

# **Sierra Leone**

## **Statement at the official opening of the court-house of the Special Court for Sierra Leone**

The official opening of the new court-house of the Special Court for Sierra Leone on 10 March 2004 marks another milestone in the efforts by the Government of Sierra Leone and the international community to ensure a measure of justice for the people of Sierra Leone who suffered so greatly from the crimes against humanity, war crimes and other serious violations of international law committed by all sides during a decade of internal armed conflict.

Amnesty International welcomed the agreement two years ago between the government and the United Nations (UN) to establish the Special Court not only as a major advance towards bringing to justice some of the large number of people responsible for some of the worst known crimes committed during conflict anywhere in the world, but also towards promoting reconciliation and a durable peace. It counteracted to a certain degree the unacceptable and unlawful amnesty which had been granted in the 1999 Lomé peace agreement to the perpetrators of these crimes, in violation of the prohibition of amnesties for crimes under international law.

This is an occasion to reaffirm aspirations that the Special Court will succeed in bringing justice to some of the thousands of victims; it is also, however, important to recognize and respond to the immense challenges facing the Special Court in achieving its mandate to try those “bearing the greatest responsibility” for these crimes. These challenges can only be met through full cooperation by the international community and the just, fair and effective operation of the Special Court.

The Special Court is an example of a new type of court established by the international community jointly with the state where crimes under international law occurred. It differs, for example, from the International Criminal Tribunals for Rwanda and the former Yugoslavia. It is both an international and national court, with both international and Sierra Leonean judges; it is an African court established to try those accused of crimes against humanity and war crimes against Africans; and it is based in the country where the crimes within its jurisdiction were perpetrated. The Special Court must be shown to be a viable model which provides the highest standards of international justice, including by demonstrating that its prosecution policy is fully independent. In this respect, it is to be welcomed that the indictments issued so far by the Special Court reflect investigation of crimes committed by all parties to the conflict.

Trials before the Special Court must meet the strictest international standards of fair trial. Justice demands fairness and respect for the presumption of innocence unless proven guilty beyond a reasonable doubt. It is, therefore, disturbing that in its first hearings and rulings the Special Court has fallen below the fair trial standards set by the International Criminal Tribunals for Rwanda and the former Yugoslavia.

In November 2003 the Appeals Chamber of the Special Court, sitting for the first time, upheld an amendment to the Rules of Procedure and Evidence which denies the right of defendants to appeal against important pre-trial preliminary motions by having these decisions made by the Appeals Chamber without further review. Such motions may decide issues which directly affect a conviction or whether a case should even be commenced. In its ruling the Special Court highlighted the need to act expeditiously. Amnesty International firmly believes, however, that ensuring a defendant's right to an expeditious trial should not compromise the right to a fair trial.

We recall the recent warning of Judge Hunt about similar steps to expedite proceedings in the International Criminal Tribunal for the former Yugoslavia at the expense of the right of the accused to a fair trial:

“This Tribunal will not be judged by the number of convictions which it enters, or by the speed with which it concludes the Completion Strategy which the Security Council has endorsed, but by the fairness of its trials. The Majority Appeals Chamber Decision and others in which the Completion Strategy has been given priority over the rights of the accused will leave a spreading stain on this Tribunal's reputation.”<sup>1</sup>

We call on the judges of the Special Court, therefore, to immediately restore Rule 72 of the Rules of Procedure and Evidence to allow appeals against rulings on preliminary motions.<sup>2</sup>

The Special Court must also apply the highest standards in the treatment of victims and witnesses by taking effective measures to ensure their physical and psychological well-being, dignity and privacy, taking into account their age, gender, health and the nature of the crime. Such measures are particularly important where the crime involves sexual or gender-based violence or violence against children. As one of the first examples of a court which is both international and national, sitting in the country where the crimes were committed, the

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<sup>1</sup> *Prosecutor v. Milosević*, Case No. IT-02-54-AR73.4, Appeals Chamber, 30 November 2003 (Hunt, J. dissenting).

<sup>2</sup> For further information, see *Sierra Leone: Special Court for Sierra Leone: denial of right of appeal and prohibition of amnesties for crimes under international law* (AI Index: AFR 51/012/2003), published by Amnesty International on 31 October 2003.

challenges of ensuring the safety of victims and witnesses are much greater than for existing international courts. Full support from the government and the international community – both financially and practically – is, therefore, essential.

Amnesty International was disappointed that the Statute of the Special Court did not follow the example of the Rome Statute of the International Criminal Court by authorizing the Special Court to award reparations for victims of crimes within its jurisdiction, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Such reparations are essential to help victims to rebuild their lives.

The Special Court should work with the Sierra Leone government and civil society, and the international community, to address this issue. In particular, the Special Court should establish a program providing restitution of property to victims taken from them as a result of a crime, in accordance with Rule 104 of the Rules of Procedure and Evidence. Furthermore, it should work with the government to establish effective mechanisms for victims to make claims for compensation against those convicted by the Special Court in the national legal system under The Criminal Procedure Act, 1965. The Special Court should consult civil society and international actors in Sierra Leone to examine how other forms of reparation, including satisfaction and guarantees of non-repetition, should be awarded. This could include, for example: a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of people closely connected with the victim; an apology including public acknowledgement of the facts and acceptance of responsibility; and a call for the reform of laws which contribute to or allow gross abuses of human rights and serious violations of humanitarian law.

In addition, the Special Court should work with the government to establish the Special Fund for War Victims, as provided by Article XXIX of the Lomé peace agreement, to provide rehabilitation programs for victims, including victims of crimes within the jurisdiction of the Special Court.

It is also essential that the work of the Special Court is accessible to the whole of Sierra Leonean society so that it can witness the work of the Special Court to address some of the worst crimes committed against the Sierra Leonean people and understand its importance. This will require effective outreach programs and financial support for such projects. The work of the Special Court should also be better known internationally. The recent improvements to the Special Court's website are to be welcomed and we hope that they will continue, so that briefs of all parties and transcripts of all proceedings will be available.

Since it started its work, the Special Court has been seriously hindered by lack of cooperation and support both from individual states and the broader international

community. This must be addressed immediately.<sup>3</sup>

In particular, on this important and significant occasion, Amnesty International calls on all states to ensure that the serious financial crisis which has confronted the Special Court is remedied speedily, and that it receives assurances that it will have the resources to complete its work without compromise or curtailment. Voluntary contributions must be sufficient to meet the budget for the current year, as well as subsequent years.

In addition, Amnesty International is repeating its call to states both in West Africa and more widely to facilitate the work of the Special Court by responding positively to requests to enter into binding legal agreements with the Special Court which would provide for: the surrender of those indicted by the Special Court; full assistance in any investigation, including sharing of evidence, tracing, freezing, seizing and forfeiting assets; contribution towards victim and witness protection and relocation; and other appropriate measures requested by the Special Court.

Two of those indicted for bearing the greatest responsibility for the crimes over which the Special Court has jurisdiction have yet to be surrendered to the custody of the Special Court. As the Special Court moves towards beginning its main judicial functions, Amnesty International again calls on all states to ensure that Johnny Paul Koroma and Charles Taylor be arrested and transferred without delay to the Special Court to face the charges against them.

In particular, international pressure must be exerted on the Government of Nigeria which, in flagrant violation of its obligations under international law, is openly harbouring Charles Taylor with guarantees that he will be neither surrendered to the Special Court nor brought before Nigerian courts.<sup>4</sup> This action betrays the thousands of Sierra Leonean victims of crimes against humanity, war crimes and other serious violations of international law.

Finally, it must be recognized that, while the Special Court marks the official opening of its court-house, the national justice system in Sierra Leone, notwithstanding some recent progress, continues to struggle to function with a dearth of resources, including judges, magistrates and lawyers. It is essential that the Special Court does not operate in a vacuum – separate from the national justice system – but instead seizes the unique opportunities offered by a mixed international/national court seated in Freetown to act as a catalyst in strengthening the national justice system. The national justice system needs to be

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<sup>3</sup> For further information, see *Sierra Leone: Commitments to the Special Court must remain firm and not falter* (AI Index: AFR 51/002/2004), published by Amnesty International on 16 January 2004.

<sup>4</sup> For further information, see *The Special Court for Sierra Leone: an open letter from Amnesty International to President Olusegun Obasanjo* (AI Index: AFR 44/002/2004), published by Amnesty International on 16 January 2004.

able to work to ensure that those who have committed horrific crimes during Sierra Leone's conflict, but are not among the small number indicted by the Special Court for bearing the greatest responsibility for crimes committed after 30 November 1996, are brought to justice and that their victims have access to reparations.

The Special Court must illustrate the important role that the justice system has to play in post-conflict Sierra Leone by the way it conducts its proceedings and through its rulings.

Of critical importance in this respect will be the ruling by the Special Court on the applicability of the general amnesty provided by the Lomé peace agreement to those crimes within its jurisdiction. Under international law, there can be no amnesty, pardon or other similar national measures of impunity for crimes against humanity, war crimes and other serious violations of international law.<sup>5</sup> Indeed, the UN Secretary-General expressly stated in relation to the Lomé peace agreement:

“I instructed my Special Representative to sign the agreement with the explicit proviso that the United Nations holds the understanding that the amnesty and pardon in article IX of the agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.”<sup>6</sup>

Prohibition of amnesty for such crimes applies, however, not only to the Special Court but also to the national courts.

Together with the government, civil society and the international community, the Special Court should establish programs to provide training for Sierra Leonean lawyers and judges and to forge further progress towards rebuilding the national judicial infrastructure. A comprehensive plan should be established now for the use of the resources and facilities which the Special Court will leave to the national justice system when it completes its work.

The challenges for the Special Court as it begins its main judicial roles are great. Amnesty International will continue to support and follow closely the work of the Special Court and, where appropriate, contribute towards ensuring that it succeeds in bringing justice to the people of Sierra Leone.

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<sup>5</sup> For further information, see *Sierra Leone: Special Court for Sierra Leone: denial of right of appeal and prohibition of amnesties for crimes under international law* (AI Index: AFR 51/012/2003), published by Amnesty International on 31 October 2003.

<sup>6</sup> Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, UN Doc. S/1999/836, 30 July 1999, para. 7.