

Sierra Leone(44)

[EMBARGOED FOR: 24 September 2001]

4 - OKT. 2001 Mli

Antal bilag

Aktnr 32 Public

66

amnesty international

12/10-01

SIERRA LEONE Renewed commitment needed to end impunity

24 September 2001

SUMMARY

AI INDEX: AFR 51/007/2001

DISTR: SC/CC/CO

In August 2000, the United Nations (UN) Security Council decided to establish a Special Court for Sierra Leone to try those bearing the greatest responsibility for the most serious crimes under international law committed in Sierra Leone. More than one year later, its realization as a fair, effective and viable court remains far from certain.

In addition, much remains to be done to ensure that Sierra Leone's national legal and judicial systems, all but destroyed after more than a decade of internal armed conflict, are re-established and supported so that they can in the future effectively assume responsibility for bringing to justice those alleged to have committed human rights abuses.

Sierra Leone bears terrible scars, both physical and psychological, of a lengthy and brutal conflict, marked by some of the worst crimes under international law known in any armed conflict in any part of the world. Addressing impunity -- the failure to bring to justice the perpetrators of those crimes -- is crucial to achieving reconciliation and durable peace, ending human rights abuses and providing justice to the victims.

Amnesty International is calling for renewed and strengthened commitment by the international community to end this impunity. Action is needed at both the international and national levels. In particular, the international community must promptly provide sufficient funds for the Special Court and for reconstruction of the national judicial system so that all persons responsible for crimes under international law can be brought to justice either in the Special Court or in Sierra Leone's national courts in fair trials without recourse to the death penalty. The international community should also require Sierra Leone to end the unlawful amnesty granted in 1999 for war crimes and crimes against humanity.

Several fundamental issues must be urgently resolved concerning the relationship and cooperation between the Special Court and the Truth and Reconciliation Commission

(TRC), established by the government in February 2000. Lack of understanding of how the Special Court and the TRC will relate to each other could jeopardize the establishment and effectiveness of both as well as progress towards peace and reconciliation. Furthermore, while the TRC may be able to make an important contribution to establishing the truth about human rights abuses and understanding the nature of the conflict in Sierra Leone, it should not be a substitute for prosecuting all those responsible for serious crimes under international law.

Amnesty International is reiterating several key recommendations in relation to the draft Statute of the Special Court which have yet to be addressed. In particular, the starting date of the Special Court's temporal jurisdiction should be amended to 23 March 1991, so that those most responsible for crimes under international law throughout the period of the conflict can be prosecuted. The independence of the Special Court's Prosecutor must be rigorously guarded and the prosecution policy must be based strictly on criminal responsibility for those offences falling under the jurisdiction of the Special Court, without any possibility that political considerations could influence decisions. Other outstanding concerns include: the need to amend the definition of jurisdiction over crimes committed by peace-keeping forces or related personnel; an approach to defining the crimes under the jurisdiction of the Special Court which does not reflect the standard of international law recognized in the Rome Statute; inadequacies in legal protections to ensure fair trials; and inadequate provisions to protect the rights of victims and witnesses.

Some 200 political detainees, including some women, are currently being detained indefinitely without charge or trial. Of these, more than 100 are believed to be members of the armed opposition Revolutionary United Front (RUF), including its leader Foday Sankoh and other leading RUF figures. They have been denied many of their basic legal rights and there are serious concerns about their conditions of detention. Amnesty International is calling for the human rights of all political detainees to be respected in accordance with international standards of fairness, including provisions for fair trial, humane conditions of detention and access to counsel, relatives and prompt and adequate medical care.

KEYWORDS: IMPUNITY / INTERNATIONAL TRIBUNALS / INVESTIGATION OF ABUSES / DETENTION WITHOUT TRIAL / PRISON CONDITIONS / DEATH IN CUSTODY / AMNESTIES FOR VIOLATORS / UN SECURITY COUNCIL / PEACEKEEPING / ARMED CONFLICT / INDEPENDENCE OF JUDICIARY

This report summarizes a 28-page document (11,651 words). *SIERRA LEONE: Renewed commitment needed to end impunity* (AI Index: AFR 51/007/2001) issued by Amnesty International on 24 September 2001. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: <http://www.web.amnesty.org/web/news.nsf/thisweek?openview>

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

[EMBARGOED FOR: 24 September 2001]

Public

amnesty international

SIERRA LEONE

**Renewed commitment
needed to end impunity**



24 September 2001
AI Index: AFR 51/007/2001
Distr: SC/CC/CO

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

TABLE OF CONTENTS

1.	Introduction	1
2.	A protracted battle against impunity	2
3.	The Special Court for Sierra Leone	6
3.1.	Making the Special Court effective, fair and viable	6
3.2.	Funding	7
3.3.	Temporal jurisdiction	10
3.4.	An independent prosecution policy	12
3.5.	The role of the Truth and Reconciliation Commission	14
3.6.	Crimes committed by peace-keeping personnel	16
4.	Rebuilding Sierra Leone's legal and judicial systems	18
5.	Political detention without charge or trial	20
5.1.	Conditions of detention and deaths in custody	23
6.	Ten years of crimes under international law by all sides	26

SIERRA LEONE

Renewed commitment needed to end impunity

1. Introduction

In August 2000, the United Nations (UN) Security Council decided to establish a Special Court for Sierra Leone to try those bearing the greatest responsibility for the most serious crimes under international law committed in Sierra Leone. More than one year later, its realization as a fair, effective and viable court remains far from certain.

In addition, much remains to be done to ensure that Sierra Leone's national legal and judicial systems, all but destroyed after more than a decade of internal armed conflict, are re-established and supported so that they can in the future effectively assume responsibility for bringing to justice those alleged to have committed human rights abuses.

Sierra Leone bears terrible scars, both physical and psychological, of a lengthy and brutal conflict, marked by some of the worst crimes under international law known in any armed conflict in any part of the world. Addressing impunity -- the failure to bring to justice the perpetrators of those crimes -- is crucial to achieving reconciliation and durable peace, ending human rights abuses and providing justice to the victims.

Amnesty International is calling for renewed and strengthened commitment by the international community to end this impunity. Action is needed at both the international and national levels. In particular, the international community must promptly provide sufficient funds for the Special Court and for reconstruction of the national judicial system so that all persons responsible for crimes under international law can be brought to justice either in the Special Court or in Sierra Leone's national courts in fair trials without recourse to the death penalty. The international community should also require Sierra Leone to end the unlawful amnesty granted in 1999 for war crimes and crimes against humanity.

Several fundamental issues must be urgently resolved concerning the relationship and cooperation between the Special Court and the Truth and Reconciliation Commission (TRC), established by the government in February 2000. Lack of understanding of how the Special Court and the TRC will relate to each other could jeopardize the establishment and effectiveness of both as well as progress towards peace and reconciliation. Furthermore, while the TRC may be able to make an important contribution to establishing the truth about human rights abuses and understanding the nature of the conflict in Sierra Leone, it should not be a substitute for prosecuting all those responsible for serious crimes under international law.

Amnesty International is reiterating several key recommendations in relation to the draft Statute of the Special Court which have yet to be addressed. In particular, the starting

date of the Special Court's temporal jurisdiction should be amended to 23 March 1991, so that those most responsible for crimes under international law throughout the period of the conflict can be prosecuted. The independence of the Special Court's Prosecutor must be rigorously guarded and the prosecution policy must be based strictly on criminal responsibility for those offences falling under the jurisdiction of the Special Court, without any possibility that political considerations could influence decisions. Other outstanding concerns include: the need to amend the definition of jurisdiction over crimes committed by peace-keeping forces or related personnel; an approach to defining the crimes under the jurisdiction of the Special Court which does not reflect the standard of international law recognized in the Rome Statute; inadequacies in legal protections to ensure fair trials; and inadequate provisions to protect the rights of victims and witnesses.

Some 200 political detainees, including some women, are currently being detained indefinitely without charge or trial. Of these, more than 100 are believed to be members of the armed opposition Revolutionary United Front (RUF), including its leader Foday Sankoh and other leading RUF figures. They have been denied many of their basic legal rights and there are serious concerns about their conditions of detention. Amnesty International is calling for the human rights of all political detainees to be respected in accordance with international standards of fairness, including provisions for fair trial, humane conditions of detention and access to counsel, relatives and prompt and adequate medical care.

2. A protracted battle against impunity

Progress towards ending impunity has been a lengthy and fraught process in Sierra Leone. It has taken an unacceptable amount of time, first, to acknowledge and agree that those responsible for crimes against humanity, war crimes and other serious violations of international humanitarian law must be held to account for their crimes, and second, to begin to put into place a mechanism to achieve justice for the many thousands of victims of these crimes. This is despite the fact that the conflict which began in March 1991 has been characterized by deliberate and arbitrary killings, mutilations, rape, abductions and recruitment of children to fight on a widespread and systematic scale, and despite obligations under international law to bring the perpetrators of these crimes to justice.

On 7 July 1999, the eight year-long failure to curb the impunity, which had fuelled and perpetuated human rights abuses by both the RUF and government forces, was endorsed and even further entrenched. The peace agreement signed on that date by the government of Sierra Leone and the RUF in Lomé, Togo,¹ included an amnesty for all

¹ UN document S/1999/777

activities undertaken in pursuit of the conflict (Article IX). The peace agreement was subsequently ratified by Parliament and enacted in Sierra Leonean law through the Lomé Peace Agreement (Ratification) Act 1999, 13 July 1999.

However, although the amnesty contained in that agreement is now part of Sierra Leonean law, it is contrary to international law, which stipulates that there can be no amnesty for serious breaches of international humanitarian law and for human rights abuses which may amount to crimes against humanity. Each state which is party to the Geneva Conventions is under an obligation to bring to justice in its own courts those who have committed or ordered grave breaches of the Conventions, to extradite them to another country willing or able to do so or to transfer them to an international criminal court.

The UN, when signing the peace agreement as a guarantor, added a disclaimer that it did not recognize application of the amnesty to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. Despite this, for the next twelve months no substance was given to this disclaimer by the international community and no effective steps were taken to bring all those responsible for such crimes to justice.

The Lomé peace agreement also provided for the establishment of a Truth and Reconciliation Commission (TRC) to "address impunity, break the cycle of violence, provide a forum for both the 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" (Article XXVI). Legislation to establish the TRC, the Truth and Reconciliation Commission Act, was passed by Parliament on 22 February 2000. The object of the TRC as stated in the Act was to "create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé peace agreement, to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violence and abuses suffered".

Although the TRC can examine crimes under international law committed during the conflict and play a role in revealing the truth, its contribution to ending impunity is likely to be extremely weak or non-existent. The TRC can make recommendations concerning other measures, including legal, that may contribute to the fulfilment of its object. The TRC cannot itself prosecute individuals and the amnesty conferred by the peace agreement effectively means that the TRC cannot recommend further investigations or prosecutions at the level of the national courts. However, it is undetermined whether the TRC can recommend that an individual be investigated or prosecuted by the Special Court;

this is one of the many issues still to be resolved concerning the relationship between the TRC and the Special Court (see below).

Amnesty International calls for all perpetrators of crimes involving serious violations of human rights - including crimes against humanity, war crimes and torture - to be brought to justice. To do otherwise denies victims their right to justice and redress and contributes to perpetuating impunity. Truth commissions are not substitutes for bringing perpetrators of serious violations of human rights to justice. Truth commissions can sometimes play an important role in establishing an authoritative record of the past and in providing the victims with a platform to give their accounts and obtain redress. Amnesty International generally recommends that where truth commissions are established, they should respect due process, establish the truth, facilitate reparations to victims and make recommendations aimed at preventing a recurrence of human rights crimes.

The peace agreement forged in Lomé, undermined at the outset by the failure to end impunity for crimes under international law and provide justice for the victims, did not deliver peace. The message it conveyed was that, contrary to international legally-binding obligations, crimes under international law would be condoned and their perpetrators absolved. Although the amnesty does not apply to abuses committed after 7 July 1999 it served to establish the principle that abuses go unpunished and, predictably, throughout 2000 and into 2001, killings, mutilations, rape and abductions continued and their perpetrators continued to enjoy total impunity.²

The international community was stung into action by the collapse of the peace agreement in early May 2000 when RUF forces captured some 500 peace-keeping troops of the UN Mission in Sierra Leone (UNAMSIL). The troops had been deployed in late 1999 to assist implementation of the peace agreement, including the disarmament and demobilization of combatants.

The subsequent resumption of hostilities and the arrest of the leader of the RUF, Foday Sankoh, and other senior RUF members, forced a reconsideration of the July 1999 peace agreement and the amnesty. Foday Sankoh had been given a senior government position as a result of the peace agreement and authority over the country's mineral

² For further information about human rights abuses committed since the Lomé peace agreement, see Amnesty International, *Sierra Leone: Escalating human rights abuses against civilians*, 30 November 1999 (AI Index: AFR 51/13/99), *Amnesty International Report 2000* (AI Index: POL 10/01/00), *Sierra Leone: Voices of victims of human rights abuses from Sierra Leone*, 21 June 2001 (AI Index: AFR 51/43/00), *Sierra Leone: Rape and other forms of sexual violence against women and girls*, 29 June 2000 (AI Index: AFR 51/35/00), *Sierra Leone: Childhood - a casualty of conflict*, 31 August 2000 (AI Index: AFR 51.69 00), and *Amnesty International Report 2001* (AI Index: POL 10/01/01).

resources, including diamonds, and other RUF members had been given ministerial positions. In a letter dated 12 June 2000 the government of Sierra Leone requested assistance and guidance from the UN Secretary-General to establish a special court to bring to justice leading RUF members responsible for "crimes against the people of Sierra Leone and for the taking of UN peace-keepers as hostages".³

Amnesty International urged the international community, in particular the UN, to seize this opportunity to deal effectively with impunity for the crimes committed by all parties to the conflict. Crimes against the people of Sierra Leone have included war crimes, crimes against humanity and torture committed during the conflict.⁴ Amnesty International recommended that the UN establish, together with the Sierra Leone government, a judicial process of an international character under the auspices of the UN, which would be composed of both international and Sierra Leonean judicial officials. As an essential guarantee for independence and impartiality, a majority of international judges, prosecutors and investigators should participate in all stages of the judicial process. Amnesty International called for full and sustained financial support from the UN for any court which might be eventually established. Amnesty International has also consistently stressed that rebuilding the Sierra Leonean criminal justice system is key to effectively ending impunity in Sierra Leone.

A major concern expressed by Amnesty International was that, bearing in mind the initial request of the government of Sierra Leone, the focus for prosecution would be only one party to the conflict, the RUF. Amnesty International insisted that no single individual or party to the conflict should be singled out for prosecution to the exclusion of others; the prosecution policy should be non-selective, balanced and independent. It also urged that trials should focus on those most responsible for crimes under international law since the conflict began in 1991, whether they were members of the RUF, the Armed Forces Revolutionary Council (AFRC), which came to power following a military coup in 1997, or the Civil Defence Forces (CDF), pro-government civilian militia, and regardless of any individual's current political position or allegiance.

³ UN document S/2000/786, annex

⁴ See *Sierra Leone: Ending impunity - an opportunity not to be missed*, 26 July 2000 (AI Index: AFR 51/60/00).

3. The Special Court for Sierra Leone

On 14 August 2000 the UN Security Council decided to request the UN Secretary-General to negotiate an agreement with the government of Sierra Leone to create an independent special court to try crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone.⁵ Amnesty International welcomed this decision as a major step towards ending impunity, with the possibility of achieving justice for the many thousands of victims who have suffered human rights abuses, and also ending the conflict and promoting peace and reconciliation in Sierra Leone.

The resolution requested the UN Secretary-General to submit a report and recommendations to the Security Council on his consultations and negotiations with the Sierra Leone government on the establishment of the Special Court. Questions to be addressed included the temporal jurisdiction of the court, an appeal process and the amount of voluntary contributions of funds, equipment and services to the court.

On 4 October 2000 the Report of the Secretary-General on the establishment of a Special Court for Sierra Leone was presented to the Security Council.⁶ Attached to the report were a draft agreement between the UN and the Sierra Leone government and a draft Statute for the court. Discussions and negotiations on the Special Court have since continued.

3.1. Making the Special Court effective, fair and viable

The Security Council has taken an important step towards ending impunity by creating a judicial mechanism to try some of those alleged to have committed crimes against humanity and war crimes and by rejecting the amnesty of the Lomé peace agreement. In November 2000 Amnesty International made detailed recommendations to ensure that the Special Court for Sierra Leone has an effective mandate, an independent prosecution policy, fair procedures and secure funding.⁷ It has since continued to urge the UN Security Council and Secretary-General to ensure that the court to be established is effective, fair and viable.

⁵ Resolution 1315 (2000). Although the Security Council Resolution classified crimes against humanity as serious violations of international humanitarian law, which applies to situations of armed conflict, crimes against humanity can also be committed in peacetime without any link to armed conflict.

⁶ UN document S/2000/915

⁷ See *Sierra Leone: Recommendations on the draft Statute of the Special Court*, 14 November 2000 (AI Index: AFR 51/83/00).

Some of the organization's concerns have been addressed. For example, the definition of the crime of recruiting children under the age of 15 years has been amended to include voluntary recruitment as well as forced recruitment. Amnesty International welcomes this amendment which reflects the standard of international law recognized in the Rome Statute of the International Criminal Court.³

There are, however, several concerns which have not been adequately addressed. They include: inadequacies in legal protections to ensure fair trials; inadequate provisions to protect the rights of victims and witnesses; and an approach to defining the crimes under the jurisdiction of the Special Court which does not reflect the standard of international law recognized in the Rome Statute.

The establishment of the Special Court necessarily requires time, both to resolve complex issues relating to its Statute and also to provide its material infrastructure. Constitutional concerns have been raised about the methods of establishing the Special Court. No adequate examination of these concerns or authoritative decision have been carried out indicating that these constitutional objections are without merits. The uncertainties which continue to surround the Special Court, particularly its funding and its relationship with the TRC (see below), have caused major delays and detract from what should be an unwavering commitment by the international community to establish and make it effective.

An agreement in principle has been reached between the UN Secretary-General, the Security Council and the Sierra Leone government on the text of the Statute and the agreement between the UN and the Sierra Leone government. Signature of the agreement, however, awaits a determination by the UN that the financial mechanism envisaged for the Special Court is viable.

3.2. Funding

UN Security Council Resolution 1315 (2000) referred to voluntary contributions of funds, equipment and services to the Special Court. This implied that the intention of the Security Council was that most, if not all, operational costs of the Special Court be met by UN member states in the form of voluntary contributions, given the lack of resources available to the Sierra Leone government. The UN Secretary-General, however, concluded in his subsequent report that a special court based on voluntary contributions would be "neither

³ See *Sierra Leone: the statute of the Special Court must make all recruitment of children under 15 a crime*, 20 October 2000 (AI Index: AFR 51/81 00).

viable nor sustainable” and that the only realistic solution would be financing the court through assessed contributions.

The investigation and prosecution of crimes under international law is a responsibility which must be shouldered by the international community as a whole. Amnesty International believes that funding the Special Court by voluntary contributions will undermine the court’s effectiveness by creating uncertainty, which will discourage applications from experienced criminal justice experts to participate in the court. It may also undermine its independence; funding may be conditional -- or perceived to be conditional -- on performance which is satisfactory to a few large donors. Moreover, a failure to raise the required funding will severely limit the Special Court’s ability to bring more than a handful of those responsible to justice.

The failure since August 2000 to provide a proper funding mechanism and sufficient funds for the Special Court risks jeopardizing not only the establishment of an effective and viable court but also its very existence. In an exchange of correspondence between the UN Security Council and the Secretary-General in late December 2000 and January 2001, funding of the Special Court featured prominently.⁹ The Secretary-General repeated his concerns and cautioned against establishment of the court unless there were commitments to provide sufficient funds to establish it and ensure its functioning for a period of three years, in his view “the minimum time required for the investigation, prosecution and trial of a very limited number of accused”.

Attempts to resolve this divergence resulted in an acceptance by the UN Security Council that proceeding with the Special Court would depend on obtaining funds to finance its establishment and its first 12 months of operation as well as commitments to finance a further two years.

This formula has encountered obstacles. On 23 March 2001 the UN Secretary-General launched an appeal to UN member states for commitments to contribute to the Special Court, giving a deadline of 23 May 2001. If sufficient commitments were not forthcoming, the UN Secretary-General made it clear that the question of funding should go back to the Security Council to explore alternatives.

The UN Commission on Human Rights in April 2001 strongly endorsed moves taken to end impunity in Sierra Leone, including the establishment of the Special Court. In

⁹ UN documents: S/2000/1234, letter dated 22 December 2000 from the President of the Security Council addressed to the Secretary-General; S/2001/40, letter dated 12 January 2001 from the Secretary-General addressed to the President of the Security Council; S/2001/95, letter dated 31 January 2001 from the President of the Security Council addressed to the Secretary-General

Resolution 2001/20, adopted by consensus on 20 April 2001, the Commission welcomed the draft agreement between the Secretary-General and the Sierra Leone government and the appeal of the UN Secretary-General for contributions and pledges, and decided: "(c) To request the international community to support the Secretary-General's appeal for funds, personnel, equipment and services for the establishment and maintenance of the Special Court [...]"¹⁰

The response to the UN Secretary-General's appeal for funds, however, failed even to approach the costs of the Special Court over a period of three years as estimated by the Office of Legal Affairs at the UN Secretariat: US \$114 million, including US \$30 million for establishing the court and its first year of operation. Some states reportedly rejected the estimates and called for a revision and drastic reduction in estimated costs. A group of interested states has been formed and the Office of Legal Affairs has prepared an alternative, substantially reduced, budget. The office currently estimates that the Special Court would require about US \$57 million in voluntary funding for the first three years, with US \$16.8 million for the first year.

Amnesty International is concerned that greatly reducing the budget of the Special Court may compromise its operation and diminish its role in contributing towards an end to impunity. For example, it is now proposed that the Special Court have only one trial chamber rather than two, as originally planned. It has been envisaged that only a small number of alleged perpetrators of human rights abuses will be brought before the court and a reduced budget will inevitably reduce that number even further. If this is the case, it may be difficult to ensure a balance in the selection of cases which can be effectively investigated and prosecuted, leading to the appearance of partiality. Such an outcome would have an adverse effect on the perception of independence and impartiality of the court and therefore undermine its role in ending impunity and contributing to reconciliation and lasting peace. This result will be even more unfortunate if sufficient resources are not devoted to investigation and prosecution at the national level.

Any revisions to the budget of the Special Court must not compromise the standards by which it will operate. The Special Court must conform to international standards of fair trial in all respects, as previously detailed by Amnesty International.¹¹

¹⁰ E.CN.4/RES/2001/20, paragraph 11

¹¹ See *Sierra Leone: Recommendations on the draft Statute of the Special Court*, 14 November 2000 (AI Index: AFR 51/83/00).

As at the beginning of July 2001, there were pledges for only US \$15 million for the first year of operation of the court and approximately US \$20.4 million for the second and third years. Nevertheless, the UN Secretary-General, in a letter to the Security Council on 12 July 2001, stated that the amount of contributions was sufficient to commence the establishment and operation of the Special Court and announced his intention to ask governments which had made pledges to deposit their contributions for the first year in a Trust Fund within 30 days. He also suggested that the conclusion of the agreement between the Sierra Leone government and the UN on the establishment of the Special Court, as well as a mission to Freetown to assess personnel and service needs, would take place once the funds were available in the Trust Fund. The uncertainty still remaining in relation to shortfalls of funds and the formula of voluntary contributions is such that the UN Secretary-General reserved the right to revert to the Security Council "at any time in the course of the operation of the Special Court and ask it to reconsider alternate means of financing the Court".

Recommendations

- the Special Court for Sierra Leone must receive sufficient and sustained funding to initiate and complete trials of those most responsible for the gravest human rights abuses committed since 1991;
- in view of the difficulties in obtaining adequate commitments from member states to finance the court, the UN Security Council should reconsider its financial mechanism and, in particular, consider funding from assessed contributions.

3.3. Temporal jurisdiction

High among Amnesty International's concerns is the temporal jurisdiction of the Special Court. The draft Statute specifies that the period over which it will exercise jurisdiction begins on 30 November 1996, the date of a previous peace agreement between the Sierra Leone government and the RUF which subsequently collapsed.

The conflict in Sierra Leone began on 23 March 1991. During the first five years of the conflict serious human rights abuses -- including extrajudicial executions, deliberate and arbitrary killings, and torture including rape and mutilations -- were committed by government forces and the RUF. Although the jurisdiction of the Special Court needs to be limited if it is not to be overburdened - leading to an unacceptable delay in trials - it is nevertheless essential that prosecutions are brought whenever there is strong evidence that war crimes and crimes against humanity were committed. In addition, the temporal jurisdiction of the court must be such that all those - of whatever political group or

allegiance - who have committed or encouraged war crimes and crimes against humanity since the conflict began in 1991 face the prospect of prosecution.

Although it has been contended in the report of the UN Secretary-General that a temporal jurisdiction reaching back to 1991 would create a heavy burden for the prosecution and the court, the Prosecutor will have the discretion to prosecute those who bear the greatest responsibility for human rights crimes and will therefore be able to assess which are the most appropriate cases to bring before the court during the entire period of the conflict. The Statute of the Special Court must not result in a situation where the perpetrators of the most serious crimes under international law, committed at any time during the conflict, are able to escape prosecution on technicalities.

The current position will inevitably lead to continued impunity for many of those who committed serious crimes under international law during the first five years of the conflict. There will be no effective means of bringing them to justice under Sierra Leonean law because of the amnesty granted in the Lomé peace agreement. The draft Statute of the Special Court specifically says that: "[a]n amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution". The legal effect of the amnesty granted in the Lomé peace agreement is therefore not recognized by the Special Court. However, by not requiring Sierra Leone to end the unlawful amnesty for war crimes and crimes against humanity with regard to its own national courts, the international community is guaranteeing impunity for these crimes.

Given the amnesty and the limited temporal jurisdiction of the Special Court, there is no clarity as to how impunity for abuses committed before 30 November 1996 will be addressed, although there appears to be an understanding by many within Sierra Leone that the TRC will study these cases. As noted above, however, Amnesty International believes that the TRC cannot end impunity.

Amnesty International has repeatedly raised its concerns with both the UN Secretary-General and the Security Council about the temporal jurisdiction of the Special Court and urged them to reconsider amending the draft Statute so that crimes under international law committed since 23 March 1991 will be subject to its jurisdiction.

Recommendations

- the starting date of the Special Court's temporal jurisdiction should be amended to 23 March 1991, so that those most responsible for crimes under international law throughout the period of the internal armed conflict can be prosecuted;

- the international community should require Sierra Leone to end the unlawful amnesty for war crimes and crimes against humanity.

3.4. An independent prosecution policy

Amnesty International has repeatedly stressed that there should be a balanced and independent prosecution policy to ensure that alleged perpetrators of human rights abuses are identified for prosecution regardless of political position or allegiance, either past or present.

UN Security Council Resolution 1315 (2000) recommended that the Special Court have personal jurisdiction over “persons who bear the greatest responsibility for the commission of crimes referred to in paragraph 2, including those leaders who in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone”.

The draft Statute contained in the Secretary-General’s report, however, used a slightly different wording: “The Special Court shall have the power to prosecute persons most responsible for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996”. This made no reference to the implications to the peace process of the crimes committed. In its letter of 22 December 2000 to the UN Secretary-General, however, the Security Council proposed reverting to the wording of Resolution 1315 (2000): “The Special Court shall ... have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process of Sierra Leone”.

There are concerns that amending the draft Statute in this way may lead to an interpretation which results in only the highest military and political leaders being prosecuted, and not lower-ranking individuals who may have been directly responsible for crimes against humanity or war crimes. It is vital that the Prosecutor of the Special Court has full independence to prosecute any person who appears to bear responsibility for such crimes, regardless of military rank or political position. It is particularly important for the victims of the most serious crimes to see those who actually attacked them and their families brought to justice, not only those who may have had a leadership role during the internal armed conflict.

In addition, the phrase “including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra

Leone" added by the Security Council would restrict the prosecutor's independence and lead to prosecutions primarily of members of certain groups.

This view was endorsed by the Secretary-General who specified explicitly that "commission of any of the statutory crimes without necessarily threatening the establishment and implementation of the peace process would not detract from the international criminal responsibility otherwise entailed for the accused". The Security Council subsequently confirmed that the addition of this phrase was intended as guidance to the Prosecutor in determining the prosecution policy of the court.

Amnesty International believes that the inclusion of this phrase adds nothing to the definition of the crimes over which the Special Court will have jurisdiction. However, in drawing particular attention to the political implications of crimes by certain individuals, this phrase will undermine the independence and impartiality of the Prosecutor by suggesting that the priority for choosing which crimes to investigate and prosecute could be based on political, and not legal, considerations.

Amnesty International accepts that, if there are effective alternatives to bring persons responsible to justice, then the Special Court should not have a large number of cases and should only try a relatively small number of people. However, it is also essential that the Prosecutor is able to decide which individuals bear the greatest responsibility based also on "a sense of the gravity, seriousness or massive scale of the crime", as explained in the Secretary-General's initial report on the establishment of the Special Court. Investigations and prosecutions must be undertaken so that crimes committed by all parties to the conflict are addressed appropriately and given equal weight and there must be no politically motivated prosecutions.

The fact that the Special Court will try only a limited number of people makes it all the more vital that the Security Council and the international community as a whole ensure that the Special Court will be one part of a broader program to rebuild Sierra Leone's criminal justice system. The resources available to the authorities in Sierra Leone are extremely limited and this kind of support is essential to ensure that all those responsible for such crimes at all levels can be brought to justice in fair trials, without recourse to the death penalty (see below). It is unacceptable for the international community to deny justice to thousands of victims and their families and, instead, to investigate and prosecute only a few leaders.

Recommendation

- the independence of the Prosecutor must be rigorously guarded and the prosecution policy must be based strictly on criminal responsibility for those offences falling under the jurisdiction of the Special Court, without any possibility that political considerations could influence decisions.

3.5. The role of the Truth and Reconciliation Commission (TRC)

In May 2000, with the collapse of implementation of the peace agreement and resumption of hostilities, progress towards establishing the TRC stalled. In November 2000 a national workshop, organized by UNAMSIL and the Office of the UN High Commissioner for Human Rights (UNHCHR), together with the Sierra Leone government and non-governmental human rights organizations, was held in Freetown to explore ways in which to proceed with the establishment of the TRC. In a final communiqué, the workshop acknowledged that the establishment of the TRC would have far-reaching implications for the peace process and urged that preparations for the TRC go ahead, including identification of Commissioners and activities to promote public awareness of the TRC.

Another factor, however, had by then entered the equation: the decision by the UN Security Council to establish the Special Court for Sierra Leone. The workshop in Freetown called for further consideration of the relationship between the TRC and the Special Court. In his letter of 12 January 2001 to the UN Security Council, the UN Secretary-General said that "care must be taken to ensure that the Special Court for Sierra Leone and the Truth and Reconciliation Commission will operate in a complementary and mutually supportive manner, fully respectful of their distinct but related functions".

In his ninth report on UNAMSIL of 13 March 2001, the UN Secretary-General reported that the relationship between the TRC and the Special Court would be discussed at a round-table meeting involving UNAMSIL, the Office of Legal Affairs of the UN Secretariat, the Office of the UNHCHR, the Sierra Leone government, international experts and members of civil society.¹² Among issues to be discussed and clarified were the collection and use of evidence, witness protection and public awareness campaigns. Although a seminar on operational and managerial aspects of the TRC, which took place in Freetown from 29 May to 1 June 2001, included some consideration of the relationship and cooperation between the Special Court and the TRC, several fundamental issues have yet to be resolved.

¹² UN document S/2001/228

These issues include: the timing and sequencing of both institutions, including whether they will operate concurrently or consecutively; sharing of information between the Special Court and the TRC; the rights of witnesses, including the right to silence if the answer to the question would incriminate them; the handling by the TRC of information which could potentially be incriminatory; the implication for the work of the Special Court if individual perpetrators for human rights abuses are named by the TRC; contact by the TRC with individuals under indictment by the Special Court; and the implications of the different temporal jurisdictions of the Special Court (from 30 November 1996, currently open-ended) and the TRC (23 March 1991 to 7 July 1999).

Amnesty International believes that clarification of the relationship between the two institutions should include provisions for the TRC to recommend that the Special Court carry out investigations into specific incidents or allegations against specific individuals. This would constitute an important contribution towards efforts to address impunity, one of the stated objects of the TRC.

It has become clear that these matters need to be resolved with some urgency. For the establishment of the TRC to proceed within a climate of mutual trust and understanding, for its purpose and functioning to be fully understood, and for those who may be expected to appear before the TRC to cooperate fully, some clarity has to be established. Lack of understanding of how the Special Court and the TRC will relate to each other could jeopardize the establishment and effectiveness of both as well as progress towards peace and reconciliation.

Recommendations

- clarification of the relationship between the Special Court for Sierra Leone and the TRC should be established with a minimum of delay so that their respective roles become clear; the government of Sierra Leone, the Office of Legal Affairs at the UN Secretariat and the Office of the UN High Commissioner for Human Rights should ensure that this is accorded priority;
- this clarification should include provisions for the TRC to recommend that the Special Court carry out investigations into specific incidents or allegations against specific individuals;
- the instruments establishing the Special Court and the TRC should be amended to incorporate clarification of the relationship between the two institutions and to guarantee their independence;

- inquiries should be conducted consistently with international standards such as the 1995 Guidelines for the Conduct of UN Inquiries into Allegations of Massacres and the 1991 UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- the government of Sierra Leone and the international community should acknowledge that, while the TRC may be able to make an important contribution to establishing the truth about human rights abuses and understanding the nature of the conflict in Sierra Leone, it should not be a substitute for prosecuting those responsible for serious crimes under international law.

3.6. Crimes committed by peace-keeping personnel

In its response of 22 December 2000 to the UN Secretary-General's report on the establishment of the Special Court, the Security Council proposed amending the draft Statute of the Special Court to include jurisdiction over crimes committed by peace-keeping or related personnel, where the state which had sent the peace-keeping personnel was unwilling or genuinely unable to carry out an investigation or prosecution. This recognized that the primary responsibility for bringing to justice peace-keeping forces alleged to committed violations of international law lies with the sending state. The Special Court would have jurisdiction over such crimes only if the Security Council considered that the member state was not discharging that responsibility.

Amnesty International welcomed the inclusion by the Security Council of this jurisdiction. During the conflict in Sierra Leone, there have been reports of serious crimes under international law committed by forces of the Economic Community of West African (ECOWAS) Ceasefire Monitoring Group, known as ECOMOG (see chapter 6 below).

There are concerns, however, that the procedures to be followed in the event of such prosecutions as proposed by the Security Council may deter or prevent prosecutions by the Special Court. On 22 December the Security Council proposed that the Special Court may exercise jurisdiction "if authorized by the Security Council on the proposal of any State".

The UN Secretary-General, in his response to the Security Council of 12 January 2001, noted that this procedure would fall short of inducing the unwilling State to surrender an accused person, with the result that a State which is unwilling to prosecute a person in its own courts would in all likelihood be unwilling to surrender that person to the jurisdiction of the Special Court. In order to give full effect to the amended draft Statute and "to avoid politicization of a legal process by allowing third States to intervene and determine whether the sending State was unable or unwilling to investigate and prosecute", the Secretary-General proposed an amended wording to the effect that the President of the

Special Court would notify the Security Council and seek its intervention with the State in question to induce it to investigate and prosecute or to surrender the accused to the jurisdiction of the Special Court.

This would mandate the President of the Special Court, rather than any individual state, to report to the Security Council where the sending state was unwilling or genuinely unable to investigate and prosecute alleged crimes. Amnesty International considers that such a decision to report to the Security Council is best made by a judicial officer, such as the President of the Special Court, who would normally be well informed about such allegations and the factual and judicial context.

If it depends on individual states to report to the UN Security Council, there is a risk, as noted by the Secretary-General, that political considerations could influence a decision to make such an approach. Amnesty International believes that, in practice, it would be unlikely that any individual state would propose to the Security Council that it authorizes the Special Court to exercise jurisdiction where the sending state was unwilling or genuinely unable to carry out an investigation or prosecution. A procedure requiring an initiative from an individual state, rather than the President of the Special Court, could therefore result in impunity for perpetrators of serious crimes under international law. The formulation proposed by the UN Secretary-General has not, however, been accepted by the Security Council.

In order for the Special Court to fulfil effectively its role of bringing to justice those who have committed serious crimes under international law, it must be able to operate without obstructions stemming from either political influence or unnecessarily complex administrative procedures.

Recommendation

- in order to ensure that the Special Court is able, in practice, to exercise jurisdiction over crimes committed by peace-keeping personnel where the sending state is unwilling or genuinely unable to investigate and prosecute, the draft Statute of the Special Court should be amended as proposed by the UN Secretary-General. The President of the Special Court should be able to make a direct approach to the Security Council and seek its intervention with the state in question to induce it to investigate and prosecute or to surrender the accused to the jurisdiction of the Special Court. States, as with the International Criminal Tribunal for Rwanda and the International Tribunal for Former Yugoslavia, should be required to act or cooperate.

4. Rebuilding Sierra Leone's legal and judicial systems

The Special Court for Sierra Leone will be able to prosecute only a limited number of those who have committed war crimes and crimes against humanity. In order to end impunity there is a need to ensure that all abuses are investigated and accountability established. It remains important therefore that the UN and the wider international community provide assistance to the Sierra Leone government to deal in the long term with the investigation and prosecution of crimes during the conflict before and after the signing of the peace agreement in July 1999.

The quality of justice dispensed to those most responsible for human rights abuses, including crimes under international law, should not be significantly different to that offered to others who may be accused before national courts of committing the same crimes. This goal requires two steps. First, the unlawful amnesty for war crimes and crimes against humanity must be ended immediately. Second, the international community must ensure an effective and independent national judicial system with adequate resources to be able to try alleged perpetrators of human rights abuses, regardless of the perpetrators' political allegiance now or in the past. They should be tried fairly, within a reasonable period of time and without recourse to the death penalty. The international standards against which the fairness of a trial is judged are found in many different international instruments and include the following rights: to be immediately informed of the reasons for arrest or detention; to be brought promptly before a judge or other judicial officer; to be able to challenge the lawfulness of detention; to be presumed innocent until proved guilty; to be tried by a competent, independent and impartial tribunal; to have adequate time and facilities to prepare a defence; to be able to appeal; and to be detained in humane conditions.

The protracted conflict in Sierra Leone has had an extremely adverse effect on the legal and judicial systems. The justice system all but collapsed and institutions for the administration of justice, both civil and criminal, became barely functional. Much of the physical infrastructure of courts was destroyed during the conflict. While courts in Freetown, Bo and Kenema are functioning, and magistrates courts in Bo, Kenema, Lungi and Port Loko are also reported to be now operating, access to the judicial process remains severely limited. Judicial institutions have also faced a severe shortage of personnel with appropriate training.¹³

¹³ See *Sierra Leone: Ending impunity - an opportunity not to be missed*, 26 July 2000 (AI Index: AFR 51/60/01).

Following the return to civilian rule in 1996, initiatives to rebuild and strengthen the national judicial system were planned, to be financed notably by the World Bank and the United Kingdom Department for International Development (DFID). The resumption of the conflict following the military coup in 1997, however, both thwarted progress and compounded the problems.

The UN Commission on Human Rights in Resolution 2001/20 emphasized the need for strengthening the judicial system. It reiterated its call to the Sierra Leone government to investigate reports of human rights violations and abuses and to end impunity and decided: "(b) To request the international community to participate in the strengthening of the courts and judicial system, in particular the juvenile justice system, of Sierra Leone, as well as in the creation of the National Human Rights Commission as soon as possible".¹⁴

The assistance needed includes: improvement to the remuneration and conditions of service of the judiciary in order to encourage competent and experienced legal practitioners to take up judicial appointments; the provision of appropriate administrative and information technology support systems in order to facilitate efficient management of cases; the provision of basic law libraries with national statutes, collections of decisions of the higher courts, regional and international human rights instruments ratified by Sierra Leone, and basic legal text books; and extensive refurbishment and equipping of court buildings.

Programs for rebuilding or renovating the physical infrastructure of the judicial system, for example the law courts building in Freetown and magistrates courts, have now begun. DFID is also contributing towards the provision of information technology and systematization and computerization of legal documents, such as legal texts and court records.

There has, however, as yet been little improvement in either the number of judicial personnel or their conditions of employment, and a high level of vacancies persists. Professional training for law enforcement personnel is critical for the re-establishment of the judicial system. Training of judges and magistrates is recognized as a priority within the Commonwealth and is a component of the DFID program of assistance. Any assistance offered to the national judiciary should include judges and other legal personnel, especially from countries of the Commonwealth.

The UNAMSIL human rights section has a mandate to promote respect and protection of human rights. Included in this is the provision of technical assistance to the

¹⁴ E/CN.4/RES/2001/20, paragraph 11

national judicial system. It has identified several quick-impact or short-term projects which could make an important contribution to the national and legal system, such as the establishment of a library of law books, including in international human rights law, for use by both law students and legal practitioners. Speedy implementation of such projects, however, has been hindered by the fact that funds have to be sought by the human rights section for each project.

Recommendations

- the international community should give priority to providing resources for the re-establishment of the Sierra Leone legal and judicial systems so that all those responsible for serious crimes under international and domestic law can be prosecuted, while respecting fair trial provisions and without recourse to the death penalty;
- for a competent, impartial and independent judiciary to be established, international assistance to the Sierra Leone government should include resources for appropriate human rights training of prosecutors, judges and other officials. Local non-governmental organizations should play a key role at all stages of the training program.¹⁵

5. Political detention without charge or trial

Although it is inevitable that it will take some time to resolve outstanding issues surrounding the Special Court - not least its funding - the urgency of bringing to justice those alleged to be responsible for war crimes and crimes against humanity must not be forgotten.

Adding to this sense of urgency is the fact that some 200 political detainees, including some women, are currently being held without charge or trial. Of these, more than 100 are believed to be members of the RUF, including its leader Foday Sankoh and other leading RUF figures. The others have been described as belonging to other fighting forces, understood to be the AFRC or the former Sierra Leone Army, known as ex-SLA. The detainees are held at the Central Prison, Pademba Road, in Freetown with the exception of Foday Sankoh who is held at an undisclosed location for security reasons.

¹⁵ See *A 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials*, February 1998 (AI Index ACT 30/01/98).

These detainees are held under the provisions of the Public Emergency Regulations, 1999 (Public Notice No.11 of 1999, 24 August 1999), which allow for indefinite detention without charge or trial. First brought into effect in March 1998 after the government of President Ahmad Tejan Kabbah was restored to power by ECOMOG forces, and repeatedly renewed by Parliament, the emergency regulations state that:

3. *The President may, if in his opinion it is necessary, for the purpose of maintaining and securing peace, order and good government in Sierra Leone, make an Order-*
 - (a) *directing that any person be detained or continues to be detained and so long as such an Order is in force in respect of any person, that person shall be liable to be detained in such place and under such conditions as the President may from time to time determine and shall, while so detained, be deemed to be in legal custody.*

Several hundred members of the RUF or other perceived opponents were arrested in May 2000 at the time of the crisis precipitated by the capture of UNAMSIL troops by the RUF. Some, fearing reprisals by the CDF, gave themselves up for their own protection. On 8 June 2000 the government published the Public Emergency (Detention) Order, 2000, which listed the names of 121 detainees held under emergency regulations. Although at least 200 detainees were released from Pademba Road prison and the prison in Kenema, Eastern Province, in August 2000, almost 300 remained in detention at the end of 2000. Thirteen children among those detained were released on 2 February 2001 following interventions by the UN Children's Fund (UNICEF) and the UNAMSIL human rights section.

Although under the emergency regulations an official detention order must be issued to authorize detention under this legislation, no other detention order is known to have been issued since 8 June 2000.

By allowing indefinite detention without charge or trial, the Public Emergency Regulations, 1999, deny the fundamental human rights of detainees. These rights include: to be immediately informed of the reasons for arrest or detention; to be brought promptly before a judge or other judicial officer; to challenge the lawfulness of detention; and to be tried within a reasonable time. These rights are set out in Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) as well as in Article 7 of the African Charter on Human and People's Rights, both of which Sierra Leone has ratified. None of the detainees is known to have been informed of their legal status.

A further serious concern is that those held under the emergency regulations have been denied access to both legal counsel and members of their families throughout the period of their detention. Although particular security concerns and the threat of renewed conflict continue in Freetown and other parts of the country, this cannot justify the prolonged and continuing denial of access to lawyers and family members. International standards provide that restrictions and delays in granting detainees access to a lawyer are permitted only in very exceptional circumstances and for very short periods of time. Principle 15 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that detainees should not be denied access to counsel, in any circumstances, "for more than a matter of days".

Most of those currently detained under the emergency regulations were arrested in May 2000 and have therefore now been held without charge or trial for more than 15 months. It appears that in most cases there has been no official investigation into the reasons for the detainees' arrest and detention and no process to review their continuing detention. Amnesty International urged that there be official investigations into the cases of those held under emergency regulations in order to determine whether there is sufficient evidence of a criminal offence in order to charge a detainee and bring them to trial without further lengthy delay. All detainees should be officially informed of their current legal status.

Amnesty International is aware that some of those detained are accused of criminal offences, including human rights abuses such as killings, mutilations, rape and abduction, committed during Sierra Leone's internal armed conflict. These crimes would fall under the jurisdiction of the Special Court. Amnesty International insists that all those alleged to have committed human rights abuses be brought to justice with all the necessary safeguards for a fair trial and has encouraged both the early establishment of the Special Court and international support and assistance for rebuilding and strengthening the national judicial system.

In early June 2001, however, it was reported that a committee had been formed to consider the cases of political detainees with a view to release. Concerns have been expressed by sources in Sierra Leone about the lack of transparency of this process, including the criteria on the basis of which releases will be considered. On 22 June 2001 the Attorney General and Minister of Justice said that the government was looking at the possibility of releasing some detained RUF members. It was reported that the government was reviewing cases in order to decide which detainees could safely be released but that this would not include those alleged to have committed serious crimes. As at mid-August, at least 50 detainees were reported to have been released. Many of them were RUF members and included some senior RUF representatives such as Paolo Bangura and Daniel Kallon. In mid-August, the RUF maintained its call for the release of another 121 remaining RUF

detainees. These calls intensified as the RUF argued that progress towards disarming and demobilizing and the release of child combatants held by the RUF were an indication of its commitment to the peace process.

Amnesty International raised its concerns in respect of this group of detainees with the Attorney General and Minister of Justice during a visit by Amnesty International delegates in April 2001 and also subsequently in letters of 25 May 2001 and 28 June 2001 but at the time of writing had not received a response.

Recommendations

- the provisions relating to fair trial of the International Covenant on Civil and Political Rights, the African Charter on Human and People's Rights and other relevant instruments which Sierra Leone has ratified must be fully implemented. Those provisions include the right of all detainees to have access to lawyers and members of their families and to be officially informed of their legal status;
- there should be official investigations into the cases of all those held under emergency regulations to determine whether there is sufficient evidence of a criminal offence in order to charge the detainees and bring them to trial without further lengthy delay; if sufficient evidence against any detainee does not exist, the detainee should be released unconditionally.

5.1. Conditions of detention and deaths in custody

All detainees should be held in conditions which conform to international standards for the protection of the human rights of prisoners, such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners. There are serious concerns that prison conditions in Sierra Leone fall well below these standards.

At least 11 of the detainees held without charge or trial under emergency regulations have died in Pademba Road prison since October 2000, most of them since the beginning of 2001. The number of deaths in custody within a relatively short period has raised serious concerns about conditions in the prison, the adequacy of medical care and the physical well-being of all prisoners and detainees.

Governments have an obligation to provide quality medical care to people in custody, as they cannot readily obtain such care for themselves. Principle 9 of the UN Basic Principles for the Treatment of Prisoners provides that detainees should be given access to

the health services available in the country without discrimination on the grounds of their legal situation. However, it appears that no adequate medical care is available to detainees in Pademba Road prison, in particular when they are in need of specialist medical attention. The presence of only one doctor for a large prison population raises questions about the capacity of prison authorities to protect effectively the health of people in their custody and to respond promptly to the number of requests by detainees to be given access to a doctor. Outstanding requests by the political detainees to see a doctor were reported to be around 60 in late July 2001.

On 20 July 2001, Solomon Y.B. Rogers, a 69-year-old senior RUF representative, died in Pademba Road prison where he had been detained since May 2000. A diabetic patient, he was reportedly ill and suffering from palpitations, hypertension and swollen feet. In the days preceding his death he had been provided with medical care by the prison doctor, though there are concerns the care was not adequate and Solomon Rogers should have been given access to specialist medical attention. It was only when another prisoner, who had seen his health worsen, called for help that he was transferred to the prison infirmary. He died hours later.

Though Amnesty International acknowledges the responsibility of prison authorities to maintain discipline and order in the prison, the organization is concerned that in some cases, apparently on security grounds, detainees have not been allowed out of the cells for more than a week. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) requires that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The UN Human Rights Committee, which monitors implementation of the ICCPR, has said that states are obliged to provide all detainees and prisoners with services that will satisfy their essential needs, including access to natural light, recreation and physical exercise. According to Article 21 of the Standard Minimum Rules for the Treatment of Prisoners, "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits".

In its letters of 25 May 2001 and 28 June 2001 to the Attorney General and Minister of Justice, Amnesty International expressed concern about the high number of reported deaths and requested urgent clarification of the number and identity of those who had died in Pademba Road prison since May 2000, when the majority of the detainees were arrested, and the exact circumstances of the deaths. To date, Amnesty International has not received any response or comments by the government. Principle 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that: "Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance

shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case."

Although initially there was lack of clarity about the identity of those who had died and whether their families had been informed, it later emerged that families had been informed of the deaths by the prison authorities. No formal investigation into the circumstances of the deaths, however, is known to have taken place.

The International Committee of the Red Cross (ICRC) has since December 2000 been authorized by the government to visit places of detention, including Pademba Road prison; it began such visits in January 2001. The human rights section of UNAMSIL has also been able to visit Pademba Road prison, to assess conditions of prisoners and detainees. Visits by the UNAMSIL human rights section ceased after a security incident at the prison on 14 March 2001, but resumed in early June 2001. Sierra Leonean non-governmental human rights organizations, for example Prison Watch-Sierra Leone, have, however, been denied authorization to visit the prison.

Recommendations

- there should be an urgent inquiry into the exact circumstances of the deaths of detainees in the Central Prison, Pademba Road, in Freetown, to establish the precise causes of death, and the results of the inquiry should be made public;
- the inquiry should be conducted consistently with international standards such as the 1995 Guidelines for the Conduct of UN Inquiries into Allegations of Massacres and the 1991 UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- all detainees must receive prompt and adequate medical care and, if necessary, admittance to hospital, in accordance with international standards, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners;
- the international community should provide financial and material aid to ensure that conditions in prisons in Sierra Leone meet international standards and to assist in the training of prison officials in adhering to these standards;
- regular access to all places of detention by international and national non-governmental organizations, as well as the UNAMSIL human rights section, must be allowed;

- cases of human rights violations should continue to be monitored and recorded by the UNAMSIL human rights section with a view to the investigation and prosecution of those alleged to be responsible.

6. Ten years of crimes under international law by all sides

Since the conflict in Sierra Leone began in 1991, war crimes and crimes against humanity have been committed by all sides: RUF forces, subsequently joined by the AFRC, government forces, including the Sierra Leone Army and the CDF, as well as international peace-keeping forces.¹⁶ In order to address impunity and contribute to reconciliation and lasting peace in Sierra Leone, there cannot be a selective or partial approach to the atrocities that have been committed during the conflict.

RUF forces have been responsible for war crimes and crimes against humanity throughout a conflict during which civilians have borne the brunt of the violence. Thousands of men, women and children have been deliberately and arbitrarily killed or had their hands, arms or other limbs brutally cut off. Rape and other forms of sexual violence against girls and women have been widespread and systematic. Most of the 10,000 children -- both boys and girls -- estimated to have been associated with fighting forces in Sierra Leone have been abducted by the RUF and more than half of those have been used as combatants.

During the period of rule by the National Provisional Ruling Council (NPRC), headed by Captain Valentine Strasser, which came to power following a military coup in April 1992 and ruled until parliamentary and presidential elections and the return of a civilian government in March 1996, government forces were responsible for extrajudicial killings, torture and ill-treatment of captured or suspected rebel forces. They were also implicated in serious abuses against civilians, including deliberate amputations of hands, in the period leading up to the elections in February 1996. No one -- from either government or rebel forces -- alleged to have committed serious violations of international humanitarian law during the period of NPRC rule has yet been brought to justice.

¹⁶ See *Sierra Leone: The extrajudicial execution of suspected rebels and collaborators*, 29 April 1992 (AI Index: AFR 51/02/92), *Sierra Leone: Political detainees at the Central Prison, Pademba Road, Freetown*, 21 June 1993 (AI Index: AFR 51/04/93), *Sierra Leone: Human rights abuses in a war against civilians*, 13 September 1995 (AI Index: AFR 51/05/95), *Sierra Leone: Towards a future founded on human rights*, 26 September 1996 (AI Index: AFR 51/05/96), *Sierra Leone: A disastrous set-back for human rights*, 20 October 1997 (AI Index: AFR 51/05/97), and *Sierra Leone: 1998 - a year of atrocities against civilians*, November 1998 (AI Index: AFR 51/2/98).

The AFRC, headed by Johnny-Paul Koroma, overthrew the elected government of President Ahmad Tejan Kabbah in a military coup in May 1997 and ruled until February 1998 when it was removed from power by forces of the Economic Community of West African (ECOWAS) Ceasefire Monitoring Group (ECOMOG) and the government of President Kabbah was restored. Shortly after the military coup, the RUF joined forces with the AFRC. The rule of law collapsed completely. Hundreds of people were arbitrarily arrested and detained; many were tortured and ill-treated. Physical assault, amounting to torture or ill-treatment, of civilians by AFRC soldiers and RUF members was routine. There were also reports of extrajudicial executions of those suspected of opposing the AFRC. Victims of human rights violations included people associated with the government of President Kabbah, journalists, students and human rights activists.

Following the removal of the AFRC and RUF from power, their forces unleashed a campaign of terror against civilians which they called "Operation no living thing". War crimes and crimes against humanity reached unprecedented levels. Several thousand civilians were brutally killed or mutilated. Hundreds of others, including children, were abducted from their villages and forced to join their attackers as either combatants or labourers, in conditions amounting to cruel, inhuman or degrading treatment. Hundreds of abducted girls and women were forced into sexual slavery.

An incursion by rebel forces into Freetown in January 1999 brought to the capital the crimes which had been committed in the north and east of the country. Although it was impossible to ascertain the exact numbers of civilian deaths during the incursion, the UN body UNOMSIL (the predecessor of UNAMSIL) estimated that up to 5,000 people, at least 2,000 of them civilians, were killed. Medical authorities in Freetown later put the figure of those killed at over 6,000. Several hundred civilians, including children, were admitted to hospitals in Freetown after having their limbs cut off or suffering from other forms of mutilation. In February 1999 medical staff at hospitals in Freetown were reported to be treating some 500 victims of amputation and mutilation who required surgery. There were likely to be many other victims who did not reach medical help and who died from their injuries. Rape and other forms of sexual violence were systematic and widespread during the incursion. Women and girls were rounded up and gang-raped by rebel forces. Rebel forces abducted large numbers of civilians, including children, from Freetown. Some were selected for training as fighters, others used as porters to carry looted goods from Freetown to other parts of the country. Women and girls were used for sexual purposes. Some 4,000 children were reported missing after the rebel incursion. In the eastern part of Freetown, about 90 per cent of buildings were destroyed.

Victims and witnesses to the terrible violence in Freetown during January 1999 said that, while RUF combatants were involved, most of the perpetrators were members of the

AFRC. Following the Lomé peace agreement, the AFRC leader, Lieutenant-Colonel Johnny Paul Koroma, was named as chair of the Commission for the Consolidation of Peace, a body established by the peace agreement to oversee its implementation. He continues to hold the post.

ECOMOG forces, together with the CDF, also committed human rights violations, including war crimes, during the incursion by rebel forces into Freetown. There were reports of large numbers of extrajudicial executions by ECOMOG forces and the CDF of captured or suspected rebels, often after the most cursory interrogation and without any real attempt to establish whether the captive was guilty or innocent of any crime. In mid-January 1999 at least 10 Sierra Leonean staff of humanitarian aid organizations and the International Committee of the Red Cross (ICRC) were arrested and detained by ECOMOG forces. They were accused of cooperating with rebel forces although there was no evidence to substantiate these allegations. Most were reported to have been beaten. Aid organizations' communications equipment was also confiscated. Ill-treatment or torture, including by being beaten, whipped, tied extremely tightly and subjected to various forms of public humiliation, was common at ECOMOG and CDF checkpoints in Freetown.¹⁷

¹⁷ See *Sierra Leone: Recommendations to the international contact group on Sierra Leone*, New York, 19 April 1999, 19 April 1999 (AI Index: AFR 51/05/99), and *Amnesty International Report 2000* (AI Index: POL 10/01/00).

Amnesty International
International Secretariat
1 Easton Street
London WC1X 0DW
United Kingdom

**DETACH THIS SHEET FROM THE MAIN DOCUMENT
BEFORE COPYING OR DISTRIBUTING
FOR PUBLIC USE**

SIERRA LEONE

Renewed commitment needed to end impunity

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference.

This document forms part of the Sierra Leone action from September 2001 to February 2002 (see Action Planning Bulletin April 2001). Detailed recommended actions are given in the accompanying action circular (AI Index: AFR 51/008/2001) which is also being distributed to those listed below. A news release will also be produced for the publication of the document on 24 September.

Sections not participating in the action should aim to undertake as many of the following recommended actions as possible:

- **Press officers** are asked to generate publicity around the publication of this report, using the accompanying news release and external summary.
- **Home government and intergovernmental organization lobbyists**, particularly those in member states of the UN Security Council: Please see recommendations included in the action circular. Please ensure that relevant government and IGO officials receive a copy of the report.
- **Outreach coordinators** are asked to distribute the report and/or external summary widely to non-governmental organizations and those with an interest in Sierra Leone, West Africa or the concerns of this document, as well as interested members of the public.

DISTRIBUTION BY THE IS

This document has been sent direct by the IS to:

- Home government lobbyists and IGO coordinators in participating sections
- Legal network coordinators
- Campaign coordinators, outreach coordinators and press officers in participating sections
- Sierra Leone coordinators, WARAN coordinators and WARAN groups without coordinators
- AI EU Office and AI UN Offices in New York and Geneva
- All sections via the weekly mailing

