

Special Court for Sierra Leone

Statement to the National Victims Commemoration Conference Freetown, 1 and 2 March 2005

Amnesty International welcomes the initiative taken by the Special Court for Sierra Leone to organize the National Victims Commemoration Conference in Freetown on 1 and 2 March 2005, as well as the regional conferences leading up to it. This is an invaluable opportunity for the people of Sierra Leone to air their views, voice their concerns and make known their expectations and aspirations for achieving justice for all those who suffered killings, mutilations, rape and other forms of sexual violence, sexual slavery and conscription of children during a decade of internal armed conflict.

The National Victims Commemoration Conference should: firstly, assess to what extent the Special Court is contributing towards an end to impunity for some of the worst crimes ever known; and, secondly, determine what more needs to be done to achieve justice for all victims and their families for crimes committed during the conflict.

Amnesty International continues to support the Special Court and to contribute as far as it is able towards effective fulfilment of its mandate as a first step towards achieving justice.¹ A number of the issues which Amnesty International has particularly pursued are expected to be discussed at the National Victims Commemoration Conference.

The Special Court and achieving justice for Sierra Leoneans

Established jointly by the United Nations (UN) and the Sierra Leone government, the Special Court is an example of a new category of courts established to try crimes under international law. While it is an international criminal court, with primacy over Sierra Leone's courts and concurrent jurisdiction, its judges and officials include Sierra Leoneans and it is located in the country where the crimes under its jurisdiction were committed. This makes it different from other international criminal courts, such as the International Criminal Court and the International Criminal Tribunals for Rwanda and the former Yugoslavia.

The Special Court therefore offers unique and unprecedented opportunities for ensuring that its work is accessible to and known by the victims, their families and wider Sierra Leonean society. If these opportunities are fully exploited, the Special Court will reinforce its relevance and its

¹ For further information, see Amnesty International, *Sierra Leone: Statement at the official opening of the courthouse of the Special Court for Sierra Leone* (AI Index: AFR 51/004/2004), 9 March 2004.

contribution to the crucial message that impunity for serious crimes under international law will not be tolerated and that justice will be achieved for the victims.

Shortly before the first trials before the Special Court began on 3 June 2004, Amnesty International wrote to the President of the Special Court pointing out the importance of transparency and accessibility.

Although the vital work of the Outreach Section of the Special Court was initially frustrated by a serious dearth of funds, reflecting the financial crisis that the Special Court has had to contend with, it has since sought to bring the work of the Special Court closer to Sierra Leoneans throughout the country. The establishment of the Special Court Interactive Forum, and the Public Service Committee to monitor how successfully public access is achieved, are also positive developments. The expanding work of the Office of Press and Public Affairs, including the production of video materials, mobile video units and radio broadcasts, has also had an important impact.

All those indicted by the Special Court must be arrested and surrendered for trial

The Special Court has indicted 11 people for bearing the “*greatest responsibility*” for crimes under international law committed after 30 November 1996: nine of them are currently in the custody of the court; the trials of six began in 2004; and that of the remaining three is scheduled to start on 7 March 2005. It is unfortunate that appointment of the three judges to the second Trial Chamber was delayed, preventing more expeditious trials of the defendants, most of whom were arrested in March 2003. The swearing-in of the judges for the second Trial Chamber on 17 January 2005 and the imminent start of trials of the three indicted former members of the Armed Forces Revolutionary Council (AFRC) are to be welcomed.

The other two people indicted by the Special Court – former Liberian President Charles Taylor and former AFRC leader Johnny Paul Koroma – have yet to be arrested and surrendered to the Special Court.

Amnesty International welcomed the Special Court’s ruling on 31 May 2004 that Charles Taylor did not enjoy immunity from prosecution by virtue of his status as head of state at the time the crimes for which he is indicted were committed. This decision upheld the principles of international justice and the rule of law.²

Amnesty International has continued to seek the surrender of Charles Taylor to the Special Court since his indictment was made public on 4 June 2003 and his subsequent harbouring by the

² For further information, see Amnesty International, *Nigeria/Sierra Leone: Special Court ruling – no immunity for former Liberian President Charles Taylor* (AI Index: AFR 44/018/2004), 3 June 2004, and <http://www.sc-sl.org/Documents/SCSL-03-01-I-059.pdf>.

Nigerian government.³ By providing refugee status to Charles Taylor and protecting him from prosecution for crimes against humanity and war crimes, the Nigerian government is violating its legally binding obligations under international law. International and African conventions on refugees which Nigeria has ratified require states to refrain from offering refugee status to individuals accused of crimes under international law who are trying to evade justice.⁴

Amnesty International was particularly dismayed by the decision on Liberia adopted by the African Union Executive Council at its 5th Ordinary Session in June and July 2004 which “congratulated” Nigeria for granting refugee status to Charles Taylor. This decision, like the action of the Nigerian government, betrays the thousands of Sierra Leoneans who have suffered the worst crimes imaginable.⁵

On 22 September 2004 Amnesty International applied to the Nigerian Federal High Court to submit an *amicus curiae* brief demonstrating that the decision to grant refugee status to Charles Taylor violates Nigeria’s obligations to surrender a person indicted for crimes under international law or to submit the case to its prosecuting authorities.⁶

The Nigerian government must arrest Charles Taylor and surrender him to the Special Court to face trial in order to determine his guilt or innocence. Failure to do so, or to open a national investigation with a view to determining whether to pursue criminal or extradition proceedings in Nigerian courts, violates Nigeria’s obligations under international law.

Rumours of the death of Johnny Paul Koroma abound but have yet to be confirmed. In October 2004 Interpol made public a “Red Notice” calling for his arrest and his transfer to the custody of the Special Court. Amnesty International has repeatedly called on all states to cooperate fully with the Special Court, including by ensuring the arrest and transfer without delay of those indicted to face the charges against them.

³ For further information, see Amnesty International, *The Special Court for Sierra Leone: an open letter from Amnesty International to President Olusegun Obasanjo* (AI Index: AFR 44/002/2004), 16 January 2004.

⁴ See the 1951 Convention relating to the Status of Refugees, Article 1F(a), and the African Union’s Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 1(5).

⁵ For further information, see Amnesty International, *Open letter to Permanent Representatives at the African Union (AU) regarding the case of Charles Taylor, former President of Liberia, indicted for crimes against humanity* (AI Index: IOR 63/007/2004), 5 August 2004.

⁶ For further information, see Amnesty International, *Nigeria: Amnesty International seeks to intervene in case reviewing asylum granted to former Liberian President Charles Taylor* (AI Index: AFR 44/029/2004), 22 September 2004, and Amnesty International, *Nigeria: Amicus curiae brief submitted to the Federal High Court reviewing refugee status granted to Charles Taylor* (AI Index: AFR 44/030/2004), 23 September 2004.

More needs to be done to achieve justice

The Statute of the Special Court provides a mandate to prosecute those “*who bear the greatest responsibility*” for crimes against humanity, war crimes and other serious violations of international law committed during Sierra Leone’s armed conflict after 30 November 1996.

The jurisdiction of the Special Court does not therefore include all those who committed crimes under international law during Sierra Leone’s protracted and bloody conflict. The Prosecutor’s definition of those bearing the greatest responsibility has resulted in the indictment of only a handful of the very large number of people suspected of committing these crimes. In addition, crimes committed during the first five years of the conflict are excluded. Throughout that period – March 1991 to November 1996 – Amnesty International documented persistent and grave abuses by all parties to the conflict. No one has yet been held criminally responsible for those crimes.

It was always recognized by the UN and the Sierra Leone government – and, indeed, by Amnesty International – that the court proposed by the UN Security Council in August 2000 would not be able to try all those who had committed crimes under international law. The international community has not provided the Special Court with either the jurisdiction or the resources to prosecute the many perpetrators of crimes under international law throughout the 10-year conflict, including those who may be perceived to be most responsible because they personally committed the crimes. While prosecuting a few of those responsible for these crimes is a major contribution towards ending impunity in Sierra Leone, it is only a partial response.

Many have contended that the Truth and Reconciliation Commission (TRC) would fill the gap by creating an impartial historical record of violations of international human rights and humanitarian law from the beginning of the conflict in March 1991 to the signing of the Lomé peace agreement in July 1999. The Lomé peace agreement provided for a TRC to “*address impunity, break the cycle of violence, provide a forum for both victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation*”.⁷

The TRC has been significant in providing a forum for victims and perpetrators to recount their experiences, creating an impartial historical record of human rights abuses committed during the conflict, identifying the reasons for those abuses, and facilitating reconciliation. Its long-awaited and comprehensive report published in October 2004 not only provides an invaluable testimony to what occurred during those terrible years, but also makes important recommendations which hold out hopes for an end to conflict and respect and protection of fundamental human rights in the future.⁸

⁷ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999, Article XXVI.

⁸ While Amnesty International supports many of the TRC’s recommendations, such as abolition of the death penalty, it has reservations on others, for example, those which apparently endorse the provision of general amnesties in peace agreements.

The TRC is, however, not sufficient for addressing impunity for those crimes which do not fall within the jurisdiction of the Special Court. It cannot be a substitute for a court of law to try alleged perpetrators of serious violations of international law.

The national justice system therefore needs to be able to work to ensure that all those who committed horrific crimes during the conflict, but who are not among the small number indicted by the Special Court, are brought to justice and that their victims have access to reparations. Amnesty International continues to encourage the development of a long-term and comprehensive plan to end impunity in a transparent manner, in close cooperation with civil society, including steps to strengthen the national justice system so that it can investigate and prosecute the many people responsible for crimes under international law who will not be indicted by the Special Court, and to award reparations to victims and their families. The plan should also include effective cooperation with other states to investigate and prosecute these crimes and to award reparations.

Reparations

An essential element of providing justice to the victims of human rights abuses is the provision of reparations. 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 integral to achieving justice for the victims and also assisting them to rebuild their lives.

When Amnesty International has raised this issue with officials and staff of the Special Court, the response has been that the Special Court has neither the mandate nor the resources to consider reparations and that they fall within the remit of the TRC, rather than the Special Court. The assumption has been that reparations will be dealt with by the TRC. It is unfortunate, however, that the Special Court has not pursued this issue further. It could, for example, consider: establishing a programme to provide restitution of property, in accordance with Rule 104 of the Rules of Procedure and Evidence; working with the government to establish effective mechanisms for victims to make claims for compensation against those convicted by the Special Court in the national courts under The Criminal Procedure Act, 1965, as set out in Rule 105; and consulting civil society and international actors in Sierra Leone to examine how other forms of reparation should be awarded, such as a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of people closely associated with the victim, or an apology including public acknowledgement of the facts and acceptance of responsibility.

The TRC's report made detailed recommendations for the provision of reparations to those who had suffered throughout the conflict. It proposed responding to the specific needs of victims rather than providing financial compensation. It therefore recommended measures in the areas of health, pensions, education, skills training and micro-credit, community reparations and "symbolic" reparations.

For certain categories of victims – including those whose limbs had been deliberately amputated, other war wounded, and survivors of rape and other forms of sexual violence – the TRC recommended that they be given free physical and, as appropriate, psychological care throughout their lives or for as long as necessary.⁹

It is envisaged that some of the costs of the reparations programme be met from the Special Fund for War Victims provided by the Lomé peace agreement, to be administered by the National Commission for Social Action.¹⁰ The TRC recommended both that the Special Fund for War Victims be established within three months of the publication of its report, and also that the National Commission for Social Action complete implementation of the reparations programme within six years.

It is regrettable that more has not been done so far to ensure that the conclusions and recommendations of the TRC are known; the government appears to have been dilatory in diffusing the TRC's main messages.

The National Victims Commemoration Conference offers an important opportunity to address the vital issue of reparations which are essential to achieving justice for victims and their families. In particular, it may wish to make recommendations to the Special Court on ensuring that, in accordance with Rule 104, the Court provides restitution for the crimes it prosecutes and, in accordance with Rule 105, the national authorities establish a system whereby victims of crimes prosecuted by the Special Court can apply for compensation before the national courts. The Special Court should furthermore support the establishment of the Special Fund for War Victims and, in cases where it orders the forfeiture of property and the rightful owner cannot be identified, recommend that the resources be transferred to the Fund.

No amnesty for crimes under international law

A major stumbling block to achieving justice remains: in violation of international law, the Lomé peace agreement granted a general amnesty and pardon for all acts undertaken in pursuit of the conflict.¹¹ The peace agreement – with its amnesty clause – was subsequently enacted into national law.¹²

⁹ Report of the Sierra Leone Truth and Reconciliation Commission, Volume II, Chapter III, paras. 482 – 512, October 2004.

¹⁰ Article XXIX of the Lomé peace agreement required the government, with the support of the international community, to “*design and implement a programme for the rehabilitation of war victims. For this purpose, a special fund shall be set up*”.

¹¹ Article IX of the Lomé peace agreement required the government to grant “*absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives*” and to adopt “*legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict*”.

¹² The Lomé Peace Agreement (Ratification) Act, 1999.

This amnesty, however, cannot apply to crimes against humanity, war crimes and other serious violations of international law. This was made explicit in July 1999 when the UN Secretary-General instructed his Special Representative for Sierra Leone, who signed the peace agreement as a moral guarantor, to add the explicit proviso that the UN held 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.

International law prohibits amnesty and pardons for such crimes and Amnesty International has consistently opposed, without exception, amnesties and similar measures of impunity which prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparations to victims and their families.

In a historic decision in the fight against impunity for the worst possible crimes, on 13 March 2004, the Special Court refused to recognize the applicability of the amnesty provided by the Lomé peace agreement to crimes against humanity and war crimes.¹³ This decision followed the publication by Amnesty International of a legal memorandum explaining that amnesties for crimes under international law were prohibited by international law.¹⁴ In accordance with international law, the Special Court held that the amnesty was “*ineffective*” in preventing international courts, such as the Special Court, or foreign courts from prosecuting crimes against humanity and war crimes.¹⁵

The decision endorsed the proviso of the Special Representative of the UN Secretary-General for Sierra Leone. Amnesty International regretted, however, that it did not expressly state that the amnesty provision of the Lomé peace agreement was null and void not only under international law, but also under Sierra Leone national law. Nevertheless, Amnesty International believes that this decision will have an important impact in the struggle against impunity by encouraging international and national courts around the world to disregard amnesties for the worst possible crimes and to discourage states from seeking to shield perpetrators of these crimes from justice.

For impunity to be successfully challenged in Sierra Leone, however, the amnesty provision of the Lomé peace agreement must be removed from the statute books.

¹³ <http://www.sc-sl.org/Documents/SCSL-04-15-PT-060-I.pdf>, <http://www.sc-sl.org/Documents/SCSL-04-15-PT-060-II.pdf> and <http://www.sc-sl.org/Documents/SCSL-04-14-T-128-7347.pdf>, <http://www.sc-sl.org/Documents/SCSL-04-14-T-128-7363.pdf>.

¹⁴ For further information, see Amnesty International, *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), 31 October 2003.

¹⁵ For further information, see Amnesty International, *Special Court for Sierra Leone: A historic decision to reject amnesty for crimes under international law* (AI Index: AFR 51/006/2004), 18 March 2004.

A tangible legacy

Had the decision by the Special Court on 13 March 2004 gone further and stated unequivocally that the amnesty provided by the Lomé peace agreement did not apply to national courts, this would have had a significant impact in furthering the rule of law and ending impunity in Sierra Leone. It would have paved the way for prosecutions of others than the few being tried by the Special Court. The Special Court can and should make a lasting contribution through its proceedings, rulings, resources and facilities.

Amnesty International has attached great importance to the “legacy” which the Special Court will bequeath to the national justice system. The Special Court must illustrate the crucial role that the justice system has to play in post-conflict Sierra Leone by the way that it conducts its proceedings and through its rulings. It must seize the opportunity of trials taking place in Freetown of those accused of crimes against Sierra Leoneans to demonstrate the importance of an effective, independent, impartial and competent justice system. Regrettably, however, Sierra Leone, a party to the Rome Statute, the 1949 Geneva Conventions and their 1977 Protocols, has yet to define most of these crimes under international law as crimes under national law, so prosecution even of future cases would be impossible without legislative reform.

Despite some recent improvements and commitments by some donor governments – notably the recent promise by the United Kingdom of some £25 million (approximately US\$50 million) to support judicial and legal reform – effective and efficient administration of justice remains severely compromised.

Although additional High Court judges have recently been appointed, a dearth of judges, magistrates and justices of the peace, coupled with poorly equipped and inadequately staffed courts, results in unacceptable delays, undermining the right to an early and fair judicial hearing. Aggravating the problem still further is the absence of a legal aid system for those unable to afford legal counsel. More also needs to be done to ensure gender-sensitivity in the administration of justice. Access to justice is further hampered by poverty and illiteracy. Conditions in all places of detention – prisons, police stations and facilities for juvenile offenders – remain far below minimum acceptable standards.

Although the Special Court cannot by itself turn around the struggling national justice system, its presence, example and resources should be an important catalyst for and reinforce a committed, long-term strategy to end impunity and build an effective system of justice for the future. At the time of the official opening of the Special Court’s courthouse on 10 March 2004, Amnesty International suggested that, together with the government, civil society and the international community, the Special Court establish programmes to provide training for Sierra Leonean lawyers and judges and to forge further progress towards strengthening the national judicial infrastructure.

When it completes its work, the Special Court will leave an impressive physical legacy: its premises in New England, Freetown, including its two new and well-equipped courtrooms, its detention facilities, its library and other administrative facilities. All these are sorely needed.

There are a number of other areas where the Special Court is making a direct contribution towards a more solid judicial and legal environment. More than 50 per cent of the Special Court's staff is Sierra Leonean: both the Office of the Prosecutor and the Defence Office include Sierra Leonean personnel and efforts have been made to encourage Sierra Leoneans to join internship programmes. It was expected that Sierra Leonean judges would observe the trials before the Special Court as they got underway. The Special Court Interactive Forum has also provided an opportunity for exchanges of views.

Amnesty International continues to urge the Special Court to exploit all opportunities to benefit the Sierra Leonean justice and legal systems. The completion strategy of the Special Court must include specific and detailed recommendations on its legacy, including, in particular, law reform. This is a crucial issue for the National Victims Commemoration Conference.

Abolition of the death penalty

The Statute of the Special Court provides in Article 19 for sentences of imprisonment for a specified number of years; the Special Court cannot impose the death penalty. In this it follows the practice of the International Criminal Tribunals for Rwanda and the former Yugoslavia, the Special Panels for Serious Crimes in East Timor and the Extraordinary Chambers in Cambodia, as well as the Rome Statute, and reflects the increasing international trend towards abolition of the death penalty. Amnesty International unconditionally opposes the use of the death penalty.

Amnesty International has repeatedly expressed its disquiet about the discrepancy between the Special Court and the national courts – which continue to impose death sentences. In practice, this means that a person convicted by the Special Court of some of the worst known crimes, including crimes against humanity and war crimes, would face a prison sentence, whereas those convicted before national courts of offences which may be less serious could face the death penalty. The former UN High Commissioner for Human Rights, Mary Robinson, and Sierra Leonean civil society groups are among those who have also voiced their uneasiness about this inequity. The government should follow the practice of the Special Court.

The TRC's recommendations were explicit: the government should move swiftly towards abolition of the death penalty. These recommendations were based on extensive consultation with the Sierra Leone people who had suffered so profoundly during the armed conflict, as well as some of those either directly or indirectly responsible for that suffering, and are designed to contribute both to national reconciliation and the protection of human rights in the future.

The TRC asserted that: “*Respect for human dignity and human rights must begin with respect for human life. Everyone has the right to life. A society that accords the highest respect for human life is unlikely to turn on itself*”.¹⁶

The TRC called on the government to set an example by demonstrating that it places the highest value on all human life and noted that abolition of the death penalty would mark an important and symbolic departure from the past to the future. The TRC therefore recommended the immediate repeal by Parliament of legislation providing for the death penalty, including amendments to the 1991 Constitution of Sierra Leone. It also called for a moratorium on all judicially sanctioned executions, pending legislative amendment, and, crucially, for immediate commutation by President Ahmad Tejan Kabbah of any pending death sentences. These recommendations were categorized as “*imperative*”, that is, they should be implemented “*without delay*”.¹⁷

Amnesty International therefore learned with dismay that the High Court in Freetown sentenced 10 men to death on 20 December 2004 following their conviction on charges of treason.¹⁸ In letters to President Kabbah and the Attorney General and Minister of Justice, Francis Carew, on 14 January 2005, Amnesty International urged the government to respond immediately to the spirit and letter of the TRC’s recommendations. It appears, however, that the government has yet to take action to implement them.

Also of concern is the fact that large numbers of Sierra Leoneans remain ignorant of the TRC’s recommendations – including those on enshrining the right to life and abolition of the death penalty.

A landmark and lasting legacy of the Special Court would be if its example were to be followed and the death penalty removed from Sierra Leone’s statute books. Amnesty International is aware that the government has sought advice from the Special Court on this issue and also that some Special Court officials have provided support to civil society organizations who are campaigning for abolition of the death penalty. Amnesty International hopes that participants at the National Victims Commemoration Conference will send a strong, clear message to the government for formal abolition of the death penalty.

¹⁶ Report of the Sierra Leone Truth and Reconciliation Commission, Volume II, Chapter III, para. 53, October 2004.

¹⁷ Report of the Sierra Leone Truth and Reconciliation Commission, Volume II, Chapter III, paras. 54-56, October 2004.

¹⁸ For further information, see Amnesty International, *Amnesty International expresses dismay at 10 death sentences for treason* (AI Index: AFR 51/009/2004), 21 December 2004.