

# SIERRA LEONE

**Judicial institutions in Sierra Leone are moribund or almost completely ineffective as a consequence of a devastating civil war dating from 1991. Judges are poorly resourced and often ill-trained. The expectations for rebuilding State institutions which arose following the 1999 peace agreement by rebels and pro-governmental forces in 1999 has yet to be realised. Heightened concern from the international community has led the UN Security Council to endorse the proposition of the Sierra Leonean Government for the establishment of an International Special Court devoted to judging crimes committed in Sierra Leone during the civil war. This Court has yet to be set up due to the lack of funding commitment by UN member states.**

Sierra Leone gained independence from the United Kingdom on 27 April 1961 as a constitutional democracy. Since that time, it has experienced several *coups d'état* leading to the alternation of civil and military governments. The political situation of Sierra Leone has been highly influenced by its regional context. The outbreak of a civil conflict in Liberia in December 1989 and the intervention of the Sierra Leonean Government as part of the cease-fire monitoring group (ECOMOG) of the Economic Community of West African States (ECOWAS) preceded the eruption of conflict in the territory of Sierra Leone. Indeed, in April 1991 troops of the National Patriotic Front of Liberia (NPFL) as well as a Sierra Leonean resistance movement, known as the Revolutionary United Front (RUF), advanced 150 km inside Sierra Leone. The country has since been submerged in a fierce civil war opposing the RUF and other military factions against the pro-governmental forces.

In October 1999, the UN Security Council adopted Resolution 1270, establishing a 6,000-member force, the UN Mission in Sierra Leone (UNAMSIL) in order to supervise the implementation of a peace agreement and to assist in a programme for the disarmament and reintegration of the former rebel factions. However, implementation of key provisions was limited. Reports of atrocities perpetrated against the civilian population by rebels continued and division between the Armed Forces Revolutionary Council (AFRC) and RUF leadership emerged. Fighting among the former allied factions was reported in northern Sierra Leone. The deployment of UNAMSIL and disarmament and demobilisation were stalled. In early 2000 the implementation of the Lomé agreement collapsed when RUF forces attacked UNAMSIL troops in Makeni, seizing a number of UN personnel as hostages. The international presence was stepped up considerably, with United Kingdom troops deployed to defend Freetown, support UNAMSIL and provide training to the Sierra Leone Army.

In July the UN Security Council adopted a resolution imposing an international embargo on the purchase of unauthenticated diamonds in an effort to end the rebels' principal source of funding for armaments. In early August the UN Security Council adopted Resolution 1315, requesting the Secretary-General to negotiate with the Government of Sierra Leone to create an independent special court and recommending that "the subject matter jurisdiction of the special court should include ... 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 ." The Secretary-General subsequently submitted proposals for the

establishment of such a court. In November, following further negotiations mediated by ECOWAS, the Government and the RUF signed a cease-fire agreement in Abuja providing for the demobilisation and disarmament of all militia forces, and the deployment of UNAMSIL throughout the country. In the meantime, some 331000 Sierra Leonean refugees fled to Guinea. Guinean President Conté then alleged that Liberian and Sierra Leonean refugees were supporting the rebels attempting to overthrow his Government and ordered them to leave the country. In March 2001 the Liberian Government expelled the ambassadors of Guinea and Sierra Leone from Liberia. Large quantities of refugees began to return from Guinea to Sierra Leone.

The current Constitution was formally approved by the House of Representatives in August 1991 and later endorsed by a national referendum. It has been suspended twice since its adoption, first between April 1992 and March 1996, following a military-led coup, and again in June 1997, after dissident members of the armed forces led by Maj. Johnny Paul Koroma seized power, deposing the President, A. A. T. Kabbah. President Kabbah regained power with international assistance in March 1998 and the 1991 Constitution was reinstated.

According to article 5 (1) of the Constitution "[t]he Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice ". Chapter III provides for "[t]he recognition and protection of fundamental human rights and freedoms of the individual ". Chapter IV grants political rights to every citizen of Sierra Leone "eighteen years of age and above and of sound mind" and establishes a multi-party system. Chapter V vests executive power in the President, who is to be elected by the majority of votes cast nationally and by at least 25 per cent of the votes cast in each of the four regions (the Northern, Eastern and Southern Provinces, and the Western Area). The President appoints the Cabinet, subject to approval by the legislature. The maximum duration of the President's tenure of office is two five-year terms. Under Chapter VI, legislative power resides in a unicameral 80-member Parliament, which is elected by universal adult suffrage for a five-year term. The parties that have secured a minimum of five percent of the votes in the legislative elections are allocated seats on a system of proportional representation, while 12 seats are allocated to 12 Paramount Chiefs representing the provincial districts. According to article 76 of the Constitution, members of the Parliament are not permitted to hold office concurrently in the Cabinet. Further chapters of the Constitution provide for the establishment of various other institutions, including the Ombudsman (Chapter VIII) and Commissions of Inquiry (Chapter IX).

## **HUMAN RIGHTS BACKGROUND**

Extensive and serious human rights violations have been constant since the outbreak of the Sierra Leonean civil conflict. Reports have consistently revealed a pattern of massive and widespread violations. Among the forms of abuse reported are rape, extortion, indiscriminate use of helicopter gunships, child recruitment, extrajudicial execution and ill-treatment of detainees and of persons at checkpoints. Rebel forces have engaged in deliberate and arbitrary killings of civilians, torture including mutilation and rape, abduction of civilians and hostage-taking, forced labour and forced conscription.

The political and human rights crisis deepened in January 1999 as rebel forces attacked Freetown. On this occasion, an estimated of 5,000 people were killed, mostly arbitrarily, but sometimes as a result of deliberate targeting. Among those killed were governmental officials, journalists, lawyers, human rights activists, prison officials and especially police officers. Freetown suffered indiscriminate aerial bombardments by governmental forces, which resulted in large numbers of

civilian casualties. Atrocities continued after rebel troops were forced to retreat from Freetown and moved to the city's outskirts, killing or mutilating civilians accused of sympathising with government forces. Pro-government troops extrajudicially executed large numbers of captured or suspected rebels and ill-treated staff of humanitarian organisations, including the International Committee of the Red Cross. During the nine months following the signing of the Lomé Agreement, there was a relative reduction in human rights violations. However, certain kinds of abuses, such as sexual assault against women and girls, continued unabated. After some 500 United Nations peacekeepers serving with UNAMSIL were captured in May 2000, renewed conflict ushered in increases in human rights abuses by both sides.

The deterioration of the situation led to renewed insecurity and caused hundreds of thousands of people to flee, some to Guinea, but mainly to other parts of Sierra Leone, thus bringing the number of internally displaced persons to some 500,000. After September violence erupted along the Guinean border, and Sierra Leonean refugees escaping from arrest and harassment by the local population returned to Sierra Leone and were exposed to RUF and AFRC abuses.

The collapse of the peace process has provoked a reassessment of the provision for a general amnesty in the Lomé Agreement and mobilised national and international support for a war crimes tribunal. During 2000, Sierra Leone ratified the Rome Statute to establish an International Criminal Court and enacted legislation to incorporate the Convention Against Torture and the International Covenant on Civil and Political Rights and its Protocols into Sierra Leonean law.

## **THE JUDICIARY**

### *Institutional framework*

Chapter VII of the Constitution (arts. 120-145) provides for the Judicial power of Sierra Leone. The independence of the Judiciary is declared in article 120 (3): "In the exercise of its judicial functions, the Judiciary shall be subject only to this Constitution or any other law, and shall not be subject to the control or direction of any other person or authority".

Provisions for the structure of the Judiciary derive from both the Constitution and legislation.. According to art. 120 (4), "[t]he Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice, which shall be the superior courts of record of Sierra Leone and which shall constitute a Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish". More precisely, the judicial system consists of a Supreme Court, the Court of Appeal, the High Court and Magistrates' Courts, and local courts. The Supreme Court is the ultimate court of appeal in both civil and criminal cases and has supervisory jurisdiction over all other courts and over any adjudicating authority in Sierra Leone, as well as original jurisdiction for constitutional issues. The Court of Appeal has jurisdiction to hear and determine appeals of decisions of the High Court in both criminal and civil matters, and also from certain statutory tribunals. Appeals against its decisions may be made to the Supreme Court. The High Court has unlimited original jurisdiction in all criminal and civil matters, as well as appellate jurisdiction against decisions of Magistrates' Courts. Magistrates' Courts have jurisdiction in summary criminal cases and over preliminary investigations to determine whether a person charged with an offence, should be committed for trial. Local courts have jurisdiction, according to native law and custom, in matters that are outside the jurisdiction of other courts.

A number of additional Constitutional provisions address judicial independence. According to Art. 120 (9), "[a] Judge of the Superior Court of Judicature shall not be liable to any action or suit for any matter or thing done by him in the performance of his judicial functions". Art. 138 (4) provides that "a Judge of the Superior Court of Judicature shall not while he continues in office, hold any other office of profit or emolument, whether by way of allowances or otherwise, whether private or public, and either directly or indirectly."

Concerning appointment, "[j]udges of the Superior Court of the Judicature shall be appointed by the President by warrant under his hand acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament "(art. 135 (2)). Remuneration is governed by article 138 (3), which states that "[t]he salary, allowances, privileges, rights in respect of leave of absence, gratuity or pension and other conditions of service of a Judge of the Superior Court of Judicature shall not be varied to his disadvantage ", As for removal, art. 137 (7) provides that "[a] Judge of the Superior Court of the Judicature shall be removed from office by the President (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that he ought to be removed from office; and (b) if his removal has been approved by a two-thirds majority in Parliament ".

The Constitution suffers from an important institutional problem in terms of judicial independence. According to art. 120 (1), the Head of the Judiciary is vested in the Chief of Justice, who benefits from the same guarantees as Judges of the Superior Court of the Judicature. However, his supervisory power and more generally the independence of the Judiciary are threatened by section 64 of the Constitution, which merges the positions of Minister of Justice and Attorney General. Thus, functions which are innately executive and judicial reside in the same person.

#### *The Sierra Leone Judiciary in practice*

An editorial in a Sierra Leonean newspaper of July 2000 remarked: "It is no gain-saying that the Judiciary is the most neglected branch of government. While the Executive and Legislative branches are head over heels about fat salaries and better conditions of service, the Judiciary is left to wallow in a state of disrepair and utter neglect ". Indeed, the conflict in Sierra Leone has had a serious negative impact on the legal system as a whole. The institutional framework described is barely functional. Since 1995, the administration of justice outside Freetown has been almost non-existent. The High Court of Sierra Leone has not sat outside Freetown. In the provinces, only the Local Court system has been functional with the exception of the provincial towns of Bo and Kenema where Magistrates' Courts are still in place. Although the primary cause is the rebel war, even prior to 1995 the judiciary faced acute problems sitting in the provinces. Judges and Magistrates had, and still have, no proper accommodation. The courtrooms, which were then in an extremely precarious situation, have now been destroyed, and transportation to and from the corresponding provincial towns has been always unavailable.

According to various reports, national judicial institutions desperately lack almost everything a judicial system needs to deliver justice efficiently, independently and impartially. The judiciary lacks training necessary to enable it to carry out trials of those accused of international and national crimes . The Judiciary is forced to operate from the overcrowded law-courts building in the centre of Freetown, which lacks the most basic infrastructure and equipment, and faces acute problems such as infrequent electricity supply. In addition, having no vehicles, the Judicial Department has been forced to hire a vehicle on a daily basis at a high rate (Le 60.000 a day) in order to transport some five judges to and from work every day.

The remuneration and conditions of service of judges are seriously deficient. Judges in the Superior Court of Judicature receive less than US\$ 700 per month including allowances, while magistrates receive between US\$ 77 and US\$ 160 per month. Court clerks and registrars are paid US\$ 19-20 per month. These conditions clearly are conducive to the emergence of corrupt practices. Furthermore, they deter private legal practitioners, who would otherwise have wished to serve on the bench, from taking up judicial appointments. Another grave flaw of the current system is that it lacks a library necessary for reference to verify the law and consult jurisprudence, which makes it extremely difficult for members of the Judiciary to discharge their duties in a professional manner. There are no recording facilities for the proceedings in court and almost no secretarial services. As a result, files and documents are regularly misplaced, which leads to formal justice denials. Moreover, the judiciary has difficulty functioning without an effective and professional police force, which is nowadays absent as a result of the devastating impact of the civil conflict.

The Sierra Leone Bar Association, aware of the situation, has noted among other things that in practice judges are employed "by means of renewable contracts after retirement (which) is incompatible with judicial independence and is likely to compromise the quality of judicial performance".

Another source of concern is that given the strong sentiments of the Sierra Leonean public regarding the atrocities committed by rebels and the high complexity of some trials, it is uncertain whether the judiciary will be able to withstand internal and external political and public pressure. This is particularly worrying in a country where the death penalty is in force.

As a result of the scarcity of the constitutional administration of justice, traditional justice systems continue to supplement the central government judiciary extensively in cases involving family law, inheritance, and land tenure, especially in rural areas.

## **THE INTERNATIONAL SPECIAL COURT**

### *Background*

The collapse of the peace process in May 2000 and the subsequent apprehension of Foday Sankoh, the rebel leader, placed the issue of impunity and deliverance of impartial justice on the international agenda. In June, the Government of Sierra Leone asked for United Nations assistance to establish a court in Sierra Leone, combining local and foreign prosecutors and judges in order to ensure independence and impartiality. On 14 August 2000, Resolution 1315 was adopted requesting the Secretary-General to negotiate an agreement with the Government of Sierra Leone for the creation of "an independent special court". On 5 October, the Secretary-General submitted a report containing an agreement between the UN and the Government, the draft statute of the Court, as well as the Secretary-general's commentaries regarding the agreement and the statute. This report remains under consideration by the Security Council.

According to the Secretary-General's proposals, the Special Court would consist of three organs: the Chambers (two trial Chambers and an Appeal Chamber); the Prosecutor's office; and the Registry. The Trial Chambers would be composed of three judges appointed by the Sierra Leonean Government. The Secretary-General, upon nomination by members of the Economic Community of West African States and the Commonwealth, would appoint two additional international judges. The Appeals Chamber would be composed of five judges, two appointed by the Sierra Leonean Government and three appointed by the Secretary-General under the same procedures as above..

The judges would be appointed for a four-year term and eligible for reappointment. The Secretary-General would appoint the Prosecutor of the Court, with a Sierra Leonean deputy appointed by the Sierra Leonean Government. Each prosecutor would sit for a four-year term. This provision is critical, as the selection of an international Prosecutor is expected to guarantee the independence and the impartiality of trials. The Registrar of the Court would also be appointed by the Secretary-General. The function of the Registry covers servicing the Chambers and Prosecutor's office, as well as recruiting staff and administering financial resources.

#### *The proposed statute of the Special Court*

The Security Council recommended that the subject matter jurisdiction of the Court include crimes against humanity, war crimes, other serious violations of international humanitarian law and crimes under relevant Sierra Leonean law, committed in Sierra Leone. The proposed statute in the Secretary-General's report also includes these four crimes. In order to fully respect the legality principle, almost all of the crimes included are considered to be part of customary international law already existent at the time of the outbreak of the conflict.

Article 5 contains certain crimes under Sierra Leonean law, thus extending the Special Court jurisdiction beyond international crimes. While in the case of international crimes the elements of the crimes are governed by international law, crimes committed under Sierra Leonean law are governed by Sierra Leonean criminal law. The rules of evidence also differ, according to the nature of the crimes.

One of the most controversial issues of the draft statute is the question of juvenile perpetrators. The Sierra Leonean Government and representatives of Sierra Leonean civil society expressed their wish to set up a process of judicial accountability for child soldiers. However, many international and national non-governmental organisations of child-care and rehabilitation objected to any kind of judicial accountability for children below 18 years of age, arguing that it would endanger the children's rehabilitation program. Article 7 of the statute extends the jurisdiction of the Court to persons over the age of 15, but at the same time it provides for a special treatment for children between 15 and 18.

Another important question is that of the penalties and enforcement of sentences. The death penalty is currently in force in Sierra Leone and has been widely used in unacceptable conditions. Indeed, one of the main threats to the independence of the judgements emanating from the proposed tribunal is the public pressure on magistrates to pronounce death penalties. Like the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the Special Court is authorised to impose only prison sentences.

Another crucial question is that of the impact of amnesties granted under the Lomé Agreement on the Court's Jurisdiction, which have been considered as a serious obstacle to the administering of credible justice. Amnesties are permitted under international law only in so far as they do not concern cases of international crimes which give rise to an obligation of *aut dedere aut iudicare* (to prosecute or extradite). Although article 10 of the draft statute reaffirms the UN representative declaration that amnesties do not apply to genocide, crimes against humanity or any other serious violations of international law, the obligation *aut dedere aut iudicare* in respect of crimes against humanity or war crimes committed during the internal conflict has been questioned. A possible argument against the application of the Lomé Peace Agreement amnesties is that amnesties are only relevant to national court procedures. However, the legal problem remains whether or not amnesties are valid in cases involving a mixed national-international court.

Concerning the cost of the Special Court, it is estimated at US \$22 million for its first year of operation. The Security Council insists that the Special Court should be funded by voluntary contributions and has consequently rejected the Secretary-General's recommendation that the new Court be financed in the manner of other international criminal tribunals, i.e. through mandatory fees levied on all UN member States. However, material support to the Court by member States has proved disappointing. On April 20, 2001, the UN Commission on Human Rights decided to request the international community to support the UN Secretary-General's appeal for financial and practical support for the Court, but few firm commitments have followed. Only 13 states were represented at a meeting held by the UN Office of Legal Affairs to discuss funding of the Court, and even those States showed some reluctance regarding the projected costs. More recently, the Security Council has approved plans to move forward with the court. As of mid-July, Canada, the Czech Republic, Denmark, Germany, Mauritius, the Netherlands, Norway, Sweden, the United Kingdom and the United States were among the states that had pledged monetary contributions. At the present time, concern about insufficient funding remains the main issue.