there may be significant experience in working with technology across the institution, some thought should be given to identifying any skills gaps amongst those who will depend on that technology to any extent.

This commentary has focused mainly on the information technology aspect of communications: those systems required to provide linkages—either in respect of common functions or in terms of complementary functions where basic information can be merged and used for different purposes by the respective organs of the institution. The communications issue in its more traditional form (such as the provision of a telephone system, cellular telephones, handheld radios and satellite services generally) will be discussed in more detail in this section.

Before moving on, the message coming from a number of those involved in the area of communications and information technology is that two well-used clichés apply to this

area of work. First, 'one size does not fit all' and, second, an institution really should 'cut its suit according to its cloth' and be pragmatic about what can be achieved or compromised. In other words, the main dilemma facing new institutions will not only be the inevitable challenge of making the most effective use of their funding it will also involve achieving a balance between the likely lifespan of the institution and the sophistication and cost of the basic systems chosen to support its operations (in the areas of personnel, procurement, security, and so forth). Experience has shown that there are those who, perhaps because they have originated from well established national criminal justice systems, have little regard for the fact that a newly created institution may have an expected lifespan of only around five years and, as a result, will not have the time to develop sophisticated long-term systems. This may give rise to unrealistic expectations of what can be achieved.

Finally, as reflected in other areas of this manual, a good deal of what follows will inevitably be based on the experience of setting up communications systems in a country where there is little infrastructure.

2. Communications

When an institution is established, it is crucial that (amongst other considerations during the planning mission stage) there is a specific focus on the communications network capability in the location where the institution is situated. In a well-developed country with a sophisticated infrastructure, some of those challenges will inevitably relate to cost, technical support, security, and connection and delivery times. However, in a country where the telecommunications infrastructure may not be as well established, these and other related challenges can prove to be very difficult to overcome.

First, the availability of a reliable provider is a key factor. There may well be a number of telecoms companies with poor coverage and low capacity that will, at first sight, seem to be offering competitive rates. While the recent ‘communication boom’ in many developing countries has led to far greater coverage by mobile telephone networks than in the past, care should be taken not to be attracted purely by low rates, as users need consistent availability and strong signal strength. These criteria became more critical when security is an issue in an unstable environment.

Establishing a single point of contact and a friendly working relationship with the chosen telecoms company is advisable. As staff numbers increase, so will the demand for service. With frequent urgent requirements for new phone contracts, it pays to have an amenable contractor who will go the extra mile to serve demand. Despite using Sierra Leone’s largest and most reputable provider, the Special Court would frequently experience long delays waiting for new or replacement SIM cards, provisioning connections and bills (that often arrived two to three months late—even then containing inexplicable errors). Plenty of patience is needed.

During the start-up phase, the majority of personnel will need cell/mobile phones, especially if they are accommodated at some distance from each other and the court. A policy decision should be taken early as to which staff will be eligible for a paid phone. Not only is this costly, but dedicated staff will quickly be required to handle the issuing of phones, maintain connections and deal with related problems.

In some instances, such as a shared duty phone, assigning responsibility for calls to one person is impossible and charges can rapidly spiral out of control. There may be an issue with staff spending a large percentage of their salary on personal calls. The Special Court's solution to these problems was to issue pay-as-you-go chips and top-up cards for set amounts each month. This method provides the users with sufficient credit to perform duties while alleviating the worry of excessive spending. Bill analysis showed that the majority of calls made were staff to staff. Significant cost savings can be made by negotiating a reduced rate for intra-organisational calls. Other simple measures include encouraging users to use radio or DECT portable phones if roaming the site. Another new technology (such as Motorola's TETRA systems) combines radio and cell phone in a single handset. This system eliminates internal call costs completely and benefits the user by only having one handset to carry and charge. This system has proved successful with London's emergency services and would probably pay dividends in the long run.

3. Radio

Handheld radio handsets are essential for security in an unstable environment. The UN's presence in the country benefited the Special Court, which was able to use its deployed VHF radio repeater stations. As previously mentioned, a user will often use a cell phone for convenience rather than walk to an office nearby or page the person on the radio. Encouraging the use of radio can save substantial call charges. However, it is important to have a clearly defined radio usage policy. This is an insecure method of communication, especially considering the United Nations has a rule of not encrypting radio transmissions. Depending on the local situation, an institution must decide if sufficient justification can be provided to deploy an independent encrypted network.

4. Landlines and Satellite

Local landlines are frequently unreliable and extremely costly for international calling, although necessary to facilitate in-country calls and basic Internet access initially. With no ISDN, broadband or leased lines, the Special Court's only option was to set up its own self-sufficient satellite dish to provide reliable international calling and bandwidth for Internet connectivity.

Again, the advantage of having a UN presence in close proximity eventually proved extremely helpful for communications, especially the loan of a dish until the court could procure its own. The link routed to the UN Logistics Base (UNLB) in Italy, which effectively made the court another 'mission' of the UN department of peacekeeping communications network, providing free 'internal' calling to other UN

offices globally. The court also benefited from UNLB's negotiated worldwide calling rates of less than 10c per minute to USA and Europe, only a fraction of the price of local providers. The excellent rates allowed recharging staff personal calls with a small mark-up to help recover the high cost of leased satellite space.

To facilitate this UN compatible service, an Ericsson telephone exchange must be installed and, ideally, recruitment of UN staff familiar with field operations and an established working relationship with UNLB for support. It is also worth mentioning the camaraderie that can exist within the field service network and how this occasionally helps cut the inevitable 'red tape' that makes things happen behind the scenes. Dedicated satellite bandwidth for data is costly and was kept to a minimum for as long as possible—then incremented in small steps as staff numbers built up. Various methods to maximise available bandwidth should be employed before committing to an upgrade. These include:

- Use of a proxy server to cache frequently used sites.
- Blocking inappropriate sites.
- Restricting hours of access for certain user groups.
- Restricting web-mail to outside offices hours.

With staff numbers rising and lack of bandwidth becoming an issue, only users with justifiable cause were allowed Internet access during the working day. Considering that Lotus notes corporate e-mail was deployed to every user, the blocking of Hotmail, Yahoo and other web-based personal messaging sites during office hours was not unreasonable. These measures dramatically released bandwidth during the day for those whose work was reliant on Internet access.

5. Staffing

Specifying all this equipment in the early stages will require close consultation with technical staff experienced in telephony, radio and satellite technology. When based in a developed country, contracting these services to an outside independent specialist may be the best option. The need for self-sufficiency in a developing country means early recruiting of skilled technicians to specify, install and maintain the array of mission-critical communications equipment. A full-time senior communications engineer takes responsibility for these tasks, with one or two assistants to complement this role as equipment arrives. Cable laying and major installations may also require some local manual labour on short-term contracts.

6. Hardware—Computers

One of the biggest challenges of working in a post-conflict environment is the lack of local supplies. Virtually everything must be procured from abroad with a lead time of 90 or more days. Forward planning is crucial. Something small and seemingly insignificant (like an incorrect type of plug) can lead to delays and unforeseen costs.

Inevitably, there will always be unexpected requirements, changes in staff numbers and surprise arrivals. Experience has shown that it is best for the communications and IT section to liaise directly with each section head to ascertain their future computer requirements. The majority of office staff in this type of organisation requires a permanently allocated machine and possibly occasional use of a laptop. Where section budgets were restrictive, the Special Court was able to negotiate for some posts to share computers.

When buying from abroad, warranty or service agreements are typically unworkable. This means spares must be kept on site and staff who are capable of diagnosis and repair employed and available. Many companies find this more cost effective to outsource but in a developing country—and especially with an institution whose security is of paramount importance—in-house technicians are the only option. When buying personal computers, it may be cheaper to buy a complete machine than individual components. Having replacement machines on standby will also improve a user's experience and reduce downtime when a failure occurs. The faulty machine can then be taken away and repaired at a convenient time. For this method to work, it is important to have standard machine configurations and all required software pre-loaded. The user's machine can then be swapped out and the new box immediately up and running with minimum configuration or installation.

Being situated at a distance from the usual supply chains also means that, when ordering, allowances should be made for 'dead on arrival', early breakdowns and potential thefts *en route*. If the budget allows, increase the order by 10 percent to cover these eventualities. Obviously the ability to achieve standardisation of manufacturer and, where possible, model simplifies roll out, maintenance, spare parts and repairs. The case for this must be clearly set out when requisitioning, as procurement rules generally specify generic specifications to allow for fair competition. It should be shown that standardisation is in the best interests of the organisation.

To help minimise the risk of theft during delivery, requests should be made for all shipments to be palletised and wrapped in black plastic as a dockyard or warehouse worker will be less likely to pilfer if the contents are unknown. Standards frequently change; floppy disks are now almost obsolete and have been largely replaced by the USB memory stick, which has thousands of times the capacity and is considerably more reliable. In fact, a hot and dusty environment is the enemy of floppy disks and they should not be installed if avoidable.

Flat panel 19”, 20” or 21” monitors have reduced greatly in price and are well worth the extra investment for certain users, such as technical staff. On the whole, 17” monitors are both a reasonable price and generous size. While there may be those in an institution who believe that their seniority demands the provision of larger or more sophisticated monitors, equipment should be distributed according to user requirements.

Another standard change is the optical mouse with the right type of mouse mat. These are far superior to the ball type. Having no moving parts makes them for less

susceptible to damage from accumulated dust and dirt; roller mice clogged with fluff become uncontrollable and eventually ineffective.

As indicated earlier in this chapter, it is frequently the small things that are important; keyboard and mouse extension leads or four way power extension cables make the difference between a smooth installation and non-functioning or poorly positioned machines. The communications and IT section must act as a turnkey solution provider and have attempted to predict everything in advance; ordering the correct plug type is far preferable to spending two days trying to source 200 travel plug adaptors.

Unstable power and frequent blackouts mean that the availability of uninterruptible power supplies (UPSs) are crucial. In an environment with regular national power failures, the life expectancy of the units will be reduced, thus ordering replacement batteries is prudent. Ensure that time is also taken to wire up the computer feedback cable. Even when instructed to shut down at night, many users will forget. With the cable connected, the UPS will initiate a graceful shutdown of the computer during a power cut and prevent corruption or loss of work.

7. Printers

If no local area network (LAN) is initially in place, desktop printers will be necessary and, in some instances, appropriate in any event. However, heavy-duty multi-bin, double-sided work group printers are ultimately the most cost effective and space saving. Experience has shown that legal personnel in particular use a significant amount of paper and printing, so it is sensible to keep a suitable stock of toner. Measures to reduce paper consumption (such as recycling, printing double sided and using software to provide advanced printing controls to reduce print size for draft copies) should be considered. The importance of cabling should not be overlooked as there is nothing more frustrating than having new printers in stock and not being able to connect them or having to position a printer on a chair next to a PC because only one meter of USB cable was provided. Typical spare parts for printers should also be ordered from the start. Desktop printers working at, or above, their duty cycle will rapidly require rollers re-gripping or replacing.

8. Hardware—Servers

At the core of a network, servers are the back-end machines that provide essential services to users. The number of users, required applications and storage capacity will determine how many servers are required. Consideration should be given to the following categories:

a. File and print sharing services

These servers supply a secure location to store and share work files internally and control access to network printers. Ideally, prosecution and registry files should be on separate machines. Anticipated usage is 200-500 MG per user, depending on the type

of work. A fast disk system and plenty of random access memory (RAM) is essential. All workstations should be configured to store the users' work on the central file server by default. This provides several benefits. Having data in only one location ensures the workstation's security is further enhanced. Users also have the benefit of being able to log-in to any workstation and have their files immediately available in the 'My Documents' folder. This capability has allowed 'hot desking' to become increasingly prevalent.

An institution will typically have a number of roaming personnel as users increase. A typical scenario will have data residing on one server and the application separate on another. With many programmes now using a web-based front end, a dedicated Internet web server is the most desirable configuration. This does not necessarily mean that the data will be accessible from the Internet; simply that network users only require a browser (i.e. Internet Explorer) to run their programmes. This way of working is known as 'thin client' and leaves all the programmes working on the server. Only a small amount of data need be sent over the network to each user (that is, only a 'thin pipe' is required). This is why a more powerful server is required but is ultimately more economical.

b. Firewalls

A hardware firewall solution is the only option for a high security environment. The firewall serves to block network access by unauthorised users and ensure only that only specific data flows in or out of the organisation. Monitoring this data flow is a critical task for the security officer. While automated electronic monitoring can be performed, there is no substitute for a human eye to spot unusual or suspicious activity. Choice of machine should be discussed with the security officer, but a redundant cluster is preferable when taking security seriously. Failure of the firewall means shutting down Internet and e-mail access until a secure connection can be re-established. The firewall's task is network-based and has a low overhead, thus a low=end machine is adequate.

c. Background/unseen services

If a Windows network is deployed, it is not unusual for the active directory services to be used to manage users, machine accounts and policies across the network. It is recommended that two servers be provided, with designated domain controllers to manage logons, security authentication and apply policies. Other background services can also be deployed on these machines—such as DNS (required), DHCP, WINS, (required for older machines) remote installation services and the time-server service. In large networks, servers may be running a single dedicated task. As it is unlikely that any new institution will be required to reach thousands of users, performance will not be affected by combining these services on a single machine. The storage required is minimal.

d. Redundancy, cooling and power

Server up-time should exceed 99 percent availability as a minimum. Typically, servers are now shipped with redundant parts as standard. With hard disks being the most common part to fail, they should always be installed in a 'redundant array of inexpensive disks' (RAID) configuration with on-line spares. Given the length of ordering and delivery times, spares should also be kept in stock. It is not uncommon in the event of a disk failure for another to breakdown soon after. Sensible preparation can save hours of downtime and possible data loss.

Other common spare parts—such as memory, network cards and power supplies—can also be pre-installed with automatic failover capability. In addition to the redundancy of parts within servers, it is also advisable to maintain at least one complete installed and ready spare server. Occasionally machines develop a fault that can prove difficult to trace and may require some time to diagnose or even complete reinstallation. Having a spare on standby, which can also act as a 'test bed', can minimise disruption to the whole organisation.

Air conditioning in the server room must not be overlooked in any environment. Racks of machines will generate significant amounts of heat that must be dissipated. In a sub-tropical climate, where ambient temperatures consistently reach 30 degrees or more, excess air conditioner units must be installed. Given their tendency to breakdown and require frequent maintenance, it will not be uncommon for one or more units to be either out of action or running at reduced capacity. Without spare units in place, the room can quickly exceed recommended tolerances, leading to a server shutdown.

If power is unstable, the server room should be independently wired with its own back-up generator and UPS array. Servers by design cache date in volatile memory should be written to disk later. An unexpected power outage may not only cause immediate data loss, but cause corruption to files that may not become apparent for some time. There can also be damage to sensitive components through overheating if power is abruptly removed and fans stop working.

e. External storage arrays

With trials underway, hundreds of documents will be scanned daily. If audio and video footage is to be stored digitally, hundreds of gigabytes of storage will be quickly consumed. External arrays are a reliable solution for both storing and archiving large quantities of data. With the price of disk space now so inexpensive, and unsatisfactory experiences with unreliable tape backup systems, it is recommended that a disk-based backup solution be considered.

9. Data Security

Perhaps the most serious and wide ranging subject, data security, should be devoted sufficient resources and consideration. While also important to the business world generally and to other organisations, an international criminal justice institution holds

(amongst other matters) information pertaining to witnesses, safe houses and relocation programmes. A breach in security will inevitably put lives at risk. This threat cannot be overstated. Securing data requires a combined effort from all staff (shredding documentation waste) and is not limited to IT personnel or procedures. It is not within the scope of this chapter to provide detailed technical specifications. It is, however, worth describing those key measures and policies to be implemented by technical staff of which senior management should be aware. This is broken down into the following four categories:

a. Physical network and assets

- Servers and network equipment physically secured.
- Firewalls and routers configured to restrict in/outbound data.
- Wireless networks encrypted and restricted.
- Routine monitoring for unauthorised devices.
- Routine monitoring of network traffic for intrusion detection.
- Network cards with data encryption capacities.
- No physical separation of organ networks.
- Asset register with strict check in/out procedure.

Access to the server room must be restricted to authorised personnel, cleaners supervised and workgroup hubs and switches housed in lockable cabinets when distributed around a site. When connecting a network to the Internet, the greatest threats to security come from unseen hackers who may be anywhere in the world. Simply installing a firewall does not protect a system from attack. Once the firewall and router have been configured to restrict traffic, there must be ongoing monitoring. Attempts to attack or degrade a system can come in through legitimately open ports such as e-mail (port 25) and there can be no substitute for trained staff to monitor traffic for unusual activity.

If highly sensitive data is to be accessed over the LAN, installing network cards with data encryption capabilities should be considered. Typically packets of data sent between server and client workstation are not encrypted; anyone with a computer on the network could intercept, capture and read this data. However, it should be recognised that encrypted data places an additional overhead on the network and this measure should only be intended for limited use.

It is understood that registry and prosecution data must be separated with no risk of accidental leaking of information. After consultation with the ICTY, which established physically separate networks, it was decided in the circumstances of the Special Court that the resulting duplication of work was unwarranted. Any concerns were allayed by storing data on separate servers and establishing an internal firewall to keep the organs

virtually separate, although still sharing the same physical wire and server services. This method proved successful, without any instance of a breach between prosecution, chambers, defence or registry.

With the communications and IT section responsible for telephones, computer equipment, digital cameras and camcorders, a significant amount of equipment must be tracked. As was the case with the Special Court, it is likely that an institution will receive a significant number of visitors, members of the public, temporary contractors and others on a daily basis. This can pose a problem for the administration of the institution's site.

At the outset of operations, an asset management database should be established, with equipment that can be checked out only on presentation of a properly authorised form. Over time, the system can be expanded to provide an institution-wide asset management system to incorporate the records of general services, transport and communications and IT. In that way, a comprehensive overview of all an institution's assets, from SIM cards to chairs and vehicles, is available.

b. Computer policies

- Any floppy disks and CD burning facility disabled.
- USB memory devices disabled.
- No personal laptops permitted on the network.
- Official laptops secured.
- Locking of workstation cases.

If secure data is to be accessed, computers can have floppy drives and CD burning disabled administratively. While this step may prove contentious for some staff, these are sensible measures to ensure secure data remains where it is supposed to be. USB pen drives and memory sticks should also be prohibited as they allow a large amount of data to be transferred without control. This is again likely to be contentious, but the requirement should be unnecessary when using a properly connected network. This policy is simple to enforce, but situations will arise where exceptions need to be made. For example, a forensic investigator may want to upload digital pictures using a camera's memory card in order to take work home. As in so many other areas of an institution, such instances must be individually and sensibly evaluated and the policy overridden where appropriate.

At the Special Court for Sierra Leone, there were occasions when the communications and IT section would receive requests to enable personal laptops to be operated on the court's network. As a rule, this was not allowed, but occasionally, due to the shortage of official computers, exceptions were made—but only after the machine had been virus scanned and checked for spyware and other potentially harmful programmes. In

such instances, the security officer within the section would be notified as soon as possible.

With investigators travelling abroad extensively, laptops may need to be issued on an ad-hoc basis, often at very short notice. These machines can have their security enhanced by enabling BIOS passwords and, importantly, activating disk encryption. In the event of a mislaid laptop, the risk of even a skilled hacker obtaining any meaningful information is therefore minimised.

Theft of memory chips has become common; these memory modules are small, expensive, and desirable and can go unnoticed. PC manufacturers have addressed this issue with a locking mechanism or padlock fitting on the case.

c. Software and e-mail policies

- Automated virus scanning and deployed updates
- Standard software preinstalled
- No installation by users
- User accounts only created with signed authorisation
- Logical sub-grouping of users
- Accounts set to expire at contract end
- Complex passwords enforced
- Restricted login hours
- Account lockout policy
- Logins, files and folder access audited
- All accounts restricted from Internet access by default
- User folders redirected to server
- Published Internet and e-mail acceptable use policy
- Spam and junk mail forwarding prohibited

Antivirus software must be kept updated to be effective. Default installations will set each workstation to download updates directly from the Internet, which can be inefficient, especially with bandwidth at a premium. Correctly configured corporate software should task a server to collect updates and then distribute internally using the LAN. Experience has shown that installing antivirus software from different providers at different levels and gateways dramatically reduces the number of infections. Every machine should be prepared with MS-office (or an equivalent work processing, spreadsheet and presentation suite), Adobe Acrobat, e-mail client and WinZip (or equivalent compression tool). These are the essential tools to ensure the majority of

users can get straight to work. Other specialist software—such as Visio, Project and Stenographers tools—can be installed by IT staff per user requirement. Under no circumstances should users be granted installation privileges, as unlicensed software, games and dangerous mail will certainly find its way onto the network and cause problems.

With new personnel arriving every week, a network administrator must have controls in place to ensure user accounts are created with proper privileges and access rights. This commences with an authorisation form signed by the relevant section head. Controlling access to folders and shares can be time-consuming and mistakes can easily be made. To simplify the task and minimise errors, it is suggested that the best method may be the creation of users in logical groups—reflecting the organisation's structure by assigning access rights to the group. User accounts placed in the relevant group will automatically inherit access rights predetermined for that group. When creating accounts, the administrator should be aware of the staff member's expected contract duration; thus the account can be set to disable automatically upon completion of contract. This may seem a small matter but accounts quickly mount up and a new administrator will have no idea which of them should still be active. Numerous redundant accounts equate to a security risk.

Complex passwords requiring seven or more characters—with mandatory upper case and lower case letters plus a symbol or number—will ensure that easy to guess and blank passwords are not used. Most users find deciding on a password of this nature quite a challenge and spending a few minutes explaining the requirement can be beneficial. Providing a step-by-step first guide to users can be invaluable. If an incorrect password is entered more than four times, the account should automatically lock for a period. Those with poor keyboard skills may find this frustrating, but it is a necessary policy to prevent applications designed to decode a user's login by sheer attrition and persistence.

Restricting login hours from 7am to 7pm further tightens security, but occasional emergency deadline situations may arise with no technical staff on site to unlock the account. This policy should be discussed before enabling. Auditing user login creates a log file recording who logged in where and when. Additionally, logs can be enabled to record access to high security files and folders. In a secure environment, auditing failed access attempts may also prove beneficial. Deciding which events to audit is important, as log files can grow extremely large.

Restricting Internet access by default is a good policy to conserve bandwidth. This ensures that only those users with explicit authorisation will have access enabled. Every organisation should have a published Internet and e-mail acceptable use policy. The Internet is a valuable tool for many areas of work, but a huge amount of time can be wasted on personal surfing or browsing inappropriate pages. It must be made clear that this is not work, wastes time and resources and will not be tolerated. Undoubtedly e-mail has transformed the way we work and improves efficiency, but the associated risks such as virus transmission must be considered. Connecting a network to the

Internet for messaging immediately gives users the capability of leaking information or even inadvertently sending a confidential document to the wrong person or group.

Every organisation will have contracted viruses at some point, despite maintaining adequate protection. This is one of the risks of e-mail and cannot be avoided. An alert IT/security section should be able to pick up outbreaks and respond accordingly in most instances, but sometimes hundreds of machines can become infected before any signs are noticeable. Educating users not to open and immediately discard spam is a major preventive measure and should be part of an IT policy. Of course e-mail can be kept strictly internal but, in today's fast moving world, communications make things happen and a total block sounds somewhat draconian. Another option would be to enable external use but limit it to specific users, although that will lead to those not so franchised being disgruntled. A compromise option may be to provide all staff with an Internet e-mail account, but restrict certain security sensitive machines or user accounts from sending mail. This can be implemented using a separate subnet designed for the exclusive use of, say, the witness protection and victim support database but with no access to the Internet or e-mail server.

Security risks are a prime concern to an institution, but ultimately a determined person will always find a way around any security measure. IT policies and procedures can only make the task more difficult and possibly provide an electronic record or finger print of the event. For example, using a print server allows every print job to be recorded.

d. Disaster response and recovery

- Scheduled backup routines
- Archival policies
- Off-site replication or backup storage
- Defined staff responsibilities
- Practised emergency routines

A typical 'grandfather, father, son' backup routine will provide for daily, weekly and monthly backups, ensuring any accidental losses can be quickly restored. Tape drivers have traditionally been the medium of choice and now allow hundreds of gigabytes on one tape. Ensuring a sufficient quantity of tapes and an on-site fire proof safe for storage is essential. As mentioned earlier, tape drives and their media are notoriously susceptible to breakdown and it is advocated that a removable hard drive storage system for backups be provided. Not only is the process faster but the reliability will exceed that of a tape. This is a constantly evolving technology and the latest products should be evaluated for suitability. A tape drive may ultimately prove the best option, but care should be taken to ensure that this option is not chosen purely because it reflects what has been done in the past.

On top of routine backups, a data archival policy must be established. The value of an institution's data will depreciate with time and can be moved to a more suitable medium. Many documents will be made publicly available for years to come and not relegated to a cardboard box or outdated DAT tape. The Internet has allowed documents to be published electronically and downloadable by anyone, anywhere. Choice of format is to an extent a matter for ongoing discussion. At present, it seems that Adobe Systems Portable Document Format (PDF) has the best properties for storing public documents. Other choices are MS Word or Hypertext (HTML is the basic language of webpages). Once the format has been decided upon, the IT department must find the most suitable method for storage and World Wide Web publishing.

All other institutional documents, financial records and administrative papers will probably require hard copies to be stored, but electronic methods may be becoming more reliable and cost effective. Major terrorist attacks in recent years have served to identify the need for off-site replications. With bandwidth in industrialised nations freely available at low cost, this has become a viable option. Daily replications ensure that, if a local disaster or attack occurs, an alternative working copy can be made available. The Special Court did not have the facility of local bandwidth and could not implement any 'data mining' solution. An alternative site housed a safe to store regular complete backups. Any CIT section must have clearly defined roles for its staff in the event of an emergency. To be fully prepared for a worst-case scenario, a simulated attack can reveal any shortcomings.

Applying all the above suggestions may not be appropriate in every case, but the majority should certainly be regarded as compulsory basic requirements.

10. Application Requirements

Establishing an institution from scratch is a significant challenge, and this does not preclude application development. With experienced staff fully aware of the advantages of electronic data processing, many demands will be made for customised applications to serve one purpose or another. In some instances, such as accounting, off the shelf financial packages can be quickly deployed and working in a short time frame.

A commitment to adopt the UN way of working with procurement, asset management and personnel makes off the shelf software unrealistic and a tailor made solution the best route. While the United Nations has its own customised applications built around Lotus, some of these are cumbersome and still undergoing development. In any event, it would depend whether the institution concerned was seen as being entitled to use the UN's in-house systems Given the choice, any communication and IT section would rather support an established package or in-house developed solution. The Special Court managed to get by in the first year by using spreadsheets and simple access databases, but it quickly became apparent that more advanced solutions would be required and that a full time programmer should be employed.

This post took some time to recruit, which resulted in additional pressure on the communications/IT section in trying to meet all the Special Court's rapidly growing requirements. With hindsight, recruiting one or two skilled developers from the start would have greatly assisted several sections. A prime example was the procurement section, which was inevitably under extreme pressure during the first 18 months and would have benefited hugely from a quickly deployed requisitioning system. After almost two years in the country, procurement was still manually retyping requisitions into multiple bid documents and faxing each request for a quotation to various suppliers. A requisition index was being poorly maintained in a Word document, which failed to provide little effective management reporting.

Lessons from the Special Court have shown that, as the different sections began to establish a presence as the court grew, there was a tendency for each section to create and develop its own records, often around the same key pieces of information (an example being personnel records). This was required to account for such functions as leave, telephone billing, payroll, and so forth. Each section found that it was having difficulties in maintaining such records effectively. The solution to this problem was to make the personnel section solely responsible for maintaining staff records. A read-only list of staff including, ID card number, section and entry into employment date and so on could then be made available to other applications on the system. With a single point of entry, every section could be sure that the list was up to date and maintenance free. Over time, all sections received an in-house developed application. This was certainly the most efficient method of providing tailor-made solutions for each section, using common data and with a consistent look and feel.

The primary business of a court or tribunal is to conduct trials in a fair and transparent manner. To help facilitate this, an electronic document management system is essential. At the core of this process are court records. Documents must be received, logged, and then published. Although not an immediate requirement, the sooner a backend database is established, the sooner records can be indexed, searched and viewed electronically internally and externally. Creating this system is fairly straightforward and examples can be readily obtained from the existing institutions. However, a brief overview may assist.

Documents are submitted from a variety of sources and must be indexed and catalogued. An electronic version must then be submitted to the database to allow viewing on the website. This has been over simplified to an extent, but the point is to illustrate a problem with which every existing institution has grappled. Ideally a view of every document, original and complete with signatures, should be available and the text within the file should be searchable. Unfortunately, a scanned document only captures a snapshot image and contains no text. Lawyers and staff have cited this search capacity as a critical requirement.

The obvious solution (which has been tried time and time again) is optical character recognition (OCR). Some pages can be recognised with a high degree of accuracy, but different sized fonts, logos and handwriting mean that processing the thousands of

pages logged in each trial is extremely difficult. Analysis and correction requires a significant amount of resource. The Special Court in Sierra Leone found that the vast majority of documents originated in MS-Word format, printed, signed and submitted. To allow text searching, it was ruled that, wherever possible, an electronic word file should be submitted along with the original. Court records could then use Adobe Acrobat to create a read-only PDF with searchable text. The advantage of this method, which does not include graphics such as signatures, is the extremely small file size. A typical TIFF image of an A4 page will exceed 2MG, whereas a Word file converted to PDF would be 1/200 of this at just 10k.

When viewing the web sites of other existing institutions, two versions of the same file can be viewed. This has been the solution most acceptable to all parties. One shows a picture of the original while the other contains searchable text. Until OCR is improved or a new technique is found to combine both text and image in a small file size, this will remain the most expedient solution.

V. THE CHAMBERS

A. General Commentary

An effectively structured and organised chambers is crucial to any criminal justice institution, to provide support to the judiciary at all stages: pre-trials, trial and appeals, and coordinating the efforts of what may be a number of judges across a number of chambers. The issues of staffing, including recruitment, will be dealt with elsewhere, but it is important that early thought is given to the nature of legal support that the judges are likely to need. It will always be difficult to estimate with any precision the numbers and levels of staff required for chambers before there is some certainty about the number of defendants and trials to be dealt with.

However, the number of judges appointed from the outset, supported by the number of trial chambers or courtrooms likely to be in use, will assist in providing a basis for staffing the chambers. Experience varies across the existing institutions, with some regarding ad hoc tribunals as having, over time, developed a strong cadre of legal officers or advisers. Some others may even consider the staffing levels to be inflated. As ever, the issue of the availability of financial resources will rear its head. And while there is a need to avoid excessive staffing in chambers—especially from the outset of the institution when there may be little to keep staff fully occupied—there is also a need to keep a balance. An understaffed chambers can have a serious impact on an institution, as it may not be able to provide the crucial support and advice to often hard pressed judges in an effective and timely manner. Judgments and the rendering of decisions on motions generally can all be severely hampered and delayed.

Chambers also have a significant part to play in the progress of the institution overall. It is important that senior staff in chambers have the trust and confidence of the judges they support, and that those staff are able to play a full part in ensuring that issues important to the judges are communicated to all the other parties and vice versa. Representatives of chambers have a particularly significant coordinating role to play—in their every day interaction with colleagues in the registry, specifically the court management section. It is also important that they participate in the various registry committees, such as the judicial support coordination committee and the weekly chiefs of section meetings. While it is part of the registrar's ongoing responsibilities to maintain a regular dialogue with the judges with regard to the institution's completion strategy, chambers staff also have a role to play in contributing to the development and constant updating of the completion strategy, by keeping those responsible well informed of the judges' views on the matter.

Finally (and a matter to be dealt with more fully when discussing the appointment of judges), in an institution smaller than the Yugoslavia and Rwanda tribunals, there are questions about the line management of chambers staff, as well as the demarcation lines between legal staff in the trial and appeals chambers. Not least of these is the relationship of the senior legal adviser to chambers as a whole. Both matters have to be a matter for discussion and consultation between the registrar, the president of the court

and his or her judicial colleagues. This is a matter that needs to be tackled at an early stage in order to avoid difficulties later. Line management issues will vary according to the particular management structure in place in the institution concerned but, in the interests of effective use of resources and efficient management, it is recommended that there be one senior legal officer responsible for the daily operation of chambers.

B. Staffing and Recruitment

1. Staffing Levels

The whole issue of the organisation and structure of chambers is a matter for discussion and consultation with the president of the court and his colleagues. Unfortunately, given the chronology invariably in play in setting up a new institution, it is likely that decisions will already have been made with regard to that portion of the budget allocated to the chamber for staff in the first year of operation—even before the precise nature of the number of defendants and trials is known. While that situation will apply across the institution generally, it does point to the importance that first year budgets particularly retain an element of flexibility, leaving the capacity to reallocate resources as necessary, even to the extent—in exceptional circumstances—of drawing down on any second year funding available.

Opinions will differ, but it is recommended that the allocation of legal staff be based on at least two legal officers per trial. (In the ad hoc tribunals, it has been more common to have at least one legal officer per judge, but resources may not always permit that approach). In addition, consideration should be given to the provision of a legal post allocated specifically to the president of the court, to assist with, and advise on, the inevitably wide range of issues with which the president will have to deal. However, each and every trial is likely to create differing requirements and an open mind should be kept.

In addition to these legal officers assigned to the chambers, it is recommended that they be supported by a cadre of legal interns to assist with research and some preliminary drafting (albeit under close supervision). Experience has shown that there will always be a ready source of enthusiastic, committed and intelligent interns who will relish the opportunity to work in such an institution to gain experience and make their own contribution to the institution's progress and success.

One aspect of the use of interns, while not necessarily seen by some as either relevant or important, is the impact of the employment of interns on the institution's budget. Again experience has shown that a good team of interns can bring the institutions concerned real value for money as the level of remuneration can be somewhat lower than use of the traditional UN international professional levels. Indeed, for a significant period in the start-up phase of the Special Court for Sierra Leone, interns were not paid a salary but given only a subsistence payment. Such was the interest internationally that there continued to be any number of young lawyers and law students who were willing to work on that basis.

It must also be emphasised that, especially if the institution concerned is located in-country, every effort should be made to ensure that there is a healthy mix of both international and national intern posts available. Not only does that bring richness to the intern team in terms of cultural diversity, it also contributes to the legacy left by the institution. Indeed, there may well be organisations or foundations interested in assisting such a programme.

Before leaving the staffing issue generally, it follows that every effort should be made to provide a corps of experienced secretarial support staff to chambers to handle the everyday administrative responsibilities. While some legal experience is desirable, experience has again shown that the employment of energetic, committed staff with general administrative experience and a fund of common sense can produce excellent results.

In constructing the framework for the staffing of chambers, it is crucial that the registrar—or whoever is the senior administrator responsible for handling staffing—consults fully with the president of the court so as to discuss and resolve any difficulties that may arise. As mentioned earlier, while it can be difficult to strike the right balance in avoiding what some may see as a 'standing army' of lawyers in chambers, the provision of effective support is paramount and every consideration has to be given to ensuring that sufficient timely and good quality legal support is available to the judges.

2. Recruitment in Chambers

As with any other area of the institution, all recruitment must be transparent and in accordance with the institution's established procedures, even if those procedures are not as sophisticated as one might wish if the institution is being set up against a background of financial and timescale challenges.

To that end, every effort should be made to advertise vacancies as widely as possible and, while the advertising of vacancies generally will be dealt with elsewhere, the intention should be to reach as wide an audience as possible. Most definitely in the case of an institution located in-country, the vacancy should be advertised in local newspapers and through any national bar association. In addition to the institution's own website and any access to a UN system such as GALAXY, efforts should be made to ensure that universities and law schools are also targeted, especially when interns are being recruited. Depending on accessibility and cost, the placing of an advertisement in certain international newspapers can also produce results.

It may avoid difficulties at a later stage if generic vacancy notices for posts in the chambers are discussed in advance with the president or the presiding judge, to ensure that there is a common understanding of the duties and responsibilities concerned and the type of candidate desired in terms of experience and qualifications. Thereafter, and at the short-listing and subsequent the interview stages, it is important that the

presiding judge be invited to participate or nominate a colleague to do so. Subject to complying with the institution's overall appointment criteria and procedures, it is also important that the judge participating in the selection process has the opportunity to discuss the candidates with his or her colleagues before a decision is made. In the instance of a close contest, the judge's preference should be given priority, as it is he or she who will have to work with the successful candidate.

It is also important that the judges are aware of the intentions of the institution to adhere to the robust exercise of probationary periods for newly appointed staff. Crucially in that respect, they should be made aware of the arrangements for performance assessment both during that period and beyond—for the duration of the appointee's contract. Finally, given that all institutions will work to an official language or languages, it is important that all candidates for appointment are able to demonstrate that their written and oral comprehension of at least one of those languages is to an acceptable level.

3. Line Management of Chambers Staff

While some may see this issue as controversial, it needs to be highlighted and discussed. Views will vary, but it is recommended that all the staff in chambers—ranging from the senior legal adviser to secretarial and administrative staff—should be regarded as being appointed by the registrar to support the judiciary and, accordingly, within the registrar's line management chain through the supervisory function of the senior legal adviser to chambers.

The point should be made very clearly that the overriding intention in recommending this approach is to protect judges from being caught up in the responsibility and work inevitably involved in managing any number of staff in different posts and at different levels. The view is that the judges should be free to concentrate entirely on the various stages of the trial process and beyond, without being distracted by matters that can be handled in another way. None of this removes the overarching supervisory responsibility of individual judges for the assessment of staff working for them. Indeed, the judges' perception of chambers staff is a crucial part of the overall assessment process to be completed by the senior legal adviser. However, it is suggested that it is both unnecessary and impractical to involve judges in an administrative process that could involve them in a staff appeals procedure, should a performance assessment be challenged by a staff member. In those circumstances, it is again suggested that it is better for the senior legal adviser to be the focal point in such disputes.

It may assist to examine the recommended approach in a little more detail. The intention would be for the senior legal adviser to chambers to be assigned to the appeals chamber, under the overall control of the president of the court. If the appeals chamber—as in the Special Court for Sierra Leone—is not located in the country concerned during a substantial part of the institution's lifespan, the senior legal adviser will be located in the institution wherever situated. He or she can then maintain a ready

link between the president and his or her colleagues in the other chambers and, as necessary, with the registrar.

While the role of the senior legal adviser would be to provide legal assistance or advice to the appeals chambers from within the institution, given the particular circumstances, he or she would also be responsible for overseeing the operation of the chambers structure in providing the judges with the support they require. Amongst a number of day to day administrative duties—such as dealing with recruitment, absences due to sickness, applications for leave and so forth —the senior legal adviser would liaise with individual judges (or chambers as a whole) about the effective operation of chambers from an administrative aspect, perhaps in terms of their workload generally or backlogs of work occurring. He or she would also be responsible for conveying any matters that judges wish to raise with the president or vice versa, where distance prevents ready or easy communication. Specifically, he or she would be responsible for supervising the arrangements for any plenary meetings to be convened.

In addition, the senior legal adviser would liaise with the presiding judges between trial chambers (where more than one exists) and coordinate any interaction required and necessary. In regular discussion with the judges, areas of concern about the performance of the other legal advisers in chambers would be identified—such as, perhaps, meriting some mentoring or training or, in particular instances, a cautionary word. In recommending this approach, it must be made clear that the senior legal adviser would not have any input to any legal advice or assistance provided to any judges on any matter outside the appeals chamber. Nor would he or she interfere in any way with the work of legal advisers in the other chambers, other than to facilitate cover or backup in the event of prolonged absences by members of staff.

Particularly in respect of the performance assessment, the senior legal adviser would be responsible for arranging the timely completion of both probationary and annual assessment reports for chambers staff. He or she would also be responsible for consulting the relevant judges on their professional view of the performance of the legal advisers assigned to them—especially in the key areas of providing timely, accurate and well researched legal advice and delivery in terms of drafting and oral presentation. It would also be for the senior legal adviser to identify and seek to resolve any major differences between respective judges' opinions on the performance of a staff member.

Finally, as indicated in other chapters, the senior legal adviser has an important role to play as a regular contact point with the registrar, alerting him or her to any difficulties in chambers that need to be addressed. He or she would also represent chambers in those meetings where a chamber's perspective will be required to ensure that the required support is forthcoming.

C. Plenary Meetings

The circumstances of the creation of individual institutions will inevitably have a bearing on the structure and frequency of plenary meetings of the institution's judges. There are a number of issues surrounding the holding of plenary meetings and, as elsewhere in this manual, it is recognised that views and opinions will vary. But the overriding principle is that a plenary meeting should be convened only if there is a firm reason for doing so.

Usually it will be the president who convenes a plenary meeting—either at his or her volition or at the request of his or her colleagues—having been persuaded of the need and justification. Provision for this will, in any event, be made within the institution's legal instruments. Unless there is a change in the current approach, the election of president and vice president is likely to be just one of a number of matters to be dealt with by a plenary, depending on the terms of office of those posts. It is also likely that, in the early stage of a new institution, the need for plenary meetings will be increased as the chambers begin to gain first hand experience of the efficacy of the legal instruments in place.

It would be difficult to address every angle and to meet all the possible scenarios in play insofar as new institutions are concerned. In recommending the approach to be taken, some of the principles advocated are advanced on the premise that all the institution's judges are not co-located, and others will be common to all eventualities.

First, the cost of plenary meetings will vary according to circumstances but, inevitably, any gathering of judges over a period of days (with all the administrative arrangements required) will result in a significant cost to the institution. As in Sierra Leone, where the first president and his colleagues in the appeals chambers were located outside the country, the logistical exercise in bringing all the judges together, whether in Sierra Leone or elsewhere, was both challenging and expensive. As indicated above, the senior legal adviser to the appeals chamber can play an important role in liaising with the president on a primary need for a plenary and alerting the registrar of the president's view. While deciding to convene a plenary will always be the responsibility of the president and colleagues, it will be the responsibility of the registrar to assist in informing that decision and justifying why consultation with both the president and the senior legal adviser is important.

A good deal will depend on the nature of those legal instruments in place, in particular the fledgling rules of procedure and evidence. The present position is that there is now considerable experience available in the various internationally assisted courts and tribunals as a result of respective sets of rules being tested on the conduct of the trial and appeal process. For example, the Special Court for Sierra Leone adopted the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda as an early template from which to develop its own set of rules. That approach saves a significant amount of time and effort and also builds on earlier experience. Thereafter, it is for the institution concerned to consider its own particular mandate and

circumstances and, with the benefit of experience on the ground, to adapt the rules to fit its purpose.

Given that the cost of internationally-assisted criminal justice institutions has increasingly become the focus of attention by international donors or contributors, whether voluntary or otherwise, it is important that the institution shows generally that it incurs expenditure only on the basis of activities that can be justified. There will be those who feel strongly that the rigours of trying to balance a budget in a cost-effective manner has no place against a wider issue of judicial independence and that there should be far fewer financial constraints on judicial expenditure. Whatever the thinking on that issue, it is very clear that the international community's views are that no aspect of the expenditure of such institutions, past, present or future, should be exempt from scrutiny.

With that in mind, it is important that the registrar is able to quantify the cost of any proposed plenary and, if the circumstances are such that a decision needs to be made with regard to venue, the registrar can offer costed alternatives. There may well be occasions when the nature of the issues to be discussed at a proposed plenary may lend themselves to discussion by other means—such as by e-mail, telephone or video conferencing—and it will assist the president if the registrar is able to provide costed options in that regard.

Finally, and turning to the arrangements to be made for a plenary, it will be the role and responsibility of the registry and chambers to ensure that there is effective coordination in making all the necessary arrangements. It is important that all and any proposed discussion papers in respect of agenda items for consideration should be produced and circulated in advance of the plenary to enable informed discussion and reduce delays. This especially allows representatives of the prosecution and defence, who should be invited to the open sessions of the plenary, to notify the chambers of any issues they wish to raise and provide supporting papers. In addition, the registry should look closely at any area of potential discussion that may affect the registry itself—for example, where the registrar is responsible for dealing with detention issues on behalf of the judges.

The accurate reporting or recording of the discussions and decisions made at the plenary is important and, while it is preferable that an audio recording be made of the proceedings, there must be an agreed note taken of the issues raised and the eventual decisions. Where any rules have been amended, it is important that a revised set of rules is produced, incorporating the agreed changes, and distributed and signed by all those party to the revisions. Thereafter, the revised rules should be available to all those parties with business in the institution and a copy posted on the website.

VI. APPOINTMENT AND TRAINING OF JUDGES

A. General Commentary

There will be those who regard the issue of the appointment of judges, especially international judges, as being no part of an administrator's remit. This applies too to any matter beyond an administrator's area of expertise or experience and, perhaps, competence. This will doubtless be a matter for others, including perhaps those involved in the present appointment process, to consider along with a number of related issues. However, one does not need to be either a judge or a lawyer to recognise the crucial importance of having a transparent, efficient, consistent and, above all, effective appointment process in place when it comes to handing the quite awesome responsibilities and onerous duties of any individual either nominated for, or seeking, such an appointment.

It should be made palpably clear at this stage that nothing that follows in this regard is in any way a commentary on the competency, suitability or otherwise of those men and women currently serving as judges in the existing internationally-assisted criminal justice institutions. Rather it is a comment on the system and procedure that has been and continues to be used to fill many of the judicial posts held at present.

In outline, that system mainly concerns the response of the United Nations Office of Legal Affairs (OLA) in New York to the need for judges to be appointed to any new internationally-assisted tribunal or court being created, including those hybrid institutions where both international and national judges are involved. The OLA invites nominations from member states by way of a letter on behalf of the secretary-general, providing a background to the need for nominations and the procedure to be adopted. Thereafter, any nominations received are considered by OLA and arrangements made in due course for applicants to be interviewed in New York.

An ongoing challenge of that nomination system is that it has failed on occasion to produce sufficient quality and quantity of candidates to meet the requirements of the institutions concerned. The result is that renewed efforts have to be made to solicit expressions of interest, either from member states again or by targeting particular groups of states through bodies such as the Commonwealth Secretariat. All that inevitably results in delays and may still not result in a significant increase in the number of nominations. Small ‘fields’ of applicants in any aspect of recruitment, especially for senior positions, run the risk of constraining the ability of the appointing authority to find suitable candidates from amongst them. With the pressure all too frequently on that appointing authority to identify successful candidates, the inevitable risk is that appointments may be made that, for a number of reasons, prove later to be unsuitable.

It should be noted that, more recently, OLA has also invited nominations from other competent persons, including international NGOs that work closely on international

justice issues. While candidates were once interviewed only by senior officers in OLA, UN practice has changed recently to a model whereby the secretary-general establishes a selection panel comprising both a senior UN legal officer and either sitting or retired judges from other international tribunals. This practice is to be commended and developed. The panel conducts the interviews and then forwards its recommendations to the secretary-general.

Those successful at interview are offered appointment subject to confirmation by the Secretary General. Depending on the institution concerned, there may be a need for consultation with the government that is a signatory to an agreement creating that institution. Any such government also has the opportunity to nominate its own judges in accordance with a pre-determined ratio of international and national judges in both trial and appeals chambers. In certain circumstances, there may be another tier of judges such as investigative or pre-trial judges.

Turning to the training of judges, it is again recognised that this is a sensitive area for some, not least because it is known that some judges, by virtue of their previous experience, seniority and the very fact that they have been appointed as 'international judges', feel that they are not in need of any further training. Indeed, in some instances that may be the case, but the view of many experienced international observers of the various existing institutions tends to support the need for training to be made available to judges following on from appointment. This is in the light of the publicity surrounding the conduct of some trials, and the criticism of some of the decisions emerging, After all, while perhaps highly experienced within their own jurisdictions, often judges will not have had prior exposure to international criminal law, nor of the domestic legal context of the relevant country. In this sense, training is not a comment on the judges' skills but a service provided to them.

Again it was encouraging that discussions with those involved in the setting up of the Extraordinary Chambers in Cambodia revealed that a very comprehensive judicial training and familiarisation programme had initially been produced for both the international and national judges on arrival at the court. Sadly, at the time of publishing this manual, few steps had been taken to implement the recommendations. More generally however there are institutions and organisations available which are prepared to contribute to such training.

B. Recruitment and Appointment

An outline of the current system in respect of the making of judicial appointments to some existing institutions—and therefore perhaps likely to be used by some future institutions—was described in the opening general commentary to this chapter. While mention has also been made of recent developments in the appointment of judges to the internationally-assisted Extraordinary Chambers of the Courts of Cambodia, it is recommended that a robust look be taken at the current system with a view to overhauling those aspects that have produced difficulties. This is particularly so with

the increasing number of tribunals in mind, where it has become appropriate to speak of a more systemic approach by the United Nations.

As part of that recommendation, it is suggested that an international judicial appointments commission be created, comprising a small number of experienced international judges—such as the presidents of existing tribunals, or recently retired, experienced international judges—supported by the UN Office of Legal Affairs in New York and invited to contribute in the following areas:

- The development of an agreed job description for international and national judges, to include the specific criteria to be adopted in assessing nominations. This may assist states and other competent persons in proposing candidates.
- The development of a judicial appointments package, including standard terms and conditions, for international and national judges.
- The development of a standard judicial induction and training programme for international and national judges.
- The production of an international 'bench book' for use by international and national judges.

The creation of a 'roster' on which to place those candidates found to be suitable for appointment generally but not perhaps selected for a specific institution at the time, subject of course to their willingness to be so 'rostered'.

C. Terms and Conditions

There have been occasions when there has been some confusion amongst judges, following appointment, as to their salary and benefits package and general entitlements. For this reason, it is suggested that a clear description of these terms and conditions be included in a judicial appointments package made available to all candidates at the selection stage and before appointment is offered.

The current arrangement in most instances is that the salaries of international judges are based on the pay levels of judges at the International Court of Justice (ICJ) in The Hague, albeit that there are modifications to be found in respect of some other tribunals and courts. The level is equivalent to that of an under secretary-general of the United Nations (USG).

Experience has demonstrated that the use of the USG pay comparison can also cause confusion, leading some international judges to see themselves as the 'line managers' of those other senior tribunal/court staff who may be graded at the assistant secretary-general level (ASG). It is suggested that, should an international judicial appointments commission be created, some early consideration should be given to the creation of a new judicial salary scale which—while perhaps based on the pay range at the USG level—is defined in terms of a specific judicial pay range (JPR) and that the range be divided into specific grades. For instance, JPR1 for senior international judges (perhaps

appointed to the post of president), JPR2 (presiding judges), JPR3 for all international judges not holding either of the appointments (JPR1 and 2).

In addition, it is suggested that a JPR(T) grade be created to recognise the need (and benefit) of appointing candidates with potential, but not yet ready for substantive appointment, to a judicial training grade. Those appointed to the training grade would be offered entry to the standard judicial training programme already mentioned, and assigned for periods of up to three months to sit in on proceedings as a 'judge in training' in an observer role. Those completing the programme satisfactorily and undertaking a period as an observer could then be added to the roster of those suitable for appointment.

Should that approach be thought beneficial to the system as a whole, in the long term, it could offer significant assistance to the judiciary in those countries where conflicts have resulted in a major disruption to that country's judicial resources.

VII. THE DEFENCE OFFICE

A. General Commentary

The importance of the presence of a strong, effective defence capability in any national or international criminal justice system is a well-accepted and established principle. Nonetheless, there have been a number of varied approaches in existing institutions. For example, in the ICC, a defence support section is located in the registry, which, amongst other matters, handles the legal aid fund. There is also a small public defence office within that section. In both ICTY and ICTR there are offices of legal aid and detention matters, which serve to coordinate all the functions involving those lawyers appearing for the defence, but do not provide legal representation directly. It is clear that there are different models on offer and consideration should be given to which is most appropriate in a given context. This may be due in part to the relationship with both national and international bar associations and the degree of support that they may be able to offer.

In the Special Court for Sierra Leone, a principal defender's office was created, to an extent, as a 'fourth pillar' of the court. This was an innovation in the structure of international courts. None previously was vested with a permanent internal institution entrusted with ensuring the rights of suspects and accused (Rule 45 of the Special Courts Rules of Procedure and Evidence). The principal defender's office is located within the management structure of the registry. Despite attempts during the development of both the Special Court and the principal defender's office to have the principal defender's office formally recognised as a 'fourth pillar', it remains within the registry, but with as much autonomy as it is feasible for it to be given in the circumstances. The intention was for that office to become as fully independent as the office of the prosecutor, not only in all practical respects, but also to comply with the legal principle that adversarial trials should demonstrate an 'equality of arms', a reasonable equivalence in ability and resources of both the prosecution and defence, albeit that should be an overriding intention in all jurisdictions.

That intention has drawn an amount of debate and discussion internationally, with a variety of views expressed. First, some prosecutors have said that, with the onus of the burden of proof on the prosecution, it follows that the prosecutorial process requires a greater level of resourcing and support than the defence. Others, including international observers, have said consistently that a major oversight in existing institutions has been the tendency to underplay the importance of the defence, while many of those engaged in defence work unsurprisingly regard the defence team as 'second class citizens'.

Whatever the eventual outcome of that debate—how the defence capability is structured in institutions of the future—it is argued that a good deal more needs to be done to ensure that the defence capability, and the necessary support required to provide an effective performance, is part of the advance planning for any institution. Certainly there remains an argument that the defence capability should be seen to be independent of any other part of the institution.

Turning to the role and responsibilities of those appointed to handle the defence capability—no matter how structured or organised—there are a number of functions to be addressed. Principal amongst these is to provide or coordinate the actual representation of those accused of crimes—together with all the associated tasks. These range from decisions on indigence, assignment (including provisional or emergency assignment on an interim basis for the arrest or interview of indigent suspects), assessment of fees and expenses, access to accused, provision of investigators and a code of conduct for defence lawyers. Another function is the representation of defence views during plenary meetings, when the institution's judges are considering amendments to the institution's rules of procedure and evidence.

A number of those functions will be discussed in this chapter but, before leaving the generality of the role—responsibility and organisation of the defence—it would be useful to consider briefly another related issue that has also been subject to debate. The whole process involved in obtaining legal representation for those accused of crimes has produced a number of concerns, amongst which are the experience, competence and overall quality of some of the lawyers who make themselves available to represent defendants. This lack of experience and quality can manifest itself in a number of ways.

Then there is the question of availability or, more to the point, the non-availability of some defence lawyers, which can have, and has had, an impact on the scheduling of trials and other hearings before existing institutions. Inevitably, and especially if a defence lawyer has been hired on a privately paid basis (not the norm it has to be said), every proper consideration has to be given to the availability of defence lawyers so as not to hinder unduly or unfairly the presentation of the defence case. However, experience has shown that there have been defence lawyers who—perhaps for political reasons, relative inexperience or other lack of professional competence or, in rare instances, total disregard for the authority of the institution concerned—have contrived to delay and disrupt the trial process of the institution concerned. While it must always be for the institution concerned to ensure that such instances, when identified, are dealt with firmly and decisively, it remains a source of possible delay and an unnecessary use of resources.

It is therefore crucial for an institution to do everything possible to ensure that only the best-qualified lawyers are attracted to make their services available to the defence. But it has to be recognised that, in reality, there will always be good reasons why a number of well qualified lawyers will not make themselves available. Not least amongst those reasons will be unattractive fee levels (in comparison to other work), potential disruption to their existing legal practices, onerous travel commitments and, on occasions, a perceived hostile or challenging local environment where the institution concerned is located. The challenge for the institution is to look at ways in which those difficulties can be addressed. One obvious solution, perhaps, is to pitch the fees available for defence lawyers at an attractive level, and design them to compete with the level of fees payable within well developed and resourced national jurisdictions and compensate for those aspects mentioned earlier. However, it is likely that there will

always be budgetary constraints and other institutional concerns that will serve to keep fees at an affordable and realistic level.

Inevitably, and thankfully, there will always be lawyers (who are both highly experienced and competent, or less experienced but still competent with significant potential to develop) who make themselves available, notwithstanding those potentially unattractive terms and conditions. However, equally, there will be those who will be attracted to defending indigent accused before international institutions for a variety of reasons, amongst which may be an unsuccessful or non-existent legal practice in their national jurisdiction, a fee level above that available in their national jurisdiction, a legitimate desire to increase their experience and develop their potential and, for some, a fierce belief in the rights of the accused before international institutions.

None of this is intended to be critical of the overall standard of those defence lawyers appearing before the existing international tribunals and courts, nor indeed of those who prosecute. But it is necessary to emphasise again the crucial need for every effort to be made to cast the widest possible net to ensure the availability of good quality lawyers. Two final points to be made with regard to this issue are, first, while there has been a focus in earlier paragraphs on the quality of defence lawyers, the importance of good quality lawyers in the prosecution ranks is also crucial. The basis on which lawyers are recruited for the prosecution is entirely different to that used to attract defence lawyers. The former—from senior to junior—will be appointed, in accordance with well established personnel procedures, to a range of salaried positions: on a contract for twelve months or more in some institutions. It follows that their performance will be assessed, as with non-legal staff, and they are likely to benefit from working within a team or teams where there is a well-defined and developed structure and a supportive environment, in terms of resources.

That environment may well, indeed should, provide the opportunity for less experienced lawyers to learn from more experienced lawyers and develop any potential. Due to the different structure of defence teams, especially in terms of support and resources, and by the very nature of the respective roles of the prosecution and defence, that opportunity may be less available. One argument, to be considered later in this chapter, is that there is a possible answer to that difficulty in using a very different organisational, structured approach between the two camps.

The second point is that, where an institution's investigative, prosecutorial and trial process is based, for example, on an adversarial approach, the involvement of either the prosecution or defence camps of lawyers with no experience of that approach can be challenging. The same would apply should those with a background in adversarial proceedings find themselves working within an inquisitorial process.

In conclusion, the views of a number of experienced lawyers who have worked within and, in some instances, across the existing institutions is that they were surprised to find themselves appearing with and against those who had little relevant experience at that level. To quote from one senior experienced lawyer: 'the reason why I joined an international tribunal was to work with, and test myself against, the very best lawyers

on the international scene. After all, those to be prosecuted and defended are facing the most serious charges a person can face. I was both surprised and disappointed to find myself in court with colleagues who had never prosecuted or defended anything in their respective jurisdiction more serious than a careless driving charge'. While there is a role for junior and inexperienced lawyers, international jurisdictions should not be a place where they 'cut their teeth'.

The views mostly expressed here are of those of people who have either worked within existing institutions on defence matters or worked as fee-paid defence lawyers. Inevitably, a good deal of experience has been drawn from the Special Court for Sierra Leone.

B. Principal Defender Post

First, it is argued that—even if the post of principal defender is not created as, effectively, a 'fourth pillar' of the institution concerned—it should be in place at the earliest possible stage and, some would say, at the same time as the appointment of the senior posts in the institution: that is, the prosecutor and registrar or senior administrator. In that way, the principal defender can play a part in ensuring that appropriate consideration is given to eventual defence needs in terms of allocation of resources and support and also influence the structure of the defence office itself.

One issue touched on above was that of attracting good quality lawyers to the defence. The view of some is that the structure of the defence office should be similar to that of the prosecutor's office, with the required number of salaried lawyers recruited, in accordance with the institution's procedures, against an agreed set of posts. The principal defender would lead and supervise that recruitment process. That approach is based on the experience of existing tribunals, in that the majority of defendants are indigent and, while entitled, within reason, to choose the lawyer(s) to represent them, will rely on the institution to provide a list of qualified, competent and available lawyers.

It therefore follows that the creation of an effective, good quality list of qualified and competent lawyers is a major priority for a principal defender or head of a defence office. Every effort should be made to build a list that is drawn from as wide a spectrum as possible on the international and national scenes alike. To aid that process there are a number of well established bar associations, in addition to the International Bar Association, which should be contacted for assistance. The importance of a proactive approach in involving any such association in place in the country concerned cannot be over-emphasised.

Inevitably, there will be defendants who have the means to fund their defence and will want to be represented by a lawyer(s) of their choice. Such requests are invariably granted, although there will always have to be a balance achieved between the best interests and wishes of the defendant and the interests of justice overall. For instance, where the unavailability of a particular privately-funded lawyer for a significant period

of time may threaten to either delay the trial of a defendant or have an impact on the trial of other jointly indicted defendants, not privately represented.

It follows that there must be the flexibility within any structured defence office to accommodate the employment of privately funded defence lawyers But where the majority of defendants are indigent, there is an argument that salaried defence lawyers could fulfil an effective role beyond that of (as in Sierra Leone) representing defendants immediately after arrest and charge until fee paid lawyers can be identified and appointed.

There are a number of issues surrounding this proposed approach, and the question at issue is not an easy one to resolve. Arguments touching on lack of perceived independence or impartiality, as well as other obvious concerns (such as poor performance and the turnover of defence lawyers leaving an institution for other postings) all have some validity and need to be considered. For example, a number of defence lawyers left the Special Court for Sierra Leone for a variety of reasons—including being 'sacked' by their clients—and the trials have continued But, similarly, lawyers within the ranks of the prosecution also leave mid-trial.. This is an issue that at least needs further debate and consideration, given the significant challenges being faced by existing courts and tribunals on this front. It is also suggested that this is one major issue in which the earliest involvement of a principal defender could be beneficial. However, while sight should not be lost of the right of defendants to counsel of their own choice, it has been held before existing institutions that this is not an absolute right.

Elsewhere, the existence of a principal defender will enable a focused look to be taken on issues such as:

- Employment of international/national investigators.
- Drafting and production of a code of conduct for defence lawyers.
- Drafting of defence protocols, such as in respect of the assignment of counsel.
- Involvement in the early discussions at plenary meetings about the rules of procedure and evidence.
- Early involvement in outreach events, in order to ensure that the necessity of a well presented defence is articulated and understood.
- Contributions to a range of issues an institution has to tackle during its development.
- Drafting legal service contracts for fee-paid lawyers.
- Early involvement with bar associations and similar bodies in attracting defence lawyers.

Inevitably and understandably, the point will be made that it could be seen as a 'luxury' in terms of an institution's expenditure to have a senior post holder, such as a principal

defender, drawing a salary before perhaps the prosecution has indicted anyone and arrests have taken place. Experience in Sierra Leone has shown that the Special Courts' hiring policy of 'just in time', phasing in the recruitment of certain post holders as the institution developed, did have a beneficial impact on the courts expenditure. But with the benefit of hindsight, as with other matters, the earlier development of the principal defender's office and filling the post of principal defender would have repaid benefits at a later stage.

Beyond those matters, the principal defender can perform a role similar to that of the prosecutor in many strategic aspects and, as with a number of existing prosecutors, need not be in court regularly. In addition, and again an issue that has been the subject of heated debate in Sierra Leone, the principal defender can play a significant part in contributing to the institution's completion strategy. It should be made clear that the reference here to the principal defender's role is with regard to the administrative aspect only. It remains crucial to any institution that its completion strategy be an ongoing effective exercise. It therefore requires that all the principals within the institution contribute to that process. While that will inevitably pitch both prosecutor and defender into the same room on occasions, the benefits to the institution as a whole can be considerable.

C. Other Defence Office Issues

1. List of Counsel

International law provides for the accused to have a choice of lawyers to represent them. The system that has been adopted at every international tribunal is for the creation of a list of pre-qualified counsel who fulfil objective criteria, so that they are considered competent to defend accused persons and be paid. The majority of these lists require a minimum number of years of experience—either seven to ten—and expertise in relevant areas of law, such as criminal law or international criminal law. There are some differences between the tribunals as to whether or not academic qualifications are sufficient, that is, not as a practitioner.

One of the earliest tasks often performed by the defence office is to set or clarify the criteria for inclusion on the list and to design the application process for candidates to follow. As this affects the right of lawyers to practice their profession, the process must be transparent and subject to a form of appeal, first to the registrar where there is one and subsequently to the court itself where that is possible.

2. Training

An important function of the defence office where an institution is located in-country is to enhance the capacity of the local legal profession, ensuring better and more efficient trials and leaving a legacy for the country concerned. Domestic lawyers are normally well-versed in ordinary criminal proceedings, but may have little experience in either

international criminal law or in defending complex criminal cases involving novel charges and vast quantities of evidence.

Training in international criminal law can normally be provided by utilising experts and international NGOs, as well as through seminars focusing on the defence of complex crimes and investigations. Attendance at such seminars can be required as a pre-requisite for inclusion on a list or on a voluntary basis.

3. Legal Services Contracts

Mention has already been made of the issue of the employment of fee-paid lawyers and the alternative. But, given the likelihood that such arrangements will continue in new institutions, it may be of assistance to consider the development of a legal services contract (LSC), to address a variety of matters surrounding the representation of a defendant at the pre-trial, trial, post-trial and appeal stages. The contract will require the lawyer concerned to produce documentary evidence to support claims for work carried out at each stage on behalf of his or her client, including travel and other associated expenditure.

The contract will also set out details of 'staged payments' to be made by the institution and, perhaps, advance payments where any significant and reasonable work undertaken can be justified. The contract may also include mention of an expenditure or fee 'cap' on the work to be done by the lawyer concerned, progression beyond which payments have to be certified by the defence office in consultation with the lawyer(s) concerned.

The creation of a 'cap' in Sierra Leone was less than popular, but was put in place to try and signal to lawyers that assignment to a defendant did not result in a 'blank cheque'. The degree to which the legal services contract in general and the 'cap' in particular has been entirely successful will be a matter for reflection in time. But whatever the position on that front, there must be a mechanism in place to control expenditure on fees, especially given the concerns expressed earlier about the comparative lack of experience of some lawyers.

Notwithstanding the unpopularity of the legal service contracts in Sierra Leone, all the defence teams signed them. However, in fairness to defence teams, trials in which they are involved may overrun due to circumstances beyond their control or, as can frequently happen, a legal issue within a trial unexpectedly arises requiring, perhaps, adjournments. The defence office has to be prepared to be flexible in allowing expenditure to exceed the initial 'capping' or raising the cap appropriately. One feature of the legal services contract that needs to be highlighted as an advantage is that it requires a commitment by the lawyer(s) concerned to ensure their availability on all reasonable occasions, as required by the court.

Finally, on this subject, as with most arrangements involving two or more parties, it is crucial that the defence office and, especially, the principal defender works hard to establish an effective working relationship with fee-paid defence lawyers. Inevitably, it

is also incumbent on those lawyers to play their part in fostering a good relationship, albeit that there will always be issues that result in confrontation. But the existence of sensible protocols, procedures and contracts will help to reduce the scope for such confrontation. A copy of a legal services contract can be obtained from the principal defender's office at the SCSL, but contact with the other institutions is also recommended.

4. Code of Conduct for Counsel

This issue can be dealt with relatively briefly. There is some experience across all the current institutions and contact should be made before any steps are taken to invest significant time and resources producing a code. A code of conduct sets out what is expected of those lawyers (counsel) appearing before the court in a number of respects, almost all aspects of which are unlikely to come as a surprise to many of the lawyers involved. But it is important that those working in the court clearly understand what is expected of them and the range of sanctions available to deal with any breach of the code. Most, if not all, lawyers appearing in court will be subject to the disciplinary codes of their national bar associations or other relevant body. In Sierra Leone, a unified code of conduct, covering both defence and prosecution lawyers, was accepted by the judges of the SCSL. That code of conduct was the first unified code in an international criminal tribunal that covers both prosecution and defence.

5. Employment of Investigators

Again there is significant experience available across the existing institutions, and reference should be made to those institutions as necessary. But there are one or two issues that it may be helpful to mention at the outset. As with other areas in the work of a new institution, many of the factors will depend upon the location of the institution concerned. While the recruitment of investigators in any circumstances has to be undertaken carefully, there are inevitably different considerations where the institution is located in the country of conflict.

The use of international investigators is subject to ensuring that the investigators concerned have the relevant experience, good credentials and, if possible, experience of the type of environment to which they are coming. But the identification and selection of local/national investigators can be slightly more difficult. There may be concerns about the depth and breadth of experience of those putting themselves forward, especially in the aftermath of any serious conflict where such skill sets were unable to be developed. Additionally, there may be the question of impartiality given that, as in Sierra Leone, the conflict touched almost every family and community in some way. Another concern is that a defendant and his/her family may well put forward someone as an investigator in whom they claim to have confidence when, in reality, the prime motivation is the payment or offer his services will attract and the likelihood that payment will be shared between the investigator and the defendant's family (in other words, a form of 'fee-splitting').

It can be extremely helpful to be at least aware of some of the factors in play. It has to be said that the advantages to a defence (or prosecution) team in having the services of experienced, competent local or national investigators cannot be overstated and, unsurprisingly, the first 'port of call' will be the national police force or service. That is likely to be a more ready source for the prosecution than the defence, but it should not necessarily be seen as exclusive to the prosecution.

Consideration also needs to be given to identifying and appointing an investigator, international or national, to act as a financial investigator with regard to claims of indigence by defendants. The prosecution will have investigators who will be pursuing investigations into the financial means of the defendants in readiness to provide any information to the court in due course. The defence should be prepared to make its own enquires.

6. Assessment of Fees

To an extent, the existence of a legal services contract will provide a sound basis for the assessment of fees, as certain calculations—based on hourly or daily rates for defence lawyers both for preparation and trial appearances—will have had to be made when fixing the 'cap' on expenditure mentioned earlier in this chapter. That being said, it is inevitable that there will be disputes with regard to the assessment and payment of fees for work claimed to have been done by defence teams, most probably in the areas of pre-trial research into the background and history of the conflict concerned, and identifying and interviewing potential defence witnesses and preparation generally.

While the defence office specifically, and the administration generally, are responsible for ensuring that the resources set aside for defence costs are used effectively, there is a balance to be achieved. It needs to be recognised that, as with the prosecution investigations, there will be occasions when the defence teams feel obliged, in the best interests of their client, to pursue lines of enquiry that, subsequently, will be taken no further.

On these occasions, while it could be said that the work conducted by the defence appears to be unproductive, it is only reasonable to allow fees to be paid for that work. However (and absolutely crucially as far as all parties are concerned) defence lawyers must be made aware from the outset of their involvement of the importance of maintaining complete and accurate records of work carried out—in terms of hours and days expended, travel undertaken, precise dates when the work was undertaken, together with an indication of the level of the person within the defence team, such as lead lawyer, junior lawyer, intern, who undertook the work concerned.

Experience has shown that some defence lawyers are notoriously bad at keeping working records, but every effort must be made to impress on them that their fees will not be paid for any work not supported by the necessary paperwork. That apart, the presence and availability of such records will avoid, to a very large extent, the breakdown that can occur in the working relationship between defence lawyers and the

defence office. It should be noted that time keeping for billing purposes is extremely common in private practice and this should be no different.

One specific task that a defence office can carry out, as in Sierra Leone, is the production at a very early stage of a conflict mapping exercise. This can have a useful impact on defence preparation costs and may also assist the prosecution. While it is unlikely that the defence office staff will necessarily have the time or resources to carry out an exercise themselves, it is not unusual for both national and international NGOs to have conducted such exercises during and after a conflict and for any resulting publications to be available. It is suggested that consideration be given to the availability of such exercises and, indeed, whether there is any scope for the institution concerned to work in partnership with an NGO or NGOs to achieve the production of a conflict mapping report. While there will inevitably be limitations to such exercises, they can be extremely useful as preliminary background reading and planning instrument for defence teams—as well as saving them substantial time in carrying out that research themselves, and then including it in their claim for preparation costs.

7. Fee Splitting

Before leaving the matter of assessment and payment of fees, it is necessary to mention that there have been past difficulties in some of the existing institutions with a practice known as 'fee splitting'. This involves a defendant and /or his or her family agreeing to representation by a certain lawyer on the basis that the legal aid payments will be divided between the defendant, his family and the lawyer (or sometimes the investigator without the lawyer being aware) concerned. This is a practice that can be difficult to identify, although it is likely that only a small minority of defence lawyers will be party to such arrangements. It can assist the administration to bear this in mind, especially if their suspicions are aroused when a defendant insists on being represented by a lawyer who is perhaps not on the defence office list of qualified lawyers. It is critical that any such issues are not only addressed in a code of conduct, but that cases should also be referred back to the lawyer's national bar association for disciplinary action.

VIII. RELATIONSHIPS

A. General Commentary

Inevitably, the importance of effective working relationships is mentioned with regard to almost every aspect of the administrative practices described in the other chapters in this manual. However, it is felt that an individual focus should be given to the subject, if only to emphasise how crucial it is that everyone concerned recognises the importance of making relationships work. The permutations are almost endless in terms of identifying specific relationships, whether internal or external to the institution concerned but, so far as those employed by the institution are concerned, there should be only one overarching objective or aim: to have in mind the best interests of the institution itself at all times.

There will be tensions and difficulties arising between the various organs of an institution during its lifespan, and a number of occasions when it will be easy to be publicly critical of others' actions and, as a result, perhaps damage the credibility and reputation of the institution. There is always a very real temptation to protect one's own particular area of work or responsibility, or readily apportion blame to others, perhaps at the expense of the institution as a whole. However, this is a temptation that should be resisted. None of that is to say that there are not real benefits to be had from the existence within an institution of a readiness and willingness to tackle the hard issues, and for views to be exchanged in an open and forthright manner. However, as with relationships elsewhere in life, every attempt should be made for those views to be informed, balanced and, if criticism is implied, constructive.

It is also important that a mechanism or platform exists whereby views on the institution's performance or other activities, especially internally, can be exchanged, discussed and, if action is required, that action taken. Similarly, and externally, there should be a mechanism in place to accommodate the views of stakeholders, observers, monitors and other interested parties.

Inevitably, the existence and effectiveness of such mechanisms will not prevent an institution being criticised from almost any quarter, frequently by way of ill-informed or malicious comment, occasionally provoked perhaps by antipathy towards the institution and its aims as a whole. It is, however, helpful to be in a position to isolate such criticism and respond accordingly in the knowledge that the institution has done all that it can to provide platforms for constructive discussion and debate. Mention has been made elsewhere of some of the mechanisms an institution may consider to be helpful in this regard, such as the internal senior management board and the external 'users committee' or, as in Sierra Leone, the 'Interactive Forum.' It may be helpful to look in a little more detail at those suggested mechanisms and others and the role that they can play in ensuring effective working relationships. Before doing so, it is necessary to look not just at 'mechanisms' per se, but also at attitudes and approaches adopted by those both inside and outside an institution. It was once said that, no matter

how well structured or logically conceived an organisation may be, it is only when that organisation is 'populated' by people that it can fall apart. That will be of little surprise to most, but it underlines the importance of the fact that everyone within any institution (no matter how senior or junior, how experienced or inexperienced) must first understand their role and responsibilities and that of their colleagues. Second, they must be prepared to work and act at all times in the best interests of that institution, even though their own personal wishes or preferences may sometimes have to be put aside.

In particular, and within the senior echelons of an institution (whether judges or senior officials), there must be a recognition that position and rank carry with them a significant responsibility. This is not only with regard to the duties of their specific post, but also because others inside and outside the institution will legitimately have high expectations of how those judges and senior officials conduct themselves and are seen to be conducting themselves at all times. Those expectations can translate simply into a belief, on occasions betrayed, that those in authority will lead by example and not succumb to the pettiness or self interest displayed by lesser mortals.

It is accepted that, with the benefit of experience, the considerable pressure that can exist within or be exerted upon an institution can provide a significant and, on occasions, almost intolerable burden on those given the responsibility for taking the institution forward. It is with that in mind that it is crucial from the very outset that those appointed are alive to the personal responsibility and expectation vested in them: that inevitably their actions will be scrutinised, and that it is important to work collaboratively with others as necessary and appropriate. For that to be achieved, there must be willingness on the part of all concerned to recognise, not only their own responsibilities, but also those of their senior colleagues across an institution, and a preparedness to consult on and discuss those issues of mutual concern or interest.

B. Management Culture

Inevitably, it will be the senior appointees within an institution who will set the standard as to the manner in which the institution goes about its daily business and its strategic, long term objectives. It is, of course, recognised that any internationally-assisted criminal justice institution will to some extent combine to produce any number of conflicting issues, almost on a daily basis. This will occur by virtue of its very composition (with three very separate and distinct 'organs', the chamber, prosecutors office and the registry, not to mention the specific interests/responsibilities of a defence office). This may result in all those involved rightly and properly 'fighting their own corner' with regard to availability of resources, accommodation, personnel and wider issues and so forth.

It is therefore to be expected that there will, all too often, be disagreements and occasions when one party or another feels aggrieved. It is important that there is recognition of this likelihood, and an understanding that ensures that all concerned are aware of the process in place for dealing with cross-institution issues or requests and

the decision making process, and that the process is transparent and intended to be administered fairly. It is also worth repeating that all concerned should remain constantly aware that the institution's best interests as a whole are paramount, and that there should be little, if any, activity within the institution that does not directly or indirectly serve to support the judiciary and the trial or appeal process.

With that in mind, it is the responsibility of senior management to ensure that both the mechanisms and the underpinning culture exists that will convince staff that, so far as is it is possible in any organisation, daily business will be conducted in a collegial and reasonable manner. It will not be conducted on the basis, which one can find all too often, where those who shout the loudest or who rely solely on rank will get their own way, regardless of the merits or priority of their respective requests or demands. Implicit in dealing openly and fairly with issues is that the institutions' employees at all levels will be treated with respect and consideration, and that a 'fear' or 'blame' culture will not be tolerated.

Inevitably, it is suggested that, while all concerned at every level should work together to produce and support this culture, it will be for the registrar or senior administrator of the institution concerned to accept responsibility for taking the lead—in close consultation with, and supported by, the president of the institution. To that end, it is important that both the president and the registrar work proactively to establish an effective working relationship whereby, over a period of time, a mutual respect and understanding can be cultivated. This can happen only if there is complete openness on both sides, and a mutual understanding of each other's respective roles. There must most especially be an understanding that the registrar or senior administrator and his or her staff are there to do all that they can to support the president and his or her colleagues, even if, occasionally, not everything does not go as smoothly as one might wish.

Similarly, it is suggested that it is for the registrar or senior administrator to establish effective working relationships with the president or presiding judge(s) and his or her colleagues. It is not suggested that there should necessarily be any formal mechanism to support this approach, as regular meetings can, after a time, lose their value if there are occasions (as there will be) when there is little to discuss. But there should be an acceptance on both sides that there is ready accessibility to the other as required.

Turning to other working relationships important to an institution, again it is suggested that the registrar or senior administrator should make every effort to cultivate an open and effective relationship with the prosecutor and his or her senior staff. Inevitably, all prosecutors will feel obliged to pursue their own mandates fearlessly and proactively and, most certainly, without interference from anyone. However, prosecutors will rely to a very large extent on the administration of the institution concerned to support their activities in a number of respects and, again, there will be those occasions when not each and every request and expectation will be able to be met.

As with the relationship with the president, his or her colleagues and others, the registrar or senior administrator should encourage open and forthright dialogue—

especially so when, as they will, things go wrong. There will be a need to achieve a balance in this relationship because the registrar or senior administrator cannot be seen to be other than even-handed in his or her dealings with the prosecution and the defence. This is despite the fact that the current organisation of existing institutions does tend to result in those responsible for the defence of indictees feeling that balance is not always evident. It follows that it is equally important that those entrusted with the responsibility for defence matters, whether in-house or privately engaged, feel that their interests are of comparable importance to the registrar or senior administrator.

Equally, there will be those external to an institution who will have an interest in the institution and its progress and who will not necessarily always share the same views as those inside the institution or, indeed, the views of others outside the institution. The sources of external views can vary widely from those of interested states (including, perhaps, donors) international NGOs, national NGOs, civil society within the country concerned, academia and, inevitably, the national and international media. It is suggested that everything reasonable and within an institution's resources be done to both recognise and accommodate such views where necessary.

Whatever the nature of the disagreements that will inevitably exist between the various organs of an institution and those senior officials responsible for leading those organs, such disagreements should be tackled in a professional manner, preferably within the parameters of the internal senior management board or in ad hoc face to face meetings. Whatever the outcome of such meetings or discussions, those concerned should make every effort to maintain their respective professionalism and not allow personal prejudices or dislikes to influence their approach or behaviour towards other senior colleagues, and most certainly not in front of junior colleagues. There is nothing more calculated to divide an institution or organisation at all levels and, as a result, impact negatively on its overall purpose, than for those across an institution to be aware that there is a lack of respect or professionalism between senior and influential figures in that institution or organisation.

It is suggested that an institution should make every reasonable effort when dealing with external interests to be transparent and cooperative in its approach. There should be a willingness on the part of all senior staff, especially in the registry/administration to facilitate external interest. They should arrange question and answer briefings as well as accepting opportunities to host and visit external organisations to talk about the institution's objectives, progress and key issues in play. It is accepted that such an approach can be time consuming and seen by some inside the institution as unnecessarily intrusive. It can also be seen as counter-productive to the institution's purpose when a facilitated visit results in the publication of a critical report or paper by the external organisation concerned.

However, it is suggested that, in such circumstances, the first reaction of the institution concerned should be to look honestly at the criticisms made to assess their validity and to engage the organisation concerned in dialogue before making an official and public response. Experience has shown that, in most cases, a genuine effort has been made by the organisation concerned to report accurately on the activities of the institution.

Should that not prove to be the case, the institution should waste little time in rebutting any inaccurate or misleading claims and moving on, having noted that the organisation concerned may have to wait a long time before it is invited to participate again.

However, the more likely scenario is that the organisation concerned has highlighted issues in its report that do warrant critical comment and need to be addressed. In addition, given that there may well have been a lapse of often up to six months or so between a visit and the publication of any paper, article or report, there is always the probability that some, if not all of the issues raised have been addressed in the interim. For that reason, it is always worthwhile engaging external organisations in an ongoing dialogue on the basis that the institution, having opened its doors to the organisation concerned, would appreciate an advance look at any report resulting from a visit. The purpose of this is not to censor, but just to note the main points being made and assist the organisation in producing an accurate report by correcting any factual inaccuracies and updating the organisation on any progress made on those issues raised.

Unlike those organisations that have a genuine interest and desire to observe an institution's progress and report or comment accordingly, there will always be those elements of the media that have preconceived agendas with regard to the institution. No matter what the nature of the information provided or the level of courtesy shown to them, they will feel free to report in any way that meets or confirms those pre-conceived agendas.

C. Mechanisms

1. Internal

The existence of a senior management board (mentioned in chapter III in respect of internal reporting mechanisms), provides a structured opportunity for senior officers within the institution to meet on a regular basis to discuss major issues that concern them and for which, for the most part, they have responsibility. It is suggested that the board be chaired by the registrar or senior administrator, with the chambers represented by the senior legal adviser and including the prosecutor and defender as members. The board should be supported by the registrar's immediate office and both the registrar's and prosecutor's special assistants or legal advisers should be present at meetings. Thereafter the board would be able to invite colleagues to attend meetings to present on specific topics such as the budget, completion strategy, the institution's business plan or strategy, personnel policies, and so forth.

In addition to the usual ad hoc meetings that will inevitably take place between the institutions' senior officers, this board will provide a high level opportunity for the exchange of views and proposals with the chambers' representative—not only holding a 'watching brief' but also with an opportunity to contribute on behalf of the president or presiding judges as necessary and as briefed.

An institution's attempt to operate in an open and transparent manner by establishing mechanisms and processes that engage or involve its staff at all levels in its activities has been mentioned elsewhere. It is suggested that, as is commonplace in most of the existing institutions, there should be a meetings 'tree' across an institution, which cascades down from the senior management board. A weekly chief of section meeting within the registry is one such example. Senior managers can meet under the chairpersonship of the registrar or deputy registrar to discuss cross-institution issues. These may occasionally be referred to them by the senior management board, asking them to provide progress reports from their own respective areas of responsibility or to highlight any concerns they may have with regard to the activities of any other section that may interfere or overlap with their plans.

The nature of the registry's activities inevitably means that the scope and nature of such a meeting will demand that it be held regularly, and that it should generally be fairly well attended, with invitations to the chambers, prosecution and defence. But there should also be scope for those latter areas of an institution to hold their own respective meetings to provide feedback from the main chiefs of section meeting, and to deal with issues either referred to them or identify issues that need to be raised with the main meeting. None of this raft of meetings should be a substitute for an ongoing ad hoc dialogue between the institution's staff at all levels, in line with the natural personal dynamics within any institution. The meetings structure should serve to bring together a variety of disparate personalities dealing with an ever-greater variety of subjects and issues and relationships. In this way, meetings of this nature can be an invaluable aid to senior managers—by way not only of readily identifying the issues that need to be addressed, but also those relationships that may require more work or mentoring.

2. External

Turning to those mechanisms that can assist in building effective working relationships with external bodies, mention has been made of the potential benefits of creating a 'court user' type committee or forum. The purpose of such a gathering is to provide a two-way process whereby, first, the institution concerned can report regularly on its progress and, in doing so, explain the background to its activities and actions. Second, the institution can receive comment, feedback and questions about those activities and actions. It is suggested that the registrar/senior administrator should chair the committee or forum, and be joined by representatives from the chambers, prosecutor's office and defence office. Other senior members of the institution with a public interface such as chief of security, detention, outreach and communications, could attend as required.

In all honesty, experience in Sierra Leone showed that, while such meetings (held monthly on the premises of the Special Court) could be time consuming, the benefits to all participants were significant. First, while any institution must be prepared to face criticism, it is better that any criticism, justified or unjustified, be dealt with on a face to face basis and the opportunity taken to ensure that those concerned are as best informed

as possible. Second, it has to be recognised that such institutions should not be—nor be seen to be—working in a 'bubble' hermetically sealed, as it were, from the outside world. Again, experience in Sierra Leone demonstrated that, while the Special Court did its best to address the concerns of those external stakeholders or observers, national and international, it failed on occasion to recognise a number of minor or major concerns that were subsequently brought to its attention through its 'interactive forum'.

That apart, the significant, albeit intangible, benefits of giving those external interests a regular opportunity to interact with senior members of the institution in terms of building trust and confidence cannot be overstated. This is especially important in one particular respect because if there is, as is commonplace in the existing institutions, an understandable and justified reluctance on the part of the judiciary to meet with external organisations, the opportunity for a senior chambers' representative to provide regular feedback to the judiciary on the issues and concerns raised can prove to be invaluable.

Preceding paragraphs have attempted to support the view that, apart from the benefits that might accrue to the institution from engaging proactively with external interests, it could be said that there is an obligation on the part of an institution to do so. Whether that view is supported or not, sight should not be lost of the potential wider benefit to an institution of encouraging a structured external involvement in its activities. Whatever the funding arrangement may be, there can be no doubt—given the experience of the Special Court in Sierra Leone—that it assists significantly, for example, to have the informed, albeit sometimes critical, support of internationally respected NGOs in any number of respects. This may assist, for instance, in lobbying for financial or political support; providing opportunities to get the institution's message across to a wider audience; partnerships in training and outreach programmes, and so forth. It follows that, in addition to any structured process an institution puts in place to assist and regularise effective working relationships with external interests, it should also be proactive in developing every ad hoc opportunity to interact with those interests.

IX. COMPLETION STRATEGY

A. General Commentary

This aspect of an institution's responsibilities can be extremely challenging on a number of fronts, not least of which is the timing of the production of a completion strategy document. In theory, any institution that, from the outset, is intended to have a limited timeframe for its activities (for example, the two ad hoc tribunals, the Special Court for Sierra Leone etc) should begin to plan for its eventual closure and completion of its activities at the earliest stage possible. In practice, it is likely that such an exercise will not begin until the institution concerned is some way into its trial process.

That being said, current experience has demonstrated that there is always likely to be significant pressure from a number of quarters on an institution to conclude its business within as reasonable a time as possible. Inevitably, much of that pressure will be generated by financial considerations, which can prove an irritant to those closely involved in the judicial and legal processes. Again, inevitably, there will be concerns that it is those financial considerations that are in danger of driving the judicial process. There needs to be a very clear and obvious balance struck in pursuing the cost effectiveness not unreasonably demanded by the international community and donors in particular, and the paramount consideration for any such institution—to deliver justice in a transparent and even handed manner.

Striking that balance will never be easy, but the process can be helped if all those involved in that process, especially those in positions of influence, recognise the challenge from an early stage and work together to achieve both aims. Those involved in the trial process, especially the judiciary, have to be alerted to the need for that process to be as streamlined and efficient as is possible, including the in-court conduct of trials. But there is similarly a need for stakeholders outside the institution to understand that the very nature of the trial and appeal process, in terms of affording both victims and alleged perpetrators an opportunity of having their respective interests represented in court, will inevitably be time consuming and subject to any number of eventualities, some of which cannot be easily predicted.

With that in mind, it will be for the institution to ensure that, both internally and externally, it does all that it can to involve the various interested parties in its completion strategy planning, either by way of contributing to or explaining the process.

B. Internal Planning

It should be the responsibility of the registrar, in consultation with the president of the institution, the prosecutor and the defence (however organised) to establish an internal planning mechanism as early as possible in the institution's development so that it can begin its completion strategy planning. Inevitably the process cannot realistically

involve too much detail until there is a clear understanding of all the essential factors in play (for instance, the number of defendants; the number of trials; the estimated number of prosecution and defence witnesses; the likelihood of subsequent appeals; judicial and courtroom capacity and, as ever, budgetary constraints). However, while all those factors are crucial in contributing to the planning process, the actual process itself—in terms of how that information is gathered, interpreted and fed into an eventual strategy document—is also important to the institution, and should be developed as early as possible.

It is suggested that the registrar should chair an internal senior management board, described in more detail above in Chapter III. Both the prosecutor and defence (where there is a principal defender) should be represented on that board, together with a senior representative from chambers. The board should monitor all available relevant information in respect of the trial/appeal process on a regular basis and, from that information, begin to construct a trial schedule against a set of milestones and timelines.

The actual construction of a trial schedule is the responsibility of the president in consultation with judicial colleagues. The court management section can also provide essential information that may be useful input to the judicial decisions on this point. In any event, it is crucial that such a schedule and the information supporting it be readily available to the registrar. It is only in this way that the registry can be expected to plan its supporting activities during the lifetime of the institution.

It may also assist if, at an early stage, and perhaps before any detailed trial information is available, agreement can be reached on the structure, format and scope of any completion strategy document to be produced eventually. It would be possible, for example, for an introductory section to be written in advance, detailing the institution's purpose and specific mandate, together with any other aspect surrounding its creation. Any agreement, statute or other relevant founding documents could then be annexed to the completion strategy document itself. Similarly, there could be sections dealing specifically with the organisation of the institution (for instance, chambers, office of the prosecutor, office of the principal defender and the registrar). An organisational chart could also be annexed to the strategy document.

Other sections, to be completed as the institution develops and as the trial process is embarked upon, will address issues such as enforcement of sentence and witness relocation agreements (albeit not in detail), legacy and residual activities. There would also have to be sections allocated to the institution's personnel and accommodation policies to address issues such as downsizing of staff numbers and disposal of equipment, property and court and office accommodation.

Inevitably, the main section of the strategy document will deal with the progress being made on the trial front and the estimate of how long the institution sees itself as being in operation. As indicated earlier, great care needs to be taken when coordinating all the relevant and available information and producing an estimate of the length of the trial and subsequent appeal process. However, the temptation not to attempt that

exercise, either because of resistance by members of the judiciary, the prosecutor and/or principal defender's offices, or because of the risk that any estimates produced will be seized upon by stakeholders or the wider international community and held like a gun to the head of the institution concerned, should be resisted.

As will be mentioned under the section on 'external planning' in this chapter, it is crucial that the institution is seen to be both proactively managing the trial process and exposing its reasoned thinking in planning its future progress. It is therefore important that it makes it palpably clear from an early stage that, while it will share its thinking (and all relevant information) externally, it retains a very firm control over its activities in that respect. External interests must understand that, once a trial process is embarked upon, that process can, for a variety of legitimate reasons, develop a life of its own. Based on the experience available in current institutions, it might be said that those prepared to fund/support similar institutions in the future would be well advised to recognise that fact before making any commitment. It can only be damaging to an institution, however well run, to have its funding continually under threat, perhaps because a disgruntled contributor has either ignored or not understood the likely length of the commitment required.

Returning to the construction of the completion strategy document internally, it is recommended that, in the first instance, the institution concerned let it be known that it is working on such a strategy, and that when it has something worthwhile to share with external interests it will do so. However, it is inevitable within an institution that such a process will be almost inextricably linked to that institution's annual or biennial budgetary process. It will therefore become increasingly important that the institution is prepared and able to support and relate its financial bids to its estimated workload. That being so, there will be pressure to produce a completion strategy sooner rather than later.

While it will be sensible for the registry to handle the initial drafting of a completion strategy document, as the trial process gets underway and more information becomes available and requiring assessment, it is recommended that the registry appoint a completion strategy coordinator, whose responsibility will be to coordinate and collate all relevant information and be the 'guardian' of the actual strategy document, under the supervision of the registrar. The coordinator will also be responsible for the regular update of the strategy document—in terms of ensuring that redrafts of those sections recording the institution's progress are readily available for discussion by the senior management board and, as time progresses, externally.

In addition, it is suggested that the coordinator (which should be a fairly senior position, such as P5/4 in UN grading terms) should also chair a number of internal working groups set up to deal with personnel and accommodation issues (such as, commissioning draft policy papers on staff retention, including provision of incentives, general downsizing of posts, disposal of equipment and so on, and legacy proposals). There will also be a need to think through those activities for which an institution will be responsible after it has completed its trial and appeal processes and effectively closed down; in effect its residual activities.

In conclusion, the completion strategy document should be seen from the stage of the initial draft as a 'living' document, which the institution will maintain throughout its lifetime, adding to and amending as events, mostly the trials, demand.

C. External Planning

As indicated earlier, it will be the institution's responsibility, as well as in its best interests, to ensure that those external bodies with an interest in the institution's activities are kept informed on a regular basis of the institutions' progress and intentions. Mention has been made that an institution should not be expected to share its thinking on the completion strategy front until it has something worthwhile to share. However, the pressure to do so can be expected at an early stage, especially in light of how issues with completion strategy developed with existing institutions such as ICTY and ICTR.

The preliminary step for an institution is to let it be known that it is actively working on a completion strategy and that it will be sharing an initial document with those concerned and inviting comment in due course. It should also inform those concerned at that stage as to the internal mechanism it will be employing in constructing such a strategy document and what may be expected. In due course, the appointment of a coordinator should also be announced, as he or she should become a recognised focal point on a day to day to day basis in dealing with enquiries about the strategy document.

Thereafter, and depending to a large extent on the nature of the 'reporting structure' of the institution concerned—such as whether the institution's activities and management are overseen by the UN Security Council or a management committee or similar body—it will be the institution's responsibility to ensure that there is regular dialogue with the relevant body with regard to its completion strategy proposals and, in particular, the progress that has been made.

That regular dialogue can be achieved through a variety of means, including a monthly progress report to the body concerned, and contain a range of information in respect of trial progress, staffing, finance and other related matters. It is recommended that the institution's first draft of its completion strategy document be circulated to all interested parties for information and comment and that, thereafter, it should provide an updated version every six months.

In the case of either the UN Security Council or a management committee's involvement, every effort should be made to present the institution's completion strategy as it currently stands on a six monthly basis, to allow various aspects to be explained/emphasised and questions and comments to be received. Any such presentation should be made either by the president or the registrar or jointly. It is recognised that, currently with regard to the ad hoc tribunals, the respective prosecutors make their own report to the Security Council. However, it is felt that a distinction

should be drawn between the institution's completion strategy as a whole and any progress being made by the prosecutor on, perhaps only one front: that of the status of indicted persons who have refused to surrender to the jurisdiction of the tribunal. Turning to the institution's efforts to keep other external interested parties in touch with progress and long term thinking, it is suggested that the institution address that task in a number of ways:

- Publication of a summary of the completion strategy (once presented to either the Security Council or other body and approved) on the institution's website.
- Presentation and explanation in the course of meetings with the national and international NGO community.
- Presentation to groups of interested states as appropriate and necessary.
- Presentation and explanation to other stakeholders in the institution, such as local NGO and civil society groups (especially where the institution is located in the country where the conflict took place).
- More generally taking any appropriate ad hoc opportunity to present and discuss the institution's strategy and intentions.

X. LEGACY

A. General Commentary

Interventions to create hybrid or international tribunals constitute unique moments in terms of the international community's attention, resources and effort, and this window of opportunity should be maximised. Legacy can be defined as a hybrid or international court's lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, while also strengthening domestic capacity. This impact may continue even after its work is complete.

The concept of legacy should be differentiated from a broader effort to rebuild the rule of law in a particular context, which may take many years. A hybrid or international court's legacy seeks to narrow the investment gap: between prosecuting a limited number of serious crimes in the immediate aftermath of conflict and the frequent lack of investment in the local justice system in the post-conflict context.

However, a positive legacy requires a strategy and will not necessarily happen automatically or by osmosis. It needs to amount to more than just a 'bricks and mortar' approach. Expectations in regard to legacy will need to be managed. Legacy must be domestically owned and driven. A hybrid or international tribunal should be viewed not as a driver but as a catalyst in terms of motivating a broader set of initiatives. The context and rationale for the creation of each hybrid court should inform decisions on legacy. Each model is likely to be unique and will require its own strategy; but planning from the outset is very important. For instance, it is for legacy purposes that participation in planning missions by persons from the country in which the crimes occurred is essential.

Past experiences indicate that, in order to succeed, legacy should be explicitly mandated and receive support from the core budget. A commitment to use and build up national capacity where possible, combined with a modest percentage of the total budget (such as between 5 and 10 percent) reserved for specific outreach and legacy activities, would go a long way. In order to make the most use of opportunities, it is suggested that thought should be given to the creation of a special post in the registry for a legacy officer.

A major challenge for hybrid or international courts is to achieve appropriate levels of ownership from local and international stakeholders. Ownership is an issue, not just at the moment of creation, but in terms of any important decisions that are made throughout a tribunal's existence. Ownership should include engagement and consultation with a variety of actors, including civil society. The range of interlocutors with whom the international community seeks to engage during the negotiation stages of the formation of a hybrid or international court plays an important role in securing buy-in from stakeholders in civil society and the legal community. As a result, there should be consultations with a wide scope of interlocutors, to include major stakeholders such as the local bar association, civil society groups, victim groups, the

diplomatic community, international aid organisations and so forth—not only at the outset of the tribunal's work, but throughout its lifespan.

B. Key Issues for Consideration

The potential for legacy of hybrid or international tribunals is found in a number of key areas, including:

- Legal legacy
- Professional development and skills transfer
- Physical legacy and archives
- 'Demonstration effect'

1. Legal Legacy

Legal legacy can be a complex area as it presumes a convergence of international and domestic agendas to achieve certain reforms. Nonetheless, those involved in a hybrid or international tribunal should be alive to the possibilities to make an impact on domestic law reform. A clear and firm legal framework for the hybrid institution itself is of utmost importance. Also, impact on law reform may be greater in situations where there is a specific forum where national and international actors can meet for the purpose of discussing potential opportunities for contributing to reforms. The impact of jurisprudence will depend not only on the quality of the judgements, but also on the role of precedent in the particular legal context. Publication and dissemination of judgements in local languages is essential for impact on legacy and will, in turn, be an incentive to quality.

2. Professional Development

Successful collaboration in terms of developing professional capacity is difficult to achieve and will depend on fostering a relationship from the outset between international and national actors that is conducive to skills transfer. This is about (a) engaging in sufficient planning and diagnosis of the national legal context; (b) having a thorough identification process to identify suitable nationals and internationals for participation in the process (or vetting unsuitable candidates), and (c) engaging in consultations throughout the process.

In terms of international employees of a hybrid or international tribunal, recruitment processes should identify candidates who are able to function well in an international environment, are willing to depart from their own legal system if need be and learn about the domestic legal system, and who are suited to working constructively with local counterparts. Transparency and impartiality should be respected in any recruitment process. Moreover, for internationals, a system of accountability such as a code of conduct may be important, particularly if internationals are not subject to local structures of discipline.

Inevitably, tensions may arise between international and local actors within a hybrid institution. These will require anticipation and skilled management. Creative options such as classifying posts as international or domestic (rather than classifying applicants) and structures for incentives should be used to fill the gap in conditions of service between international and national staff. Excessive gaps in salaries between international and national staff may give rise to resentments. Training programmes offered for staff should integrate international and national contributions.

Hybrid or international tribunals may create very specific opportunities for skills transfer. These include working with local authorities or law enforcement bodies. Investigations of mass crimes require multidisciplinary approaches, analysis, case management, information technology, and international cooperation. Creation of a domestic capacity in this respect should be a goal of legacy. Other areas where skills transfer may yield significant legacy include language skills and translation facilities, court management, witness protection and support, psychological services, forensics, personnel, procurement, law reporting, information technology, human rights work, public information, local journalism, and construction management. For all of these, it is possible to conceive of legacy programmes that will develop such capacity at the local level, or which—with sufficient planning—might simultaneously seek to meet the needs of the tribunal and the wider justice system.

Working with defence counsel, too, can provide unique opportunities for legacy. Usually many national lawyers are involved in the work of the defence office. Defence counsel may have greater incentives to adapt and learn new skills. A hybrid or international tribunal can also help create greater demand for effective defence in national trials. In general, integrated administration of the national and international counterparts of hybrid courts should be encouraged wherever possible.

3. Physical Legacy and Archives

Physical legacy (that is, court buildings) may be important, particularly from a symbolic perspective. This may raise complex questions of ownership, and should be carefully considered and consulted. Clear policies should be developed from the outset with a view to facilitating the legacy of court archives and other materials, such as which documents will be permanently retained and where they should be kept.

4. Demonstration Effect

Hybrid and international courts should be aware of their role in terms of demonstrating by example. If they perform well, they may contribute to a 'culture shift' through increased rights awareness and increased calls for accountability. An essential part of this will be a demonstration of how a functional legal institution operates and its independence from political considerations. This is why it is so essential that hybrid initiatives aspire to the highest standards of independence, impartiality, the application of norms of due process, and international human rights. Through the 'demonstration

effect' of these norms and values, hybrid courts may be able to have an impact on domestic systems and contribute to a culture of human rights. Effective outreach and public information are crucial to legacy and should form part of the core budget. At the core of legacy should be the concept of sustainability—how to maximise international interventions in the aftermath of mass atrocities and make a permanent contribution to a country's capacity to try massive crimes.

XI. ANNEXES

A. Contact Information of Existing International Tribunals

International Criminal Court
http://www.icc-cpi.int/home.html
Tel: + 31 (0) 70 515 8515 | **Fax:** +31 (0) 70 515 8555
E-mail: visits@icc-cpi.int

International Criminal Tribunal for the former Yugoslavia
http://www.un.org/icty/
Media office:
Tel: +31 (70) 512 5343/5356/8752 | **Fax:** +31 (70) 512 5355

International Criminal Tribunal for Rwanda
http://www.ictr.org/
Public Information office:
Tel: +255 27 250 5000 / 2565062 or +1 212 963 2850
Fax: +255 27 250 4000 / 4373 or +1 212 963 2848
E-mail: ictr-press@un.org

Special Court for Sierra Leone
http://www.sc-sl.org/
Public Affairs office:
E-mail: scsl-mail@un.org
Tel: +232 22 297000 | Via Italy: +39 0831 257000 | New York: +1 212 963 3327
Fax: +232 22 297001 | Via Italy: +39 0831 257001

Extraordinary Chambers in the Courts of Cambodia

http://www.eccc.gov.kh
(ECCC official site)
E-mail: info@eccc.gov.kh
Tel: +855 23 219 814
Fax: +855 23 219 841

http://www.unakrt-online.org/04_documents.htm
(UN assistance site)
E-mail: info@unakrt-online.org
Tel: +855 (0) 23 219 814
Fax: +855 (0) 23 219 841

War Crimes Chamber of the Court of Bosnia and Herzegovina
http://www.sudbih.gov.ba/?jezik=e
Public Information section:
E-mail: pios@registrarbih.gov.ba
Tel: +387 (0) 33 707 165 | **Fax:** +387 (0) 33 707 224/225

B. Sample Job Description for a Registrar of an International Criminal Justice Institution

1. *Responsibilities and Competencies*

a. Responsibilities

The registrar will be responsible for providing logistical support and advice to the chambers, the office of the prosecutor and the defence office, and for the recruitment and management of all support staff. He or she will also administer the financial and staff resources of the tribunal. In this capacity, the registrar will:

- Oversee the management of the various sections comprising the registry, including those divisions supporting the judicial process (i.e. court management, detention, interpretation and translation, as well as victims and witnesses).
- Oversee the management of common administrative services (i.e. budget, finance, procurement, human resources, general services and information, as well as communications technologies).
- Oversee the management of the public information and outreach department.
- Coordinate logistical and other support for judicial proceedings.
- Consult and liaise with the chambers, the office of the prosecutor and the defence office on matters of mutual concern.
- Ensure the provision of high-quality administrative services both within the registry and to the other organs of the tribunal.
- Act as the channel of communication between the tribunal and the host country on all issues relating to the administration of the tribunal, in particular on the transfer of detainees and witnesses.
- Establish mechanisms for engaging both national and international NGOs and other interested parties, including the Group of Interested States.
- Establish internal and external reporting mechanisms, including regular reporting to the tribunal's management committee.

b. Competencies

- Ability to exercise good judgment and effective decision-making
- Strong planning, management and organisational skills.
- Proven leadership skills and ability to work as part of a team.
- Demonstrated facility for establishing and maintaining inter-personal relationships in a diverse and multicultural environment.

- Excellent drafting and communication skills.
- Ability to deal effectively with sensitive or contentious matters and to handle stressful situations.

2. Qualifications

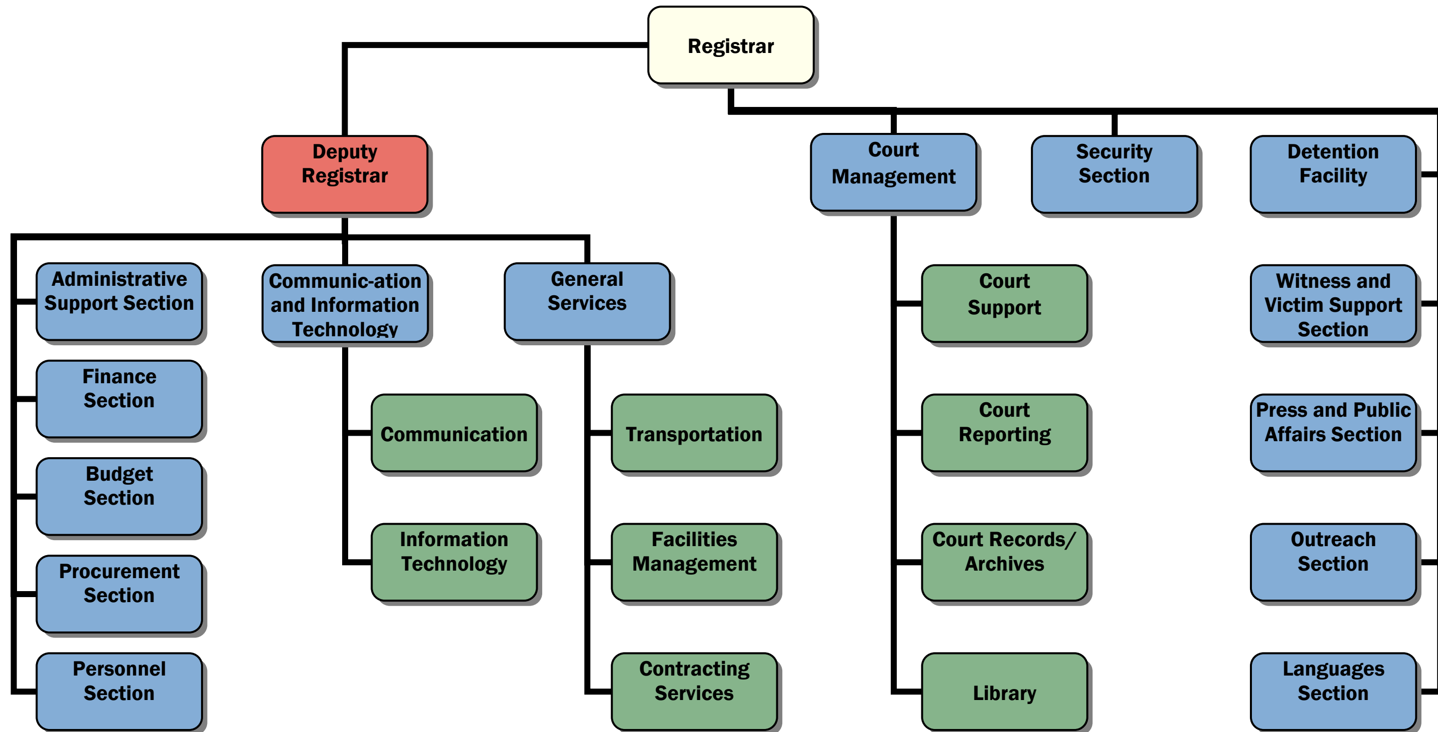
a. Experience

- Extensive relevant professional experience in the management of a national or international court or tribunal.
- Experience in institution-building, preferably of a judicial system or institution, would be an asset.
- Strong managerial skills and experience.
- In-depth understanding of the different legal systems.
- Excellent communication skills (verbal and written).
- Excellent inter-personal skills with an ability to foster teamwork.
- Highly developed negotiation skills and ability to achieve consensus among differing viewpoints.
- Experience interacting with stakeholders and national and/or international NGOs would be an asset.

b. Languages

Fluency in at least one of the official languages of the tribunal is required. Working knowledge of another official language would be an advantage.

C. Sample Organisational Chart



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