



The University of  
**Nottingham**

UNITED KINGDOM • CHINA • MALAYSIA

*Human Rights*  
**Law Centre**

# BEST PRACTICE GUIDE TO FAIR TRIAL STANDARDS IN SIERRA LEONE

Flashcards



Foreign &  
Commonwealth  
Office

Green Scenery



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These flashcards provide a concise summary of the key human rights standards and obligations that Judges, State Counsel and Defence Counsel should follow during criminal trials. The obligations and standards are taken from the Sierra Leone Constitution of 1991, the corpus of domestic law, as well as international obligations.

Each flashcard includes a reference to the relevant pages of the 'Best Practice Guide' where more details, including jurisprudence from national, regional and international decisions as well as the Sierra Leone Special Court and the Truth and Reconciliation Commission.

The text on the left, in white, represent general standards, whilst the blue text specifies what is relevant for Judges, State Counsel and Defence Counsel.

These flashcards form part of the project 'Bridging the Gap: Ensuring the lasting legacy of the Sierra Leone Special Court and the Truth and Reconciliation Commission.'

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# ACCUSED PERSONS

1

At all times the following rights of an accused person should be respected:

Right to Bail

Presumption of Innocence

Right to be Informed of the Charge in a Language One Understands

Right to Adequate Time & Facilities

Right to Communicate with Counsel of One's Choosing

Right to Trial Without Undue Delay

Right to Legal Counsel

Right to Legal Aid

Right to Examine Witnesses

Right to an Interpreter

Right to Remain Silent

(p7-37 Best Practice Guide)

# PROTECTION OF WITNESSES JUDGES

# 2

Possible protective measures for witnesses under threat and vulnerable witnesses:

Removal of the name of the witness from public records

Non-disclosure of public records identifying the witness

Provision of a pseudonym to the witness

Prohibition on all parties from revealing the witness' identity

Testimony of the witness behind a screen or curtains to hide the witness from the public and/or the defendant

Testimony of the witness in a closed session

Temporary removal of the defendant from the courtroom

Complete anonymity of the witness

Making an order for protective measures:

- Is the witness credible?
- Is the witness vulnerable?
- Is there a credible threat to the security of the witness and their family?
- Is the witness' testimony important for the trial?
- Can the rights of the accused be balanced against the need to grant protective measure(s)?
- Will the protective measure improve the quality of the witness' testimony?

When possible, less restrictive protective measure(s) should be preferred

Tailor the protective measure(s) to the needs and situation of each witness

(p38-68 Best Practice Guide)

# PROTECTION OF WITNESSES

## STATE COUNSEL AND DEFENCE COUNSEL

# 3

Possible protective measures for witnesses under threat and vulnerable witnesses:

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Non-disclosure of public records identifying the witness

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Prohibition on all parties from revealing the witness' identity

Testimony of the witness behind a screen or curtains to hide the witness from the public and/or the defendant

Testimony of the witness in a closed session

Temporary removal of the defendant from the courtroom

Complete anonymity of the witness

Inform the witness of the protective measures that can be granted but do not make any promises to the him/her

After consulting the witness, request one or several protective measures

Assess the situation and needs of the witness and tailor the protective measure(s) requested accordingly

Demonstrate that no less restrictive protective measure(s) could provide the adequate protection

(p38-68 Best Practice Guide)

# TREATMENT OF WITNESSES

## JUDGES

4

### Treatment of Witnesses:

Be aware that testifying at a criminal trial can be intimidating and cause anxiety, which is likely to affect the witness' testimony

Witnesses should be treated with respect and in a supportive manner, taking into account their individual situation in order to keep any distress to a minimum

Particular attention should be paid to vulnerable witnesses, including:

- Witnesses who have been severely physically or mentally traumatised by the criminal offence

- Child witnesses

- Witnesses who have a mental disorder or physical disability if this is likely to affect their testimony

Give the case and/or the timing of the witness' testimony priority when vulnerable witnesses are involved

When possible, prevent any contact between prosecution witnesses and the defendant in the courtroom and in waiting areas

Allow the presence of a support person in the courtroom during the testimony of vulnerable witnesses

Monitor the manner of questioning to avoid any harassment or intimidation of witnesses

Ensure that all questions are tailored to each witness and that the witness is able to understand the questions

Pay particular attention to child witnesses and ensure that they are treated in a caring and sensitive manner

(p56-60, Best Practice Guide)

# TREATMENT OF WITNESSES

## STATE COUNSEL AND DEFENCE COUNSEL 5

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Prepare witnesses for the experience of testifying in court, in particular vulnerable witnesses:

- Give clear explanations of courtroom procedures
- Conduct a pre-trial visit of the courtroom
- Refresh the witness' memory with a copy of his/her statement before the testimony
- Prepare witnesses for cross-examination without 'training' them

Encourage, reassure and build the witness' confidence before his/her testimony

Encourage the involvement of a support person to provide support to vulnerable witnesses at the pre-trial stage

Keep in mind the needs of your vulnerable witnesses

Encourage the presence of a support person in the courtroom during the testimony of vulnerable witnesses

Tailor the languages of the questions to each witness to make sure that the witness is able to understand the questions

Pay particular attention to child witnesses and question them in a caring and sensitive manner

Provide details of the case outcome to witnesses after the conclusion of proceedings

(p60-68 , Best Practice Guide)

- Keep in mind the needs and interests of victims and be attentive to their psychological state of mind
- Ensure that victims are treated with respect and sensitivity
- Give the case priority when vulnerable victims are involved
- Where possible, prevent any contact between victims and the defendant in the courtroom and in waiting areas
- Allow victims to be accompanied by support persons in the courtroom
- Encourage the presentation of victim impact statements and take them into account when deciding on a sentence
- Where possible, order restitution by the offender to the victim as a sanction or an additional penalty

(p71-72, Best Practice Guide)



- Keep in mind that victims have a valid interest in the prosecution of the case and encourage their involvement at all stages
- Treat victims with respect and be attentive to their psychological state of mind
- Encourage victims to be accompanied by support persons in the courtroom
- Encourage victims to give victim impact statements and present them to the court prior to sentencing
- Request restitution by the offender to the victim as a sanction or an additional penalty
- Notify victims of proceedings and decisions at the appellate level, parole dates and changes of status of the convicted person

(p72-74, Best Practice Guide)

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You have the final say on whether or not material should be disclosed, including whether or not material should be restricted

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Ordering the exclusion of evidence should be a final resort

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Organise conferences with the parties to monitor the disclosure process

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You can order the prosecution or defence to disclose material if they fail to do so, but an extension of time should not be granted as a matter of course

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(p82-86 , Best Practice Guide)

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***STATE COUNSEL***

- The duty to disclose is a continuous duty which runs until the end of the trial
- Give the defence any material in your possession which you may use at trial
- Allow the defence time to inspect the material which you may use at trial
- Give the defence a list of witnesses you are calling at trial

(p80-82 , Best Practice Guide)

***DEFENCE COUNSEL***

- Give the prosecution details of any alibi your client wants to put forward
- Give the prosecution details of any special defences your client intends to rely on
- Give the prosecution a list of witnesses you are calling at trial

(p82-86 , Best Practice Guide)

## ***JUDGES***

- Set a timetable for the case as soon as possible
- Organise case management conferences with the prosecution and defence, before and during trials to monitor the progress of the case
- Discourage delays by dealing with as many aspects of the case as possible on the same occasion

(p89-90, Best Practice Guide)

## ***STATE COUNSEL AND DEFENCE COUNSEL***

- Be fully prepared before coming to court on the facts, issues and history of the case
- Check that the accused is aware of the trial date and the courthouse
- Check with your witnesses that they are aware of the trial date and the courthouse
- Co-operate with the court and the other side in the progression of the case
- Check you have enough copies of the documents that you will provide to the other side, any witnesses and the judge
- Present evidence in the shortest and clearest way possible

(p90-91, Best Practice Guide)