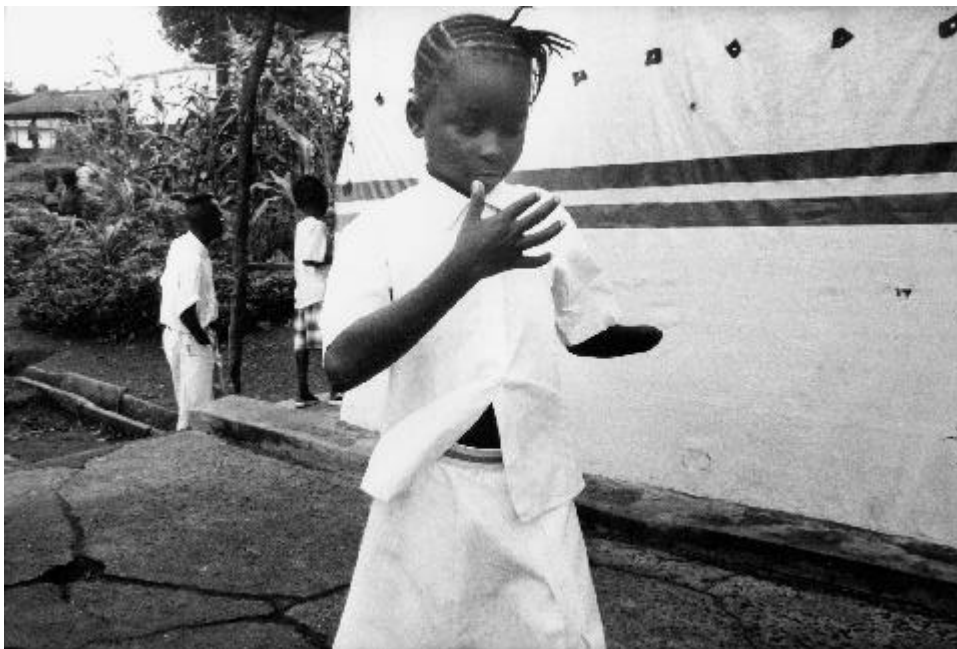


SIERRA LEONE

Ending impunity - an opportunity not to be missed

The crisis precipitated in May 2000 by the capture of United Nations (UN) peace-keeping forces by rebel forces in Sierra Leone, the subsequent resumption of hostilities and the arrest and detention of leading members of the armed opposition Revolutionary United Front (RUF) have forced a reconsideration of the peace agreement signed between the government of Sierra Leone and the RUF on 7 July 1999 in Lomé, Togo. The international community, in particular the UN, must seize this opportunity to deal effectively with impunity for the horrendous human rights abuses, committed by all parties to the internal armed conflict, which have occurred in Sierra Leone.

The UN Security Council is now debating a process and mechanism to bring those alleged to be responsible for human rights abuses to justice, following a request by the Sierra Leone government to the UN for assistance and guidance in establishing a special court or tribunal. Amnesty International is making a series of recommendations for achieving justice for the victims of human rights abuses in Sierra Leone, for ensuring that those who are brought to justice receive a fair trial in accordance with international standards, and for contributing towards the longer-term strengthening of the Sierra Leone judicial system to enable it to assume responsibility for bringing to justice perpetrators of human rights abuses.



Young girl in Freetown whose hand was amputated by rebel forces during the incursion in January 1999 ©Stuart Freedman

Context

The need to end impunity in Sierra Leone for perpetrators of human rights abuses is paramount and urgent if Sierra Leone is to enjoy peace and an environment where the fundamental human rights of all Sierra Leoneans are respected and protected. The continuation of human rights abuses against civilians after the peace agreement was signed and the increase in abuses since the resumption of hostilities in May 2000 underline this urgency. It is the responsibility of the international community as a whole to respond decisively to end impunity in a process which is credible, effective and meets international standards of fair trial, in which justice is done and seen to be done.

The Lomé peace agreement entrenched the impunity enjoyed by perpetrators of human rights abuses throughout Sierra Leone's eight-year conflict. By including an amnesty for all activities undertaken in pursuit of the conflict, the peace agreement granted impunity for some of the worst human rights abuses, including crimes against humanity and war crimes. The UN at the time added a disclaimer to the agreement that the amnesty would not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. No substance was, however, subsequently given to this disclaimer by the international community.

The peace to be forged by the agreement was undermined from the start because it failed to address the issue of establishing accountability for human rights abuses and bringing those responsible to justice. It was a peace agreement which failed to provide justice for the victims of human rights abuses. It also appeared to give a signal that human rights abuses would be condoned and that their perpetrators would not be held accountable. Since July 1999 human rights abuses against civilians, including deliberate and arbitrary killings, mutilations, rape and abductions have continued.



Victim of abduction by rebel forces, March 2000, Port Loko ©Amnesty International

Although the amnesty in the peace agreement does not apply to abuses committed after 7 July 1999, no steps have been taken to end impunity for these abuses.

The responsibility for bringing to justice perpetrators of human rights abuses in Sierra Leone lies primarily with the government of Sierra Leone. Serious obstacles, however, face the Sierra

Leone judicial system and these must be taken into account when considering what is the most effective and fair judicial process for bringing perpetrators of human rights abuses to justice.

An appropriate judicial mechanism with the necessary special legal expertise to try those alleged to be responsible for the widespread and grave violations of international human rights and humanitarian law committed during the last nine years must be established by the international community. The need to provide justice to the people of Sierra Leone as well as the fairness and effectiveness of the process must remain prime considerations.

The judicial process must exclude imposition of the death penalty, which remains on the statute book in Sierra Leone. Amnesty International is unconditionally opposed to the death penalty on the grounds that it is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which was ratified by Sierra Leone in 1996. The scale of human rights abuses committed in Sierra Leone has been horrendous and an argument used in favour of the death penalty is that it is justified retribution for particularly atrocious crimes. The use of the death penalty, however, perpetuates a cycle of violence, bitterness and revenge, instead of promoting reconciliation and respect for human rights.

Amnesty International believes that it is important that any judicial mechanism established to try those alleged to be responsible for human rights abuses, including crimes against humanity and war crimes, serves a dual purpose: firstly, to bring the perpetrators to justice in trials which meet international fair trial standards; and secondly, to contribute to the long-term goal of strengthening Sierra Leone's national capacity to try perpetrators of human rights abuses in its own courts.

Ideally, therefore, any judicial mechanism created should be rooted in the Sierra Leone legal and judicial system and ensure, as far as possible, the active involvement of and close cooperation with Sierra Leonean judicial, prosecution and police officials. Expertise to try crimes under international law is essential because trials for such crimes involve special requirements for the gathering and presentation of evidence to prove the specific elements of these crimes, which may include evidence regarding the scale and systematic nature of the crimes committed and individual responsibility based on chain of command.

For reasons described below, however, Amnesty International believes that the Sierra Leone judicial system is, at this stage, not in a position to try those alleged to be responsible for human rights abuses in trials which meet minimum international standards, without considerable international expert assistance.

Capacity of the Sierra Leone judicial system

Collapse of the judicial system

The protracted conflict in Sierra Leone, which began in 1991, has had a serious negative impact on the legal system as a whole. The justice system has collapsed and institutions for the administration of justice, both civil and criminal, are barely functional. Sierra Leone's national judicial institutions currently lack the necessary personnel with the appropriate training in international criminal law, financial support, equipment and the necessary legal tools to conduct trials of those accused of crimes under both national and international law. Sierra Leone national law does not currently extend to crimes under international law, including crimes against humanity and war crimes.

Magistrates, high court judges, judges of the Court of Appeal and Supreme Court are forced to operate from the run-down and overcrowded law courts building in the centre of Freetown. Judges and magistrates have no library to use in verifying the law, consulting jurisprudence and preparing judgements. There are no recording facilities for the proceedings in court and hardly any secretarial services for judges and magistrates. The administration of justice outside Freetown has been almost non-existent. Courts outside Freetown, other than magistrates courts in the provincial towns of Bo and Kenema, have ceased to function. Court rooms have been burned or destroyed. The remuneration and conditions of service of judges are seriously deficient and private legal practitioners who would otherwise have wished to serve on the bench can hardly consider, under the existing climate, taking up judicial appointments.

The Sierra Leone Bar Association is acutely aware of and concerned about this situation. In a resolution passed on 6 July 2000 at the conclusion of its 19th annual conference held in Freetown, concern was expressed about "the inability of judicial personnel to effectively discharge their duties, circumscribed by lack of access to legal materials and resources" and that "a significant number of judges have retired and the poor conditions of service have failed to attract suitable members of the Bar to the bench". It also noted that "the employment of judges by means of renewable contracts after retirement is incompatible with judicial independence and is likely to compromise the quality of judicial performance".

Independence and impartiality

Furthermore, in a situation where political instability and insecurity continue to prevail, and where any trials of those accused of human rights abuses will be both politically sensitive and complex, the Sierra Leone judiciary is potentially vulnerable to outside influence and pressure. This may prevent the perpetrators of crimes against humanity and war crimes from being brought to justice in trials which guarantee the independence and impartiality required by international standards of fairness.

Amnesty International is also concerned about the potential conflict of roles arising from the merging of the positions of Minister of Justice and Attorney General. This arrangement could compromise the relative independence of the prosecution authorities and the political responsibility for justice and the administration of law.

Continuing hostilities and insecurity

Continuing serious security concerns also have implications for the conduct of trials which conform to international standards of fairness. Issues such as the protection of witnesses and victims, judicial and legal personnel, confidentiality of information, as well as detention and court facilities which would ensure the safety of defendants, all require careful consideration in creating the most appropriate judicial mechanism.

The national army and police force

The conflict has had a devastating impact on the capacity of the national army and police force to carry out their responsibilities for law enforcement.

Following the military coup in May 1997 which brought the Armed Forces Revolutionary Council (AFRC) to power, the Sierra Leone Army was effectively dismantled. Training of the new Sierra Leone Army, assisted by the United Kingdom, is now being undertaken.

During the rebel incursion into Freetown in January 1999, around 200 police officers were killed and police stations were deliberately demolished by rebel forces. The effective functioning of the justice system cannot take place without an effective and professional police force. The Commonwealth Police Development Task Force, operating in Sierra Leone since 1998, has developed programs aimed at re-establishing and training the national police force. These programs are, however, far from complete and need further and sustained support from the international community.



The Central Police Station in Freetown, destroyed by rebel forces in January 1999

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Inadequate detention facilities

Conditions in all places of detention throughout Sierra Leone, both in Freetown and in the provinces, give serious cause for concern. This includes the Central Prison, Pademba Road, in Freetown, where members of the RUF are currently detained, and, in particular, police stations. Detainees awaiting trial are held in harsh and squalid conditions which fail to meet international standards for the treatment of prisoners and often amount to cruel, inhuman and degrading treatment. The lack of basic infrastructure and an acute economic crisis, further aggravated by the rebel incursion into the capital in January 1999, have resulted in little or no resources being made available for prisoners and detainees. Detainees held in police custody face particular deprivation since no food is provided by the authorities.

An Amnesty International delegation in March 2000 visited police cells in the building used temporarily to replace Freetown's Central Police Station, which was destroyed in January 1999, as well as cells in the law courts building, and noted the deplorable conditions in which detainees were held.



Building used as a temporary police station in Freetown, March 2000 ©Amnesty International

Amnesty International's recommendations

A judicial process under the auspices of the United Nations

In June 2000 the government of President Ahmad Tejan Kabbah wrote a letter to the UN Secretary-General requesting assistance and guidance from the UN to establish a special court to bring to justice leading members of the RUF for offences including human rights abuses.

In its resolution of 6 July 2000, the Sierra Leone Bar Association welcomed the proposed establishment of a judicial mechanism to try the perpetrators of violations of international human rights and humanitarian law. It repeated its criticism of the amnesty provision contained in the peace agreement and of subsequent legislation to enforce this provision, and, furthermore, called for the immediate repeal of the amnesty provision. It urged the government to ensure that amnesty or pardon only be granted after a process of truth and reconciliation. Noting that all parties to the conflict had violated both national and international law, the Bar Association called on the government to ensure that prosecutions should not be restricted to one faction or group.

In order to respond effectively to the request of the Sierra Leone authorities for assistance, the UN must ensure that fair trials in accordance with international law and standards take place. Given the very limited capacity of the Sierra Leone judicial system, the UN should establish, together with the Sierra Leone authorities, a judicial process of an international character under the auspices of the UN.

This judicial process should take the form of a tribunal composed of both international and Sierra Leone judicial officials. The political sensitivity of such a judicial process poses a challenge to the capacity of any legal system, let alone one that is emerging from a protracted period of internal armed conflict. Amnesty International therefore recommends, as an essential guarantee for independence and impartiality, that a majority of international judges, prosecutors and investigators participate in all stages of the judicial process.

The judicial mechanism under the auspices of the UN could be established either through a resolution of the UN Security Council or the UN General Assembly. Clear agreement must be reached between the UN and the government of Sierra Leone on respective responsibilities and the necessary guarantees for the independence and proper functioning of the tribunal. As a judicial mechanism established under the auspices of the UN, it should receive full and sustained financial support from the UN under the regular budget or under a voluntary trust fund. It should also benefit from the cooperation of UN member states in criminal matters and the provision of expertise and other assistance including specialized legal and judicial personnel and investigators.

Alternatively, if such a tribunal cannot be established, the UN Security Council should establish an international criminal tribunal to bring to justice the perpetrators of crimes under international law, as it has done for Rwanda and the former Yugoslavia.

A credible, effective and fair judicial process

At a minimum, any judicial process under the auspices of the UN to try those alleged to have committed grave violations of international human rights and humanitarian law in Sierra Leone during the conflict and since the signing of the peace agreement should encompass the essential elements outlined below.

- No single individual or party to the conflict should be singled out for prosecution to the exclusion of others. Trials should focus on those most responsible for the gravest abuses of human rights committed since the conflict began in 1991, whether they are members of the RUF, the AFRC, the Sierra Leone Army, or the Civil Defence Forces. Amnesty International opposes the creation of any tribunal or court which would have the sole aim of bringing to justice one named individual or group of individuals. Given that any judicial mechanism established would not be able to try all perpetrators of

serious human rights abuses, any process for deciding which alleged perpetrators to prosecute would have to be transparent, impartial and independent of government or other influence. Any process that is not objective and impartial will impede the process of national reconciliation.

- There should be a non-selective, balanced and independent prosecution policy to ensure that the perpetrators are identified for prosecution regardless of their current political position and allegiance. At this stage, such a policy will be difficult to achieve unless international prosecutors are appointed to work together with national prosecutors in order to ensure the necessary expertise in bringing charges under international law and also that a prosecution policy is pursued impartially without political influence being exerted. An international prosecutor should take the lead in taking policy decisions since he or she would be free from local political pressures and can develop an independent policy in the best interests of justice. National prosecutors should actively participate in the process, their role in decision making gradually increasing over time. International police investigators should be appointed to conduct investigations with and to provide training to the national police force.
- The judicial mechanism should have jurisdiction to try international crimes, including crimes against humanity and war crimes, as well as grave crimes under national law committed during the conflict and since the signing of the peace agreement. Sierra Leone national law does not currently extend to crimes against humanity and war crimes but the government has already announced its intention to ratify the Statute of the International Criminal Court which would require it to incorporate these international crimes into national legislation. The UN should promptly provide the necessary technical legal assistance to draft the statute for the judicial mechanism to be established, using relevant legal models.
- The judicial mechanism should have the jurisdiction to try all the above crimes committed since 1991 when the conflict began.
- The interpretation by the UN that the amnesty provided in the peace agreement does not apply to “international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law” should be integrated into the statute of the judicial mechanism and be immediately and rigorously applied.
- The death penalty must be excluded as a punishment, especially since it can be imposed under national law. The Statute of the International Criminal Court and the statutes of the international criminal tribunals for Rwanda and the former Yugoslavia have excluded the use of the death penalty for all crimes, including the most serious.

- Qualified judges should be appointed of high moral standing, known integrity and independence. They should include a substantive number of Sierra Leonean judges, although there may be few available in the immediate post-conflict situation. Recognizing the considerable pressures to which sitting Sierra Leonean judges might be subjected, international judges with the requisite expertise in international law should be appointed. International judges should constitute the majority on the bench, sitting alongside Sierra Leonean judges. Since Sierra Leone shares similarities in its judicial system with many other Commonwealth countries, judges from Commonwealth countries would be particularly well qualified for these tasks.
- International defence lawyers should be allowed to participate in trials in the event that no national lawyers are able or willing to defend those accused or if the number of Sierra Leonean lawyers is not sufficient to cope with the demands of defending the accused. Facilities for the provision of access by all defendants to defence lawyers should be established promptly, since the pre-trial stage is of crucial importance in guaranteeing the right to an adequate defence and therefore a fair trial.
- Appeal chambers should have a similar predominance of international judges, and could be drawn mainly from Commonwealth countries. Alternatively, the joint Appeals Chamber of the International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia could also be charged with hearing appeals for Sierra Leone. Such an arrangement would ensure that appeals benefit from the unique and accumulated experience of the joint Appeals Chamber; it may, however, not be practicable given its already heavy workload.
- Expertise should be provided on gender-based crimes and in addressing the particular problems facing the prosecution of crimes of violence against women, including protection of victims of and witnesses to these crimes. Similarly, particular expertise in dealing with violence against children, as well as juvenile perpetrators and witnesses, should be provided at all stages of the process.
- Expert training for all judicial personnel, including judges, lawyers and prosecutors, in international criminal law and procedure and international standards should be provided by the UN or member states able to provide such expertise. This training should include a component on women's and children's rights.
- There should be international supervision of detention, preferably by the UN. Such supervision would be intended to ensure that detention facilities comply with international standards, including the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form

of Detention or Imprisonment. Where existing facilities do not meet these standards, the UN and the international community should be required to establish them.

- Adequate security should be provided for judicial personnel participating in trials, preferably by the UN.
- A professional witness protection and support program which includes expertise in dealing with children and with women who have suffered sexual violence should be established with support from the international community and with expert advice from the international criminal tribunals for Rwanda and the former Yugoslavia.
- Trials should preferably take place in Sierra Leone since this would be the best means to ensure that justice is seen to be done, that the facts are laid before the Sierra Leone people, and that the trials contribute towards the process of reconciliation. If this proves impossible on security grounds, trials should take place in a nearby country with the necessary legal infrastructure, including a body of defence lawyers able to undertake the defence in these legally complex cases.

An international commission of inquiry

Any judicial process to be established in Sierra Leone with the assistance of the international community, or an international criminal tribunal, would only be able to prosecute the major perpetrators of human rights abuses. In order to end impunity, however, there is a need to also ensure that all human rights abuses are investigated.

In addition to a judicial process under the auspices of the UN, Amnesty International therefore continues to urge the establishment without further delay of an international commission of inquiry to investigate human rights abuses during Sierra Leone's conflict, as recommended by the UN High Commissioner for Human Rights shortly after the signing of the peace agreement. There has appeared to be little political will on the part of the international community to pursue the High Commissioner's recommendation.

Such an international commission of inquiry should ensure thorough fact-finding and lead to appropriate accountability for all perpetrators of human rights abuses. It should include experienced investigators of crimes under international law who would be able to gather evidence which could be used by any judicial mechanism established by the UN. The commission of inquiry's impartial findings should constitute the basis for any future prosecution policy.

While including the amnesty, the peace agreement also provided for the establishment of a Truth and Reconciliation Commission as a means by which accountability for human rights abuses committed during the conflict would be established. The amnesty, however, limited the

capacity of the Truth and Reconciliation Commission to establish accountability. Although the High Commissioner subsequently set up a study on the possible relationship between an international commission of inquiry and the Truth and Reconciliation Commission provided by the peace agreement, the outcome of that study has not yet been made public.

The Truth and Reconciliation Commission may have a role in establishing the facts about human rights abuses committed during the conflict, but more is needed to bring true justice and reconciliation and an end to impunity. In addition, the establishment of a Truth and Reconciliation Commission was envisaged for a post-conflict situation; the failure of parties to the conflict to adhere to the peace agreement and continuing hostilities and insecurity raise questions about its viability in the current climate.

Strengthening the national judicial system

The Sierra Leone judicial system, including the prosecution services and the national courts, has to be strengthened to enable it to deal with the many crimes which it will be expected to investigate and adjudicate. Any judicial mechanism established with international assistance would only be able to deal with a limited number of cases and would involve those most responsible for serious human rights abuses. By and large, the Sierra Leone judiciary will still need to deal with other perpetrators of human rights abuses during the conflict and since the signing of the peace agreement. Unless the national judiciary is strengthened through the provision of training, resources and logistical support, it will not be able to adequately undertake this responsibility. While the courts in Freetown may currently be functioning, albeit with difficulty, rural communities in most parts of the country are left without a functioning judicial system, resulting in impunity prevailing not only for crimes linked to the continuing conflict but also for other crimes.

While the establishment of a judicial mechanism to deal with those most responsible for human rights abuses should be a priority for the international community, it is also important to consider ways in which the UN and foreign governments could assist the Sierra Leone authorities in dealing in the long term with the investigation and prosecution of crimes committed during the conflict and since the signing of the peace agreement. While the establishment of a judicial mechanism in Sierra Leone under the auspices of the UN would bring additional resources for the national judiciary, it is important to ensure that the quality of justice dispensed to those most responsible for human rights abuses, including crimes under international law, is not significantly different to that offered to others who may be accused before national courts for committing the same crimes.

The imperative of restoring confidence in the rule of law and the justice system is one of the cornerstones for establishing a culture of protection of human rights. To do this, the serious problems facing the national judiciary, which have been identified above, need to be

addressed as a matter of urgency and the international community should provide substantial assistance for this purpose. This would include: improvement in the remuneration and conditions of service of the judiciary in order to encourage competent and experienced private 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, collection of decisions of the higher courts, regional and international human rights instruments and treaties ratified by Sierra Leone, and basic legal text books; and extensive refurbishment and equipping of court buildings.

Capacity building through professional training for law enforcement personnel is critical for the re-establishment of the justice system. Training of judges and magistrates is recognized as a priority within the Commonwealth. Any assistance offered to the national judiciary should include the transfer of judges and other legal personnel, especially from countries of the Commonwealth, to ensure that the courts and other judicial institutions function effectively. Judicial training for Sierra Leone should include, among other issues, training in international human rights and humanitarian law. Some of the assistance would have to ensure also that police officials expected to investigate crimes have training in human rights as well as the resources and facilities needed to undertake their tasks.

In its resolution of 6 July 2000, the Sierra Leone Bar Association called on the government of Sierra Leone to give higher priority to making adequate provision for the smooth running of the judiciary as a whole, providing better conditions of service for judges which would be comparable to those of other member states of the Commonwealth in West Africa, embarking on continuing legal education and training of judges, magistrates and other court personnel, and to appointing judges to the Superior Court of Judicature.

Conclusion

In July 1999 the UN and the international community failed to deal effectively with impunity for human rights abuses in Sierra Leone. They now have another opportunity which must not be missed. Unless serious and concerted measures are taken to assist the Sierra Leone authorities, impunity will continue to prevail.

The Sierra Leone judicial system is currently unable to ensure trials that would conform to international standards of fairness. In order to achieve justice for the victims of human rights abuses and to ensure that those who are brought to justice have a fair trial in accordance with international standards, the UN should not take half measures in the establishment of a judicial mechanism. At the same time, the judicial mechanism established under the auspices of the UN should contribute to the longer-term strengthening of Sierra Leone's national capacity to try perpetrators of human rights abuses in its own courts.