

**SIERRA LEONE'S
TRUTH & RECONCILIATION COMMISSION
AND SPECIAL COURT:
A CITIZEN'S HANDBOOK**

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For

**National Forum for
Human Rights**

**International Center for
Transitional Justice**

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The authors divided major responsibility for the chapters, but each participated actively in conceiving and editing all. Mr. Lahai was chiefly responsible for Chapter 1, Mr. O'Connell for Chapter 2, and Mr. James-Allen for Chapter 3.

PREFACE

The National Forum for Human Rights and the International Center for Transitional Justice set out in late 2002 to create a handbook that would explain the newly-active Truth and Reconciliation Commission (TRC) and Special Court for Sierra Leone to a non-specialist audience. In our experience, most Sierra Leoneans know little about the TRC's and Special Court's respective purposes, motivating philosophies, and operating methods. Existing educational materials focus on either the TRC or Special Court and say little about their relationship. These conditions make it difficult for Sierra Leoneans to understand the accountability institutions and to engage with them as responsible, empowered citizens.

We believe the TRC and Special Court can play crucial roles in Sierra Leone's process of recovering from the civil war. They also can help the country reform political and legal institutions and practices to address the war's causes. However, neither the TRC nor the Special Court can fulfil this potential without the support of ordinary Sierra Leoneans. They require particular kinds of assistance while operating. For example, the TRC needs statements from victims and perpetrators and the Special Court needs information for its investigations. Equally important, Sierra Leoneans need to evaluate the accountability institutions' work and decide whether they provide appropriate directions for political, legal, and social reform. If they believe they do, people from all parts of society need to push the government, the international community, NGOs, and other relevant actors to make those reforms.

We also believe that citizens should be constructive critics. The TRC and Special Court are independent of each other, the government of Sierra Leone, the United Nations, political parties, NGOs, and all other groups. But they are responsible to the people of Sierra Leone. Sierra Leoneans should follow the accountability institutions' work, discuss them, and offer suggestions and criticisms that can help them improve.

To engage with the TRC and Special Court, Sierra Leoneans must understand them. This handbook aims to assist people who may not be specialists in politics, law, or human rights, but who want to understand the accountability institutions. This audience includes teachers, religious leaders, traditional chiefs, community activists, NGO workers, and others. We hope readers will share what they learn with their fellow citizens, especially those who cannot read.

The handbook covers the mandate, origins, purposes, and operating methods of the TRC and Special Court, and differences and similarities between them, in clear, non-technical language. We have tried to provide enough information that readers, and those they teach, can understand the institutions, follow their work, form well-grounded opinions about them, and – if they decide to – cooperate with

them and ensure that they have a positive and lasting impact on the country. In this way, we hope the handbook can contribute in a small way to Sierra Leoneans' struggle to build a peaceful, democratic society based on human rights, equality, and the rule of law.

CHAPTER 1

THE TRUTH AND RECONCILIATION COMMISSION

INTRODUCTION

The Truth and Reconciliation Commission (TRC) will examine what happened during the civil war and the context in which it occurred. It will reach out to victims, perpetrators, and witnesses of human rights violations and try to understand all of their points of view. It will take statements from them, hold public hearings, and produce a report on the civil war that recommends ways to deal with its effects and prevent it from breaking out again. This process involves many people telling what happened during the war: victims, perpetrators, and witnesses tell the TRC what they experienced, did, and saw; some people testify at public hearings to tell these things to the whole nation; and finally the TRC summarizes what happened in its report. We can call this entire process “truth-telling.”

Many have understood the process of truth-telling from diverse points of view. Some think that it opens old wounds that may lead to more acute intolerance. Others believe that truth-telling after a time of crisis may bring about more resentment, worsening strife rather than assisting reconciliation. A few hold the opinion that resettlement, rehabilitation, and other service delivery work have a more immediate impact on people’s well-being. They therefore think that these activities should receive the money spent on truth-telling.

Many, however, believe that expressing and learning the truth about what happened during the civil war is the foundation of genuine reconciliation, peace, and development. This is the philosophy behind the Truth and Reconciliation Commission. On this view, truth-telling brings about the culture of transparency, accountability, and moral judgment that is fundamental for the development of any society.

The following pages describe Sierra Leone’s Truth and Reconciliation Commission – its purpose, value, operating methods, and current status.

CREATION AND PURPOSE

What is the purpose of the TRC?

The purpose of the TRC is to produce an accurate and fair historical record of the civil war and to foster national reconciliation and healing. It will do so by gathering information on the violations of human rights and international humanitarian law in the Sierra Leone civil war from 1991 to the signing of the Lomé Peace Agreement in July 1999. It will give victims, perpetrators, and everyone affected by these atrocities the opportunity to tell what happened to them. Many victims want the nation to hear what they suffered, and the TRC gives them the chance to be heard.

The TRC will analyze the information it gathers from victims, perpetrators, and others, and will also do its own research. It will use all of this information to write a report that explains what happened during the civil war. The report will indicate the causes, nature, and extent of abuses of human rights; the circumstances in which they occurred; and whether they were part of a plan or policy by rebel groups, the government, or any other group. The report may also make recommendations about how to prevent the civil war, and the terrible acts that happened during it, from ever occurring again.

How was the TRC created?

Civil society groups first suggested the concept of the TRC to the government in early 1999. It subsequently was discussed during the negotiations between the government and the Revolutionary United Front (RUF)/Armed Forces Revolutionary Council (AFRC). They agreed to include provision for a TRC in the Lomé Peace Agreement in 1999. In 2000 Parliament passed the Truth and Reconciliation Commission Act, a law to create the TRC, after consultation with civil society groups and the United Nations High Commissioner for Human Rights. The law specified how the TRC would be set up and how it would operate. It then took some time to set up the TRC. The Commission finally was inaugurated in July 2002 and is now operating.

HOW THE TRC WORKS

What will the TRC look at?

The TRC will look at violations of human rights and international humanitarian law during the war, in order to determine their context and causes and to decide whether they were the result of deliberate planning by the government, rebels, or any other group or individuals. It may also examine the causes of the civil war as a whole.

How will the Commission work?

The Commission will do the following to achieve its objectives:

- Undertake *investigations* and *research* into key events, causes, patterns of atrocities, and responsible parties.
- Hold *sessions* (or hearings) at national, regional, and district levels to hear from the victims and perpetrators of any atrocities or from other interested parties. Some of these hearings will be public. The Commission may seek assistance from traditional and religious leaders to facilitate its public sessions.
- *Take statements* from a large number of people, including victims, perpetrators, and witnesses of events both inside and outside Sierra Leone.

The Commission may collaborate with civil society groups to publicize its works and further help in its statement-taking and reconciliation processes. It also may ask traditional and religious leaders to help resolve local conflicts arising from abuses during the war and to facilitate healing and reconciliation.

What will the TRC do with its findings?

The TRC will produce an analyzed and synthesized report of its findings. This report will state what the TRC has learned about the civil war from the statements of victims, perpetrators, and witnesses and its investigations and hearings. The report will also recommend reforms to prevent the repetition of the civil war and atrocities that occurred during it, address impunity, respond to the needs of victims, and promote healing and reconciliation.

The Commission will send its report to the President and make it widely available to the public. The President will then send it to Parliament and the United Nations Security Council. The Commission's recommendations will be based on its *independent* judgment, however: neither the President nor any other group or individual will be able to influence what the report says.

The law that set up the TRC (the Truth and Reconciliation Act of 2000) requires the government to implement all of the TRC's recommendations. It also states that the government should facilitate the implementation of recommendations addressed to others, such as NGOs and the international community. A follow-up committee will be formed to monitor the implementation of the TRC's recommendations and, where necessary, assist in the process. This committee will include representatives of the United Nations and the countries that promised to oversee the implementation of the Lomé Peace Agreement in 1999. It will also be important for all Sierra Leoneans to help the government, NGOs and others implement the TRC's recommendations.

What are some examples of the types of recommendations that a TRC can make?

The Sierra Leone TRC can make any recommendation it believes appropriate to assist in national recovery and prevent war from occurring again. Some examples of recommendations made by other truth commissions around the world are:

- The government should help close the gap between the advantaged and disadvantaged through education, housing, and other programs and services (South Africa).
- Those who benefited from apartheid policies should contribute toward the alleviation of poverty (South Africa).
- The government should promote a new military doctrine for the army that establishes basic principles for the appropriate relationship between the army and society within a democratic and pluralist framework (Guatemala).
- The state should establish a day of commemoration for the victims and construct monuments and public parks in their memory (Guatemala).

Is the TRC a government institution?

No. The TRC works independently—it is not under the influence or direction of any person, government, group, or political party. Its report will be fair, accurate, and not biased for or against any person or group. The Commissioners serve as individuals, not as representatives of political party, religious group, government, or other organizations.

What is the difference between human rights and international humanitarian law?

International *human rights* law states what protections every human being is entitled to at all times, such as the right not to be tortured. International *humanitarian* law provides certain people with certain protections *during armed conflict*. For example, it states that civilians may not be killed or taken hostage.

Will the planners of the war be brought before the TRC?

The planners may not necessarily be “brought before” the TRC in public, but the TRC may well want to talk to them in private. If they are unwilling, the TRC has the option of ordering them to talk to it. (This order is called a “subpoena.”)

POWERS OF THE TRC

What powers does the Commission have to fulfill its mandate?

In the fulfillment of its mandate, the Commission will encourage the cooperation of individuals, groups, institutions (both private and public), and government officials to come forward and cooperate with the Commission by giving it information or other assistance. Most of the cooperation the Commission receives will be voluntary. However, on the few occasions where it may need information or assistance that is not provided voluntarily, the Commission may use the following powers:

- *To require any source, including the government, to provide it with any information considered relevant, including reports, records, documents, or other information;*
- *To visit any establishment or place without giving prior notice, and to enter any land or premises for any purpose related to the Commission's mandate, for example, to obtain information, inspect any property, take copies of documents, or safeguard evidence;*
- *To interview any individual or representative of a group, organization, or institution;*
- *To request any person to meet with the Commission or its staff and answer questions, or attend a session or hearing;*
- *To order people to give information or materials it needs to do its work, by sending them "summons" or "subpoenas" (however, it is anticipated that the Commission will only do this in very rare cases, and perhaps not at all);*
- *To require that statements be given under oath or affirmation;*
- *To request information from the relevant authorities of foreign countries and to gather information from victims, witnesses, government officials, and others in foreign countries; and*
- *To receive assistance from the police to enforce its powers.*

What can't the TRC do?

The TRC is not a court and therefore will not try anybody. The TRC's goal is not punishment (be it imprisonment or fine), but to gather facts about the war and facilitate soul-searching and acknowledgement of acts by individuals or groups. It will not give compensation to victims, although it could recommend that the government give compensation. It will make recommendations to the government and perhaps NGOs, the international community, and others for addressing the causes and consequences of the conflict and preventing its repetition.

What is the likelihood of the TRC ordering me to speak to it or give it information or materials?

This is very unlikely. Only people who have information or materials that are absolutely crucial for the TRC's investigation *and* who refuse to provide it voluntarily will receive a summons or subpoena. Whoever receives a summons or subpoena from the TRC must obey it, however. If they do not, they may be charged with contempt of the TRC and referred to the High Court for trial and punishment.

What if someone lies to the Commission or obstructs its work in some other way?

Providing misleading or false information to the Commission will be deemed contempt and the Commission may refer the person to the High Court for trial and punishment. Obstruction or interference with the Commission or its staff is also an offence and can be punished by imprisonment (up to one year) and/or a fine of up to one million leones.

Can traditional authorities assist the TRC in making someone appear?

The law that set up the TRC makes provision for cooperation with traditional authorities. It is hoped that traditional authorities will assist the TRC, including by helping to locate victims, witnesses, and perpetrators; encouraging people to speak to the TRC; and helping perpetrators and victims to reconcile and heal.

DEALING WITH PERPETRATORS

Why should perpetrators cooperate with the TRC?

Perpetrators may want to tell the TRC why they did some of the things they did and may want to have an influence on the recommendations. They may also want assistance in reintegrating into their communities. They may see their participation as a step in reconciling with victims and their families. It is worth noting that perpetrators and all others who speak to the commission may give statements in confidence. The TRC may force a small number of perpetrators to speak to it by giving them a summons or subpoena.

Will the TRC's report give perpetrators' names?

It may or may not. It is the TRC's choice whether to name individual perpetrators or groups that were responsible for atrocities.

Will victims and perpetrators meet before the TRC?

The TRC process may assist in reconciliation, as it will create an enabling environment for exchange between perpetrators and victims. Dialogue between victims and perpetrators can help them and their communities heal the wounds of the war. The dignity that goes with dialogue is the basis for achieving common citizenship. This is what the TRC is meant to achieve.

What is the role of the TRC in reintegration of ex-combatants?

The TRC will create a forum for perpetrators and victims to exchange their experiences and will create room for healing and reconciliation. It may also make recommendations to the government and other actors on what should be done about reintegration.

If a perpetrator returns and resettles in our community, should we allow him to live his life even though he has caused so much suffering?

Perpetrators should be allowed to resettle and reintegrate into their communities. They should be encouraged to take part in the TRC process and give a statement on their role. One of the main purposes of the TRC is to enhance reintegration of divided people and communities.

WITNESSES AND VICTIMS

Will the TRC pay special attention to children and women?

Special procedures will be instituted to address the needs of particular victims, such as child victims, those who have suffered sexual abuse, and child perpetrators. Women and children should be treated in a manner that respects their dignity and does not further traumatize them. UNICEF and child rights protection agencies are working very closely with the TRC's statement takers to obtain statements from children. They may work with the Commission during public hearings and other sessions to provide psycho-social counseling for the children appearing before it.

Can the TRC protect people who give information to it?

The Commission will always take into account the interest and concerns of victims and witnesses when inviting them to give statements, including the security of those who may not wish to recount their stories in public. The TRC may permit anyone who requests it to provide information on a confidential basis. The law setting up the TRC states that the Commission will not be compelled to disclose

any information given to it in confidence. (Chapter 3 discusses the question of whether the TRC and the Special Court will share information – see pages 37-38.)

What is the relationship between the TRC and reparations?

During the course of its operation, the Commission may provide information or recommendations to or regarding the Special Fund for War Victims as provided for in Article XXIX of the Lomé Peace Agreement. It should be noted, however, that the Commission has no direct control over the fund, and it cannot pay reparations to victims.

ORGANIZATION AND ADMINISTRATION OF THE TRC

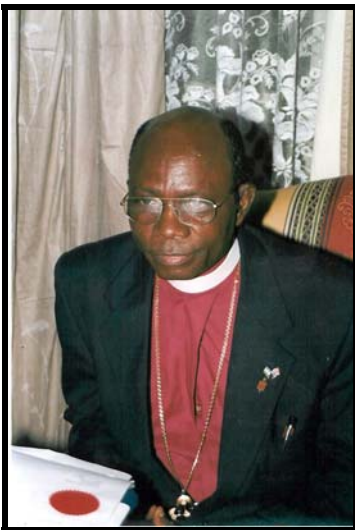
What is the timeline of the TRC and what are its operational phases?

The operation of the commission has been broadly divided into three phases:

- *Pre-preparatory phase* (August 2001–January 2002): This phase included the establishment of the Selection Panel, whose main function was to shortlist, interview and recommend possible national commissioners to the President. Preliminary public education on the TRC was also part of this phase.
- *Preparatory phase* (March 2002–December 2002): During this phase the Commission prepared to begin work. It set up its main office in Freetown, prepared its budget, began securing funds from donors, and hired staff. The phase technically began in July 2002 and ended in October 2002, but practically speaking it lasted from March to December. From March to October work was done by an Interim Secretariat. In October, the Interim Secretariat was dissolved and replaced by a Caretaker Committee. (The Caretaker Committee included the TRC’s international staff and the TRC Commissioners, plus representatives from the United Nations Development Program, the UNAMSIL Human Rights Section, and National Forum for Human Rights.) The Caretaker Committee helped the commissioners hire staff for the permanent Secretariat.
- *Operational phase* (December 2002 to sometime between November 2003 and January 2004): During this phase the Commission is gathering information; undertaking investigations; taking statements from victims, perpetrators and witnesses; and holding public hearings. It also is informing the public of its existence and the purpose of its work. Near the end of this phase it will compile its final report, with its findings and recommendations. The activities in this phase started in December 2002 with the recruitment, training, and deployment of statement takers. A few remaining preparatory phase activities are still being completed during this phase.

How many commissioners are there on the TRC and who are they?

The TRC has four national (Sierra Leonean) and three international commissioners. The Commission's chairperson is Reverend Dr. Joseph Humper, a bishop of the United Methodist Church. The Deputy Chair is Justice Laura Marcus-Jones, a retired judge of the High Court. The other national commissioners are Professor John Kamara, former principal of Njala University College; and Mr. Sylvanus Torto of the Institute of Public Administration and Management, University of Sierra Leone. The internationals are Ms. Yasmin Sooka, former commissioner of South Africa's TRC, now Director of the Foundation for Human Rights there; Madam Ajaaratou Satang Jow, former Minister of Education in The Gambia; and Professor William Schabas, Director of the Irish Center for Human Rights at the National University of Ireland.



Bishop Joseph C. Humper
(Chairperson, Sierra Leonean)



Laura Marcus-Jones
(Deputy Chairperson, Sierra Leonean)



John Kamara
(Sierra Leonean)



Sylvanus Torto
(Sierra Leonean)



Ajaaratou Satang Jow
(International)



Yasmin Sooka
(International)

A photograph of Commissioner William Schabas (International) was not available. (Photographs courtesy of Truth and Reconciliation Commission.)

How were the commissioners appointed?

There were different appointment procedures for national and international commissioners. In case of the national commissioners, the Selection Coordinator, Ambassador Oluyemi Adeniji, Special Representative of the Secretary General of the United Nations, announced the vacancies in the media. Three members of an Advisory Board assisted the Selection Coordinator in shortlisting the names of nominated individuals. The Advisory Board consisted of one representative of the government, one from the Inter-Religious Council, and one international, who was a resident of Sierra Leone. The national commissioners were chosen from this list by a Selection Panel. The Panel consisted of representatives from the Government of Sierra Leone, National Forum for Human Rights, Revolutionary United Front, National Commission for Democracy and Human Rights, and the Inter-Religious Council. It interviewed nominees before making its final selections. The names of candidates approved by the Selection Panel were then forwarded to the President of Sierra Leone for appointment.

The Office of the United Nations High Commissioner for Human Rights coordinated the selection of the International Commissioners. Nominations were invited from all over the world. The Office of the High Commissioner interviewed many candidates and recommended three. Their names were sent to the Selection Panel for approval.

The President appointed the four national and three international commissioners in June 2002 and they were sworn in on 4 July 2002.

How did the Selection Panel choose the Sierra Leonean commissioners?

The Selection Panel used the following criteria to interview and select the four national commissioners:

- Ability to be impartial and objective, with independence of mind;
- Knowledge of the historical and political dynamics of Sierra Leone, including traditional forms of reconciliation;
- Availability of the individual;
- Public perception of the individual;
- Notable contributions to Sierra Leone (in the academic, legal, or other professional fields);
- Ability to work in a multicultural/international setting;
- Ability to analyze large amounts of information regarding issues of national interest;

- Maturity and experience relevant to the work of the TRC, including record of employment;
- Good state of health and ability to work long hours and travel extensively;
- Some insight into and understanding of human rights issues;
- Diversity (profession, sex, religion, region, ethnicity);
- Understanding of the TRC and its role in Sierra Leone;
- Communication and management skills; and
- Practical experience of the conflict.

Apart from the commissioners, how are the other TRC staff members selected?

The staff is mostly employed by the Commission itself, although some of the international staff are recruited by the Office of the United Nations High Commissioner for Human Rights in Geneva.

Where is the TRC based? In Freetown or also in the provincial regions?

The TRC's main office is in Freetown. The TRC will also have provincial offices in the three regions of the country and district contact offices. The TRC plans to conduct hearings all over the country.

How does the TRC make decisions?

In as far as possible, Commission decisions are based on consensus, with all commissioners agreeing. Where commissioners do not agree on an issue, they decide by majority vote. The chairman casts a deciding vote where there is a tie.

THE LOMÉ AMNESTY

What is the connection between the amnesty and the TRC?

The Lomé Peace Agreement, signed in July 1999 between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, contained an amnesty provision. This meant that perpetrators of atrocities would not be legally accountable for their actions. The amnesty provision states that "the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement."

To provide for some accountability and to help prevent the repetition of similar atrocities if conflict ever broke out again, the Lomé Peace Agreement provided for

the establishment of a Truth and Reconciliation Commission. Parliament passed a law setting up the TRC in February 2000.

Chapter 2 explains why the amnesty will not prevent the Special Court from prosecuting the people with the greatest responsibility for very serious crimes committed during the war (see page 30.)

HOW THE TRC CAN BENEFIT SIERRA LEONE

What can the TRC do for Sierra Leone?

The TRC can help our country in several ways:

- **Help prevent atrocities by promoting accountability.** People are more likely to commit atrocities if they think they will not suffer any punishment or shame. The TRC will not punish perpetrators with prison, but it will emphasize that the things they did were terrible. Perpetrators who appear before the TRC may acknowledge that what they did was wrong and may choose to apologize. This will show anyone who might commit inhumane acts in the future that we as Sierra Leoneans condemn atrocities such as murder, rape, torture, pillage, burning houses, and other war crimes. The TRC will bring moral judgment on perpetrators. This will help prevent the civil war and the atrocities that took place during it from happening again.
- **Help some victims heal their emotional wounds.** Some victims may find that giving statements to the Commission or learning about its work lessens the emotional pain they feel as a result of terrible things they suffered during the war. It is important for each victim to think about his or her personal needs: some people will find it helpful to talk to the Commission, while others will prefer not to. The Commission will create an opportunity for exchange of experiences between perpetrators and victims. Victims will have the chance to tell of their ordeals, while perpetrators will have the opportunity to confess their wrongs. It is hoped that communities will forgive and reintegrate perpetrators who confess what they have done and show sincere remorse. The Commission may also provide counseling services to both victims and perpetrators. The Commission will give special attention to sexual abuse against women and girls and to the experience of children during the armed conflict.
- **Contribute to the consolidation of peace and development.** Truth, justice, and healing are very important for the consolidation of peace in any country in transition from war, including Sierra Leone, and there is no lasting development without peace. The TRC can contribute to trust and reconciliation, which can help make peace stable and permanent. This environment of peace is necessary for the human and material development that Sierra Leone needs.

- **Help produce national policies that will help Sierra Leone recover from the civil war and prevent it from occurring again.** In its final report, the Commission will make recommendations to government and possibly NGOs, the international community, and others.

Will the TRC bring reconciliation and reconstruction?

With our support, the TRC can help, but our country can heal and rebuild from the war only if all of us take responsibility and contribute. The TRC is an important part of the process, but only one part.

Everyone is aware of the gruesome occurrences during the armed conflict, but there has been hardly any acknowledgement of what the cost was in human terms. The TRC process should be looked at as a means of converting *knowledge* into *acknowledgement*. It seeks to facilitate acknowledgement of the pains of the past, the breakdown in the rule of law, the killings of thousands of Sierra Leoneans, and the injuries sustained by these acts.

So many abuses occurred during the war that it would be impossible to punish everyone who committed them. The TRC will provide victims with the opportunity to tell their stories and perpetrators with a way to come to terms with their activities during the armed conflict. Victims may therefore be relieved by having someone take responsibility for their ordeals, while perpetrators will be given the opportunity to confess and repent for what they did. The philosophy behind establishing a TRC is based on the belief that truth-telling can bring about healing and reconciliation. A TRC provides a mechanism for individuals, groups, and communities to describe and answer for their experiences and acts during the course of the war. This can help communities and individuals to heal and promote reforms that can prevent abuses like those that took place during the war from ever happening again.

Reconciliation and reconstruction will take time and require the efforts of all Sierra Leoneans. We must work to understand what happened to victims and perpetrators and what conditions and people caused the war. All Sierra Leoneans have the responsibility to push government and other parts of the society to reform and change the conditions that led to the war. We must also make sure that the people who caused the war do not continue to hold positions of power. The TRC can help us understand the war and will make recommendations on how to address its causes and consequences, but we must make sure these recommendations are followed. The Special Court—which is described in the next chapter—can play an important part in preventing war from breaking out again. Both of these institutions deserve our support. But they will not achieve reconciliation and reconstruction by themselves: we will have to work in many different ways to achieve these goals, even after the TRC and Special Court have finished their work.

HOW CAN I GET INVOLVED WITH THE TRC?

If you want to get involved in the TRC process by giving a statement, contact either the Secretariat at Block A Brookfields Hotel, Jomo Kenyatta Road, New England, Freetown or one of the regional offices through its statement takers or on 232 22 229194/226442 or by e-mail at trc@sierratel.sl.

The TRC will hold public hearings and you may want to attend, listen to them on radio, or read about them in newspapers.

After the TRC submits its final report, you can read it or learn about it from the government or NGOs. If you support its recommendations, you should push the government and other relevant groups (such as NGOs) to implement them.

CHAPTER 2

THE SPECIAL COURT

CREATION AND PURPOSE

What is the purpose of the Special Court?

The purpose of the Special Court is to help create peace based on justice in Sierra Leone. It will do this by trying the people who have the greatest responsibility (the *kakatua*) for very serious crimes during the civil war. It will make sure they will not be able to make war again, because they will be in prison. It will show that people who make war and commit very serious crimes will be put on trial and imprisoned—they will not get away with these terrible acts. Finally, the Special Court will be an example of independent and fair justice based on law. We deserve independent and fair justice from all our legal institutions, such as the police, public prosecutor, magistrate's courts, and traditional courts.

How was the Special Court created?

The Special Court was created by the government and the international community. The idea came from the government. On 12 June 2000 President Kabbah wrote to the United Nations asking the international community to help Sierra Leone bring to justice the people responsible for very serious crimes during the civil war.

The United Nations was receptive to this request. On 14 August 2000 the United Nations Security Council approved Resolution 1315. This resolution requested the Secretary General of the United Nations, Kofi Annan, to begin a dialogue with the government of Sierra Leone with the goal of setting up a court to try those responsible for crimes during the civil war.

The negotiations finished on 16 January 2002. On that day, the government of Sierra Leone and the United Nations signed an agreement to create the Special Court. Their agreement specified the Special Court's purpose, structure, funding, and methods of operating. It also stated how the Court would hire staff. The key principle was that the Court's staff would be a mix of Sierra Leoneans and internationals. The agreement included a statute that contains legal rules for the Special Court in many areas, including what crimes it can investigate and try, what rights people accused of crimes will have, and how the Court will treat children. In March 2002 Parliament passed the Special Court Ratification Act. That law gives the Special Court the power under Sierra Leonean law to obtain

evidence, arrest people, and do other things necessary to try the people with the greatest responsibility for very serious crimes during the war.

CRIMES AND TYPES OF PEOPLE THAT THE SPECIAL COURT CAN TRY

Whom will the Special Court try?

The Special Court will try the people who have “the greatest responsibility” for very serious crimes during the civil war. It will not try everyone who committed these crimes – only those with the greatest responsibility.

The Special Court’s Prosecutor has not said how many people he will prosecute, but international experts believe he will probably prosecute fewer than 30 people. This is because the Special Court will only try the people with the *greatest responsibility* for very serious crimes committed during the civil war. It is only a small court with limited money and staff, and it will only exist for a few years. It is much smaller and less costly than the international courts that are trying people for the Rwandan genocide (the International Criminal Tribunal for Rwanda) and for human rights violations during the civil war in the former Yugoslavia (the International Criminal Tribunal for the former Yugoslavia).

Who decides who bears “the greatest responsibility”?

The Special Court’s Prosecutor will decide whom to charge with crimes, but the Court’s judges will decide whether those people actually are guilty.

The Prosecutor is investigating what happened during the civil war. Based on these investigations, he will decide whom to accuse of having the greatest responsibility for very serious crimes. The Special Court’s judges will decide whether those accused people are guilty. The judges will decide this only after a trial where the Prosecutor shows the judges evidence that the accused is guilty and the accused shows them evidence that he or she is not.

The Special Court’s Prosecutor has said he will examine all the evidence he can find and charge the people with the greatest responsibility. These people may be rebels, government officials, government soldiers, businesspeople, arms dealers, peacekeepers, or anyone else. They may be Sierra Leoneans or foreigners. They may be people who ordered or committed very serious crimes, or who kept the war going. The Special Court will bring those with the greatest responsibility to justice no matter no matter who they are. *No one is above or below the law.*

Can the Special Court try . . .

- **A foreigner?** Yes, as long as that person is one of those who have the greatest responsibility for crimes during the war.
- **Someone who is in government now?** Yes, as long as that person is one of those who have the greatest responsibility for crimes during the war.
- **The leader of a foreign country?** Yes, as long as that person is one of those who have the greatest responsibility for crimes during the war.
- **Someone who provided money or weapons for the war but was not involved in fighting himself?** Yes, as long as that person is one of those who have the greatest responsibility for crimes during the war.

The Special Court can try anyone it believes has the greatest responsibility for the very serious crimes during the civil war, no matter who they are or where they are.

Can the Special Court try a peacekeeper from ECOMOG or UNAMSIL for very serious crimes during the civil war?

The Special Court can try peacekeepers for very serious crimes, but only if their own government is unwilling or unable to prosecute them itself.

What period of time will the Special Court look at?

The Special Court can only try people for very serious crimes that happened after the Abidjan Peace Accord of 30 November 1996. But this time frame may not make a big difference. Many of the people who had the greatest responsibility for very serious crimes committed before 30 November 1996 continued to do terrible things after that date. The Prosecutor has said that he does not believe anyone will escape justice just because the Special Court can only try people for very serious crimes committed after 30 November 1996.

What kinds of crimes will the Special Court try people for?

The Special Court can try only the people who have the *greatest responsibility* for *certain very serious crimes* committed as part of the civil war—for example, murder of civilians, rape, amputation, and torture. (The full list is provided below.) The people with the greatest responsibility could be people who, for example, actually committed, planned, or ordered crimes, or leaders or commanders who knew that the crimes were occurring but did nothing to stop them.

The Special Court can try people only for two types of crimes: certain international crimes and certain crimes under Sierra Leonean law. International crimes are especially terrible acts that *international law* says are crimes. Crimes

under Sierra Leonean law are acts that are forbidden because the laws of Sierra Leone make them crimes.

When the Special Court was designed, it was decided that it should try three types of international crimes. The first is *crimes against humanity*. Some acts are crimes against humanity when they are carried out widely or systematically and in a way that specifically targets civilians. These acts include, for example, murder, enslavement, torture, amputations, rape, and other forms of sexual violence.

The second type of international crimes the Special Court can try people for are *war crimes*. These are crimes against civilians, prisoners of war, or combatants who are unable to fight because they are sick or wounded. They include:

- Doing violence to one of these people's life, health, or physical or mental well-being, including through murder, torture, mutilation (such as amputation), or corporal punishment (such as beating);
- Collective punishments (punishing all members of a group for acts committed by just one of them);
- Taking hostages (kidnapping in order to get something from someone else – for example, demanding that enemy soldiers surrender before you free the people you kidnapped);
- Terrorism;
- “Outrages upon personal dignity” –for example, humiliating treatment, rape, enforced prostitution, and any kind of sexual assault;
- Looting;
- Punishing or executing people without giving them a trial in front of a regular court with internationally recognized rights (for example, the right to provide evidence that they are not guilty).

The third kind of international crimes the Special Court can try are ones that are not necessarily crimes against humanity or war crimes, but were considered especially important for the Special Court to be able to try. These are

- Intentionally attacking civilians;
- Intentionally attacking people, places, or equipment involved in humanitarian aid or peacekeeping; and
- Forcing or allowing children under the age of 15 to join armed forces or armed groups (even if they want to join) or using them in the fighting.

The *crimes under Sierra Leonean law* that the Special Court is allowed to try people for are: abusing girls under 14 years old, abducting girls for “immoral purposes,” setting fire to dwellings with people inside, and setting fire to public buildings or other buildings.

Will the Special Court try child combatants?

The Special Court has the power to try child combatants. However, the Prosecutor has said that he will not prosecute *anyone* for crimes they committed while they were under the age of 18.

When they created the Special Court the government of Sierra Leone and the international community wanted to make sure it treated children appropriately. Children played a difficult role in the civil war. Many of them committed terrible acts, but in many cases they were forced to do those things. Many child combatants were forced to serve and were abused terribly.

The government of Sierra Leone and the United Nations therefore have required the Special Court to treat children with special care. The Special Court *cannot* try anyone for a crime that person supposedly committed while he or she was under the age of 15. The Special Court could try someone for a crime he or she supposedly committed while aged 15 to 18, but it could not send that person to prison if it convicted him or her. Instead, it could only send the person somewhere for rehabilitation, such as to the approved school, a child protection agency, or a foster care home.

The Prosecutor has said publicly and clearly that he will not prosecute anyone for crimes committed while they were under 18. Remember that the Special Court will only try the people who have the greatest responsibility for crimes committed during the civil war. It seems very unlikely that someone who was under 18 could be one of the people with the greatest responsibility for the terrible crimes committed during the war. Most or all of the leaders of the rebel groups, the officers of the army, the government ministers, and the businesspeople who profited from the war, as well as most of the foreigners who may have been involved, were over 18 when they were involved in the war.

INDEPENDENCE OF THE SPECIAL COURT**Who decides whom the Special Court will try?**

The Special Court's Prosecutor is investigating what happened during the civil war. Based on these investigations, he will decide who he thinks has the greatest responsibility for the terrible crimes committed during it.

The Prosecutor will then take the evidence to a judge of the Special Court. He will show the judge the indictment (which is the document that lays out the charges against the accused) and explain why he thinks the evidence shows that the particular person is responsible for those crimes. If the judge agrees that the indictment looks reasonable, the judge will "confirm" the indictment and allow the Prosecutor to make steps to have the person arrested.

The Prosecutor and the judges are completely independent. They will not take instructions from the government of Sierra Leone, any other government, the United Nations, or any other organization in making these decisions.

Will the Special Court only try people from one side of the civil war?

No. The Special Court will treat all people equally, no matter what side they were on, and it will be independent of all governments and organizations. The Special Court will try the people who have the greatest responsibility for very serious crimes during the civil war, no matter what group they belonged to. It can try people from the government, AFRC, RUF, CDF, mercenaries, businesspeople, politicians, or anyone else, whether they are Sierra Leonean or foreigners. The Special Court's Prosecutor has said he will "follow the evidence wherever it may lead." This means that he will figure out who has the greatest responsibility for the worst crimes, no matter what side they were on, and try them.

**HOW THE SPECIAL COURT WILL DECIDE
WHETHER ACCUSED PEOPLE ARE GUILTY OR INNOCENT**

What will the Special Court do with people it tries?

This section explains what happens to each person the Special Court charges with very serious crimes. (That person is called the "accused person" or "defendant." Another word for "charges" is "indicts.")

After the Special Court charges (indicts) someone, it must arrest that person. The Special Court cannot put someone on trial unless that person is there to defend himself or herself.

After being arrested, the accused person can get advice from a lawyer immediately. Very soon after being handed over to the Special Court, the accused person comes before a judge of the Special Court. The judge asks whether the accused person understands what he or she is being accused of. The judge then asks whether he or she is guilty or not. If the accused person admits to being guilty, there is no trial: the Court simply decides what punishment he or she should receive.

If the accused person says he or she is not guilty, the Special Court puts him or her on trial to decide whether he or she is guilty. Three judges hear the arguments and evidence presented by the Prosecutor and the defense lawyers (or the accused person, if he or she does not want a lawyer). The Prosecutor has witnesses tell what they know, give the judges physical evidence (for example, photographs of a mass grave), and explain why all of the evidence fits together to show that the accused person is guilty. The accused person's lawyers—the defense team—also present witnesses, evidence, and arguments to the judges to persuade them that

the accused person is not guilty. For example, if the person on trial is a commander, the defense may try to show that he was not really in control of what was happening.

At the end of the trial, the judges decide whether the evidence has shown that the accused person is guilty. If two out of the three judges, or all three of them, decide that all the evidence together shows—beyond any reasonable doubt—that the defendant is guilty, then the Special Court finds him or her guilty.

However, if more than one of the judges has any reasonable doubt that the accused person is guilty, then the Special Court finds him or her not guilty. (In other words, the Court “acquits” him or her.) A reasonable doubt can be a very small doubt. Whether the judges find the accused person guilty or not, they have to give reasons for their decision.

If the judges find an accused person guilty (“convict” him or her), they then will decide what punishment he or she will receive. (This is called “sentencing.”) The Special Court will sentence people it convicts to prison for a certain number of years, or for the rest of their lives.

What happens after the trial ends?

After the trial judges decide whether the accused person is guilty or innocent, either the accused person or the Prosecutor can ask a second group of judges to review that decision. This process is called an “appeal” and the second group of judges is called the “Appeals Chamber.” The Appeals Chamber has five judges.

Neither the Prosecutor nor the accused person has to appeal any decision. Of course, they will only appeal a decision they do not like. For example, if the trial judges find that an accused person is guilty, the accused person often appeals that decision to the Appeals Chamber. In that case, the accused person is asking the Appeals Chamber to decide that the trial judges were wrong and that he or she is actually not guilty.

During the appeal, the person who is appealing (either the Prosecutor or the accused) explains to the Appeals Chamber why he or she believes the trial judges made a mistake. The other person explains why he or she believes the trial judges were correct. The judges in the Appeals Chamber then decide whether the trial judges were right or wrong.

If Appeals Chamber judges decide that the trial judges were wrong, they order the trial judges to do whatever is necessary to correct the mistake. For example, the trial judges might find an accused person guilty, but the appeals judges might decide they are wrong. In that case the appeals judges would either set the accused person free or order the trial judges to hold a new trial.

What happens after appeal?

After the decision of the appeals judges the accused person is put in prison if the Special Court has found him or her guilty, or released if the Special Court has found him or her not guilty. Guilty people are kept in prison for however long the Special Court decided—for some number of years or for their entire lives. They may be held in a prison in Sierra Leone or in some other country.

What if an accused person is outside Sierra Leone – can he or she be arrested?

A person accused by the Special Court can be arrested anywhere in the world. The Special Court will ask the authorities of the country where the person is located to arrest him or her and give him or her to the Special Court. Accused people who are in Sierra Leone will be arrested by the Sierra Leone police and given to the Special Court.

Will defendants be free during their trials?

Not usually. The Special Court will keep most, and maybe all, accused people in jail while they are waiting for their trial to start and then during the trial. This is a precaution to keep them from escaping or threatening witnesses.

Where will the trials be held?

The Special Court's trials will take place in a courthouse on Jomo Kenyatta Road, in the New England area of Freetown. The courthouse is being constructed and probably will be completed in mid-2003.

The Special Court is different from the international courts for the former Yugoslavia and Rwanda in holding its trials in the country where the crimes took place. The international court for the former Yugoslavia has its trials in the Netherlands. The international court for Rwanda holds its trials in Tanzania. The Special Court's trials are in Sierra Leone so that the Court can be closer to the people. We can see the process of justice for ourselves because the trials are near us, not in another country.

Will the trials be public?

The Special Court's trials will be open to the public most of the time. Everyone is welcome to attend them. The trials may be interesting to anyone who would like to see the process of justice working. The reason the trials will be public is that the Special Court is for Sierra Leoneans and we should be able to see it work. Also, if we watch the trials, we can make sure that they are conducted fairly. Some sessions of Special Court trials may be closed to the public to protect a witness, protect the rights of the accused person, or ensure security.

There are other ways to learn about the trials. Some or all of them may be broadcast on radio. Newspapers, radio, and television will report what happens in the trials. The Special Court will work with Sierra Leonean civil society organizations all over Sierra Leone to give us information about what is happening during the trials.

PUNISHMENTS

What punishment will people convicted by the Special Court receive?

People convicted by the Special Court will be put in prison. The Special Court judges will decide at the end of their trial how long they will stay in prison. This can be for a certain number of years or for the rest of their lives.

It is unlikely the Special Court will prosecute anyone for crimes they committed while under age 18, because the Prosecutor has said he will not. Even if this does happen, the Court cannot send anyone to prison for crimes committed while between 15 and 18 years old. The guilty person would be sent to an institution that could help him or her recover and eventually return to the community, such as the approved school, a child protection agency, or a foster care home.

Can people convicted by the Special Court receive the death penalty?

No. The Special Court will respect all internationally-recognized human rights. Many countries believe that the death penalty is a violation of human rights. On the other hand, all countries agree that putting convicted criminals in prison is compatible with human rights. Because the Court is a collaboration between the international community and the government of Sierra Leone, it will impose only the penalty that everyone agrees is permitted by international human rights law: prison.

RIGHTS OF ACCUSED PEOPLE

What rights will accused people have?

The purpose of the Special Court is to bring to justice those who have the greatest responsibility for very serious crimes during the civil war. It is important that the Special Court does not put anyone in jail who is *not* responsible for these terrible crimes. People accused by the Special Court will have rights so they can defend themselves. These rights ensure that if an accused person is innocent, he or she can show this to the Court and the Court will not find him or her guilty.

- The Special Court will treat all accused people *equally*. It will not treat some better than others because they are from one faction, or because they are rich, or for any other reason.
- Everyone accused by the Special Court will have the right to a *fair trial*. This trial will be *public*, except where the protection of witnesses and victims makes that impossible. Accused people are considered to be innocent until the Prosecutor *proves* to the judges, after a full trial, that they are guilty.
- All accused people will have the right and opportunity to *defend themselves* against the charges against them. They must be told in detail what crimes they are accused of and why. They must be told in a language they understand. They must be given enough time and resources to prepare for their trial.
- Everyone put on trial by the Special Court has the right to a *lawyer*. If an accused person can afford to pay, then he or she has the right to choose any qualified lawyer to defend him or her. If not, then the Special Court will pay for a defense lawyer. The accused person's lawyer is loyal only to the accused person. It is the defense lawyer's responsibility to do everything possible to persuade the judges that the defendant is not guilty. The defense lawyer makes sure of two important things. First, he or she makes sure that the judges hear all the evidence, not just what the Prosecutor presents to show that the defendant is guilty. For the judges to figure out the truth and come to the correct decision, they must hear *all* the evidence. Second, defense lawyers protect the accused person's rights and make sure the Special Court treats the accused person fairly.
- The Special Court cannot put someone on trial if he or she is not present. (This is to make sure that the person has the chance to defend himself or herself.) The Special Court cannot wait for too long after an accused person is arrested to start his or her trial—trials must take place within a reasonable time. During the trial, the accused person has the right to have witnesses tell the court information showing that the accused person is not guilty. The Special Court's trials will be in English. If the accused person does not understand or speak English, the Special Court must provide an *interpreter* for free.
- Accused people cannot be *forced to confess* or to testify at their own trial. But they can confess or testify if they freely choose to do so.

What if the Special Court tries someone who is innocent?

It is extremely important that the Special Court only put in jail the people who have the greatest responsibility for very serious crimes during the civil war. When the government of Sierra Leone and the United Nations set up the Special Court they set up many safeguards to make sure of that.

The Prosecutor accuses people only when there is evidence indicating that they are among those with the greatest responsibility for very serious crimes. The Prosecutor investigates carefully to make sure he identifies the right people. After the Prosecutor decides to accuse someone, he shows the evidence to a Special Court judge. The judge allows the Prosecutor to charge (indict) the person only if there is evidence.

During the trial, the accused person has the right to defend himself or herself. He or she has the right to a lawyer and to show the judges evidence that he or she is innocent. The accused person has many other rights that make sure that his or her trial is fair.

The judges listen carefully to all evidence and witnesses. They are not biased and they are not influenced by anyone. The judges find an accused person guilty only if they are very confident he or she is guilty, that is, if they see no reasonable doubt.

Finally, all accused people who are found guilty after a trial can appeal that decision. In an appeal, another set of judges (the Appeals Chamber) checks the decision of the first set of judges (the trial judges) to ensure it was correct. The accused person is not put in jail if the Appeals Chamber decides that the trial judges were wrong.

Even after this time, if new evidence is found that shows that someone convicted by the Special Court is innocent, that person can ask the Court to look at his or her case again.

What if an accused person cannot afford to pay a defense lawyer?

The Special Court will organize and pay for a defense team for any accused person who cannot afford to pay for his or her own defense.

WITNESSES AND VICTIMS

Does the Special Court protect people who give it information or who testify during trial?

Yes. The Special Court protects people who give it information or give evidence (testify) during its trials if doing so puts them in danger. Most people who give the Special Court information do not testify during a trial. The Special Court examines the individual situation of each witness who needs protection. It then tries to protect that particular person and, if necessary, his or her family. For example, it may allow the person to testify in private, so the public does not know his or her identity.

Will the Special Court protect witnesses if the person they testify against is found not guilty?

Yes. When the Special Court promises to protect a witness, it protects that person no matter what happens to the defendant he or she testifies against.

Can children give evidence to the Special Court? Can they testify in a trial?

Yes. Children who witnessed very serious crimes or were victims can give evidence to the Special Court. They also can testify during trials. The Special Court's investigators are talking to children to learn what they saw and suffered during the civil war. The Special Court pays special attention to children's needs. For example, children may find talking about what they saw or experienced especially difficult. They may find it frightening to testify during a trial. The Special Court will be careful with children when getting evidence from them or having them testify. It will not ask children to testify unless their evidence is essential.

The Special Court can protect children who are in danger for giving it information or testifying at trial, just as it can protect adults (see above).

Does the Special Court pay people who give it information or testify at trial?

No. The Special Court does not pay people who give it information or testify at trials as witnesses. If the Special Court paid for information, people might lie in order to get paid. Also, people—including the Special Court judges—might not believe a paid witness, even if he or she really was telling the truth. Even though they are not paid, people who give information to the Court or testify at trials make a very important contribution to peace and justice in Sierra Leone. We all should support them.

Does the Special Court compensate victims?

No, the Special Court cannot compensate victims. The Special Court's purpose is to try and punish the people who have the greatest responsibility for very serious crimes during the civil war.

If the Special Court wants me to give evidence to it or testify at trial, do I have to?

It is important for us to help the Special Court bring those with the greatest responsibility for the war to justice, by giving it any evidence we have. If the Special Court needs evidence from someone, it can order them to answer questions—in private or in court—or give it material it needs (for example, documents). This order is called a "subpoena." If someone does not obey a subpoena then the Court can find him or her guilty of "contempt of court" and

require him or her to pay a fine or spend time in prison. The Special Court probably will issue subpoenas only to a few people who have important evidence to give and are not willing to cooperate voluntarily.

If someone tries to intimidate a witness or prevent him or her from testifying, can the Court do anything?

Yes. If someone tries to interfere with the Special Court's administration of justice—for example, by intimidating a witness or refusing to obey an order from the Court—the Court can find that person guilty of contempt of court and punish him or her with a fine or imprisonment.

ORGANIZATION AND ADMINISTRATION OF THE SPECIAL COURT

How is the Special Court organized?

The Special Court has three main parts: the Chambers, the Office of the Prosecutor, and the Registry. Defense teams also will play an important role in the Special Court's work, because they will defend people that the Special Court has charged with crimes. They will be part of the Registry.

- The **Chambers** is another word for the judges and their staff. The Special Court has eight judges. Three of them make up the Trial Chamber. The Trial Chamber will oversee the trials and decide whether the accused people are guilty. The other five will be the Appeals Chamber. They will review any decision made by the Trial Chamber if either the accused person or the Prosecutor claims that the decision is wrong. The government of Sierra Leone appointed one of the judges in the Trial Chamber and two of the judges in the Appeals chamber. The United Nations Secretary-General, Kofi Annan, appointed two judges in the Trial Chamber and three judges in the Appeals Chamber, after consulting with the government of Sierra Leone.

The judges currently in the Trial Chamber are Bankole Thompson from Sierra Leone, Pierre Boutet from Canada, and Benjamin Mutanga Itoe from Cameroon. Judge Thompson was a High Court judge in Sierra Leone and now is a professor in the United States. Judge Boutet is a former military judge in Canada. Judge Itoe is a judge on the Supreme Court of Cameroon.

The judges currently in the Appeals Chamber are Geoffrey Robertson, Q.C., of the United Kingdom, Emmanuel Ayoola of Nigeria, Alhaji Hassan Jallow of The Gambia, Gelaga King of Sierra Leone, and Renate Winters of Austria. Judge Robertson is a human rights lawyer in the United Kingdom. Judge Ayoola is a judge on the Supreme Court of Nigeria. Judge Jallow is a judge on the Supreme Court of The Gambia and also a consultant for the International Criminal Tribunal for the former Yugoslavia. Judge King is a

former judge of the Supreme Court of Sierra Leone and former President of the Court of Appeal of The Gambia. Judge Winters is a judge on the Supreme Court of Kosovo. Judge Robertson is president of the Special Court.



The Judges of the Special Court: from left to right, Alhaji Hassan Jallow, Pierre Boutet, Emmanuel Ayoola, Geoffrey Robertson, Q.C. (President of the Court), Bankole Thompson, Gelaga King, Renate Winters, and Benjamin Mutanga Itoe. (Photograph courtesy of Special Court for Sierra Leone.)

- The **Office of the Prosecutor** investigates crimes, decides whom to prosecute (although a judge must confirm each decision), and during trials argues and gives evidence that the accused person is guilty. The Office of the Prosecutor has prosecuting lawyers and investigators. The Prosecutor is David Crane from the United States.
- The **Registry** supports all other parts of the Special Court. It takes care of administrative issues, for example by organizing offices and vehicles for the Chambers, the Office of the Prosecutor, and the defense teams. It also will provide support for witnesses and victims. The head of the Registry is called the Registrar; the first Registrar is Robin Vincent from the United Kingdom.
- Every person the Special Court puts on trial will have a **defense team**. Each defense team will include lawyers and perhaps investigators. The defense

team will try to persuade the judges that the accused person is innocent. It also will make sure that the Special Court respects the accused person's rights and treats him or her fairly. The defense team may include both Sierra Leoneans and internationals.

In addition to these parts of the Special Court, a **Management Committee** supervises the administration of the Court. It makes sure the Court is running efficiently and effectively. It also helps raise money so the Court can operate. The Management Committee has representatives from the United Nations, the government of Sierra Leone, Canada, the Netherlands, Nigeria, Lesotho, the United Kingdom, and the United States. The Management Committee has no influence over the Special Court's Prosecutor, judges, or defense teams—they are all independent.

Who is the staff of the Court? Are they internationals or Sierra Leoneans?

The Special Court's staff are a mix of Sierra Leoneans and internationals. The Special Court has 8 judges—five internationals and three Sierra Leoneans. The Office of the Prosecutor will have approximately 45 staff. The Registry will have approximately 110 staff. The number of people on the defense team will be different for each accused person. The defense team will depend on what the particular accused person wants and how complex their case is—more complex cases will require more defense staff.

Who pays for the Special Court?

The government of Sierra Leone is not paying for the Special Court. Various countries have donated money or materials. When this manual was written in early 2003, the following countries had contributed to the Special Court: Australia, Belgium, Canada, Chile, China, Cyprus, Czech Republic, Denmark, Finland, Germany, Ireland, Italy, Japan, Liechtenstein, Lesotho, Luxembourg, Mali, Mauritius, Malaysia, Mexico, Netherlands, Nigeria, Norway, Philippines, Singapore, South Africa, Sweden, Switzerland, United Kingdom, and the United States.

The Special Court is expected to cost approximately \$57 million over three years. The Special Court is continuing to raise money for the rest of its costs.

The government of Sierra Leone has supported the Special Court in important ways, but is not paying for it. For example, the government has loaned a large area of land in Freetown for the Special Court to use. (The Special Court is building a courthouse and other buildings on that land. The buildings will be donated to the government of Sierra Leone after the Court finishes its work, so they will continue to benefit us.)

THE LOMÉ AMNESTY

What about the amnesty granted in the Lomé Peace Agreement? Does it apply to the Special Court?

The amnesty in the Lomé Peace Agreement will not stop the Special Court from prosecuting the people who have the greatest responsibility for very serious crimes during the civil war.

The government of Sierra Leone and the RUF signed the Lomé Peace Agreement on 7 July 1999. One part of the agreement said that no one would be prosecuted for crimes committed during the war. The legal name for this is “amnesty.” An amnesty makes it legally impossible to prosecute certain people for certain crimes. (The amnesty in the Lomé Peace Agreement states: “the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.”) The amnesty was given so that the fighting would stop.

The amnesty does not stop the Special Court from prosecuting the people who have the greatest responsibility for *international crimes* committed during the war. It also does not stop the Special Court from prosecuting the people who bear the greatest responsibility for *any* crimes committed *after the Lomé Peace Agreement*, meaning after 7 July 1999. We can look at these two points in more detail.

Why does the amnesty not stop the Special Court from prosecuting people for international crimes? The Lomé amnesty was provided by the Sierra Leone government. It can give people amnesty under *Sierra Leonean* law, but not under *international* law. When the government of Sierra Leone and the RUF signed the Lomé Peace Agreement, the United Nations stated that, in its view, the amnesty could not protect people from responsibility under international law for their crimes. The government of Sierra Leone agreed with this when it signed the agreement with the United Nations to set up the Special Court.

Why does the amnesty not stop the Special Court from prosecuting people for any *crimes committed after 7 July 1999*? The Lomé amnesty only talked about crimes that had been committed before it was signed on 7 July 1999. This was because the Lomé Peace Agreement was a peace treaty—the parties who signed it (the government of Sierra Leone and the RUF) thought that it was ending the war. If the civil war was ending, then the “crimes during the civil war” were only in the past. The Lomé amnesty was not intended to cover any crimes committed after it was signed.

The Lomé amnesty only stops the Special Court from prosecuting crimes that are *not international crimes* and that occurred *before 7 July 1999*.

HOW THE SPECIAL COURT CAN BENEFIT SIERRA LEONE

What can the Special Court do for Sierra Leone?

The Special Court can help Sierra Leoneans build a just and sustainable peace (*gud gud kol at*). This could ensure that the terrible experience of the last decade is never repeated. There are several ways the Special Court can contribute to Sierra Leoneans' work for peace now, but it needs help and support from all Sierra Leoneans.

- The Special Court will contribute to peace by stopping those with the greatest responsibility for the war from committing crimes again, because it will put them in prison (after fair trials).
- The Special Court also will make other people who might think about making war or committing terrible crimes think twice before doing so. The Special Court will show that the people with the greatest responsibility end up in prison, not rich and free. People will not make war or commit crimes if they know they will go to prison if they do.
- The Special Court can help us start to create a fair and equal justice system in our country. The Special Court will bring to justice the people with the greatest responsibility no matter how rich or powerful they are. We deserve a justice system that brings to book everyone who commits a crime, even if they are friends with a policeman, or relatives of a judge, or powerful politicians, or rich businesspeople. Our country's justice system must treat everyone equally and make sure no one is above or below the law.

Without our help, however, the Special Court cannot accomplish any of this. People who know who was responsible for very serious crimes or for continuing the war need to tell the Special Court what they know. Everyone needs to help the people in their community, especially ex-combatants, understand the Special Court. It is especially important that ex-combatants understand that the Special Court will try only the people who have the greatest responsibility for the war and the worst crimes committed during it.

Only Sierra Leoneans can build a fair and equal justice system. The Special Court cannot do it for us. We must watch the Special Court to see whether it is a good model for Sierra Leone. We must decide whether it provides fair and equal justice. We must pressure the police, judges, and politicians to build a court system in Sierra Leone that is equal and fair. Corruption will end only when we demand that officials stop taking bribes and giving out favors, and when we insist that our fellow citizens stop participating in this system. All of us must respect the law. Also, the people who enforce the law must do so equally and without bias in favor of their friends or family, or people who are rich or powerful. The Special Court can be an example of what a good court system can do. If we want Sierra Leone's courts to work in the same way, we must reform our system.

Will the Special Court cause war to break out again?

Some people worry that the Special Court might cause war start again. They think that ex-combatants may start fighting again when the Special Court starts to try their commanders.

No one can predict the future, but these people may be mistaken. The Special Court will try only the people who have the greatest responsibility for very serious crimes during the civil war. It will not try all the ex-combatants who committed those crimes. Nearly all ex-combatants have nothing to fear from the Special Court. It is very important that they understand this. Most ex-combatants, like their fellow Sierra Leoneans, are tired of war. If they understand that they have nothing to fear, they will not take up arms.

Most ex-combatants who participated in crimes will not be tried by the Special Court (because it will only pursue those with the greatest responsibility). But they should acknowledge that they did terrible things and apologize. They can do this by telling what they did to the Truth and Reconciliation Commission and by apologizing to the people they hurt and those people's families.

All of us can help prevent war by explaining these things to our families, friends, and others in our community. If ex-combatants understand how the Special Court works, they will see that they have no reason to go back to war.

HOW CAN I GET INVOLVED WITH THE SPECIAL COURT?

The official name of the Special Court is the "Special Court *for* Sierra Leone." It belongs to all of us.

What can we do to make sure the Special Court helps our country?

The Special Court can only succeed if we support it. We need to:

- *Educate* our family, friends, and others in our communities about the Court;
- *Encourage people to give evidence* about very serious crimes during the war *and to testify* in trials if the Special Court asks them to;
- *Watch how the Special Court works* and decide whether it is a good model;
- *Press for fair and equal justice, without corruption*, from the police, prosecutors, lawyers, judges, and other parts of the government; and
- *Help end impunity*—make sure that people who commit terrible crimes or act corruptly face justice, even if they are powerful, so that we can rid Sierra Leone of these problems.

Can I watch the Special Court's trials?

Yes, most of the time. Most parts of the Special Court's trials will be open to the public. Everyone will be welcome to attend them. Some sessions may be closed to the public to protect a witness, the rights of the accused person, or security.

Some or all of the trials will be broadcast on radio. Newspapers, radio, and television also will report on what happens during the trials.

Where is the Special Court located?

The Registry is located on Jomo Kenyatta Road, in the New England area of Freetown. This is where the new courthouse will be, as well as the prison and the judges' offices. As of March 2003, when this handbook was published, the Office of the Prosecutor is located at 1 Scan Drive, off Spur Road, in Freetown, just up the hill from the British High Commission. It will move to Jomo Kenyatta Road sometime in the future.

If I have information about crimes committed during the civil war, how can I give it to the Special Court?

You can give information to the Investigations section of the Office of the Prosecutor. The Office of the Prosecutor can be reached by telephone on (232 22) 236-527. You also can telephone the Office of the Prosecutor by calling UNAMSIL on (232 22) 273-183 or 273-184 or 273-185 or 273-186 and asking for extension 5164. When you reach the Office of the Prosecutor, ask to speak to someone in the Investigations section. You also can go to the Office of the Prosecutor in person; as of March 2003 it is located at 1 Scan Drive, off Spur Road, just up the hill from the British High Commission, in Freetown.

What if I want more information about the Special Court?

You can learn more about the Special Court by contacting its Outreach Unit, located in the Registry offices on Jomo Kenyatta Road, in the New England area of Freetown. Some civil society organizations also can provide more information about the Special Court.

CHAPTER 3

DIFFERENCES AND SIMILARITIES BETWEEN THE TRC AND THE SPECIAL COURT

INTRODUCTION

Many people feel confused about the similarities and differences between the Special Court and the Truth and Reconciliation Commission (TRC) and about how they will relate to each other. This chapter addresses those issues. It compares the two institutions, looking at their differences and similarities, and explains the relationship between them. In particular, it discusses:

- The institutions' different roles in building peace in Sierra Leone;
- How the two institutions will interact and specifically whether they will share any information; and
- The differences between what the TRC does and what the Court does.

THE DIFFERENT ROLES OF THE TRC AND SPECIAL COURT

Why does Sierra Leone have both a TRC and a Special Court?

If our country is to develop, we need to deal with the horrors of the civil war by creating accountability and justice. The war was so complex that no one mechanism would be adequate to address the human rights violations and very serious crimes that occurred during that period. The TRC and Special Court play different roles in the process of creating a just and sustainable peace. They can help ensure that the horrors of the civil war do not occur again. But both the TRC and the Special Court can be important if we help them and make sure that they have a lasting effect on our society.

Specifically, the TRC will give people the chance to say what they experienced during the civil war. It will investigate the full story of what happened. Finally, it will make recommendations to government and perhaps NGOs, the international community, or others about how to deal with the effects of the civil war and prevent war from breaking out again.

The Special Court will try the people with the greatest responsibility for very serious crimes during the war. Putting them in jail will stop them from committing these crimes or making war again. It also can show that we will not

tolerate these horrible acts: anyone who commits them will be punished. Finally, the Special Court can be an example of fair and equal justice. We can demand that every part of Sierra Leone's justice system – police, courts, prosecutors, lawyers, prisons – provide fair and equal justice.

Another reason why we have both a TRC and a Special Court is because they were created at different times. The TRC was first suggested during the negotiations for the Lomé Peace Agreement in 1999 as a way to address accountability, justice and impunity as a result of the atrocities committed during the course of the war. The Lomé Peace Agreement granted amnesty to all combatants to make sure they were not prosecuted for crimes they had committed. But after Lomé, many continued to fight and commit crimes. After the RUF started fighting again, President Kabbah proposed the Special Court in 2000. He wrote to the United Nations to ask for help from the international community to prosecute the people responsible for very serious crimes. The United Nations and the government of Sierra Leone then negotiated and agreed in January 2002 to create the Special Court.

Why do we need to punish if we have decided to reconcile?

The war broke out because of (1) leaders who incited the violence; and (2) structural problems that allowed the war to break out or continue (such as the diamond trade, injustice, corruption, and lack of economic opportunity).

The Special Court will deal with the leaders. It will seek to imprison the people with the greatest responsibility for the atrocities during the war. This will make it impossible for them to commit those atrocities again or restart the war. It also will send the message that Sierra Leoneans will not allow people to make war or commit atrocities.

The TRC has a different role. It is to determine what happened during the civil war, including why it started and why it was so brutal, and to help Sierra Leoneans recover and live together in peace. The TRC therefore addresses the second cause of the war, examining the structures that allowed the war to take place and continue. The Commission also enables victims of the war, perpetrators of terrible acts, and people who witnessed those things to explain what happened to them.

The Special Court will focus on the role particular individuals played in the war, while the TRC will try to figure out the whole story of the war. The Special Court's investigations will focus on specific people and parts of the war. It will look at these in great detail. The TRC will be concerned with the entire war and everything that happened during it, but will not examine every incident.

Do we need to have both at the same time? Why not have a TRC first and then a Special Court (or a Special Court first and then a TRC)?

The two institutions are operating at the same time not by design, but rather by coincidence. The Special Court and TRC were proposed at different times, but have ended up beginning their work about the same time.

The Lomé Peace Agreement of 1999, signed by the RUF and the government of Sierra Leone, stated that a Truth and Reconciliation Commission would be created. In 2000 Parliament passed a law that set up the TRC. The United Nations and the government of Sierra Leone have worked together since then to create the TRC and obtain funding from donors to support it. The TRC began work in late 2002. The unavailability of funds for the TRC to start its work and other factors such as the collapse of the peace process in May 2000 may have contributed to delaying the commencement of the TRC's work.

The process of creating the Special Court began with President Kabbah's proposal in 2000 that the international community help Sierra Leone create a court to try people responsible for very serious crimes during the war. The United Nations and the government of Sierra Leone studied this proposal and negotiated. In January 2002 they agreed to create the Special Court. After raising funds, the Special Court began operating in mid-2002 – around the same time as the TRC.

Will the TRC and the Special Court just re-open old wounds? Shouldn't we let sleeping dogs lie?

Many Sierra Leoneans believe that once something has happened, it should be forgotten. This concept has not been helpful to us. Experience from other countries, like South Africa, indicates that it can be useful to have bodies like courts and truth commissions, which examine the past. If the past is forgotten and not confronted, it may be difficult to change things and prevent such crimes from happening again. We can move forward only if we address the conditions that caused the war. We also must address the consequences of the crimes that occurred during it. This requires identifying the people and structures that caused the war. It also requires punishing those with the greatest responsibility, to show that people cannot mastermind terrible acts in our country and get away with it. We also need to understand the experiences of both victims and perpetrators, and help communities to heal. We must deal with the past so that we can enjoy the future.

Why spend money on the TRC and the Special Court instead of on development?

It is not necessarily the same money which would be spent on the TRC or Special Court or on development. It is our hope that money will be spent on both. However, the TRC and Special Court also have an important role in long-term

development. They will help develop the idea that one is accountable for one's actions. Fostering this concept, whether in relation to human rights abuse or corruption, will be important for long-term development and will give foreign investors and donors more confidence in our country. That will lead to more assistance and investment that will help us develop our economy.

Has this happened anywhere else or is Sierra Leone unique?

It is not uncommon for countries to have a combination of truth commissions and prosecutions. For instance:

- In some countries, such as *Chile* and *Argentina*, there was a truth commission followed by prosecutions.
- In other situations, there was a court before there was talk of a truth commission. An international court for the *former Yugoslavia* was created in the early 1990s. Since then, there have been discussions about creating a truth commission, but one has not yet been created.
- *South Africa* used an amnesty to get people to talk to the truth commission. There, perpetrators could come before the commission and ask for amnesty. If they told everything they knew and showed real regret for their actions, they received amnesty and could not be prosecuted later.

Several things about Sierra Leone's TRC and Special Court are unique. Few countries have had a truth commission working at the same time as prosecutions are taking place. It is also unusual for a truth commission and the courts to keep their information completely separate, as our TRC and Special Court are doing. These differences make Sierra Leone unique and interesting to the rest of the world.

RELATIONSHIP BETWEEN THE TRC AND SPECIAL COURT

What is the relationship between the TRC and the Special Court?

The Special Court and the TRC are different institutions. They will work separately, even though they both are contributing to Sierra Leoneans' struggle for a just and sustainable peace. The Special Court and TRC are very unlikely to share any information (see next section). They will have completely separate offices, staff, and equipment.

Will the TRC and the Special Court share the information they gather about the war?

There has been some discussion and anxiety about whether the Special Court and the TRC will share information. In particular, some ex-combatants wonder

whether statements they make to the TRC will end up in the hands of the Special Court's Prosecutor and lead to their being prosecuted.

In reality, this issue is not as important as some people think. The Special Court will prosecute only a small number of the people with the greatest responsibility for very serious crimes from the war. The vast majority of ex-combatants will not be prosecuted by the Special Court. Also, it is very unlikely that the Special Court and the TRC will share any information. It is extremely unlikely that any ex-combatant's statement to the TRC will ever be used by the Special Court to prosecute him or her. The TRC has stated that it will not give the Special Court any information. The Prosecutor of the Special Court has said very clearly that even if he has the power to get information from the TRC, he will not request or require it. He believes it is very important for all Sierra Leoneans to feel comfortable giving information to the TRC without fearing prosecution.

It is possible that defense lawyers might try to obtain information from the TRC to help defend an accused person. It is not entirely clear what would happen in that case. The judges of the Special Court might deny that request. If that happened, the TRC would not have to give any information to the defense lawyers. Also, the TRC has said that even if the Special Court's judges did tell the TRC to give information to defense lawyers, the TRC would still respect confidentiality.

Finally, even if defense lawyers in the Special Court requested information from the TRC and even if the Special Court's judges accepted that request and even if the TRC agreed—even then the defense lawyers would use the information only to help their client (the accused person).

OPERATIONS OF THE TRC AND SPECIAL COURT: SIMILARITIES AND DIFFERENCES

In which of the two will more people participate?

The Special Court will involve very few people, while the TRC will involve many. The Special Court will only prosecute a small number of people: those who have the "greatest responsibility" for atrocities. A few victims will participate in the Special Court by giving it evidence and testifying as witnesses during its trials. But the vast majority of people who fought in the war and suffered from it will not interact with the Special Court—they will only watch it. On the other hand, all Sierra Leoneans who fought in the war or suffered from it can participate in the TRC. The TRC is taking statements from all over the country.

How does each treat ex-combatants/perpetrators?

Ex-combatants will have different roles in the Special Court and TRC. The Special Court may prosecute a few ex-combatants who bear the greatest responsibility for

atrocities (for example, a top commander who ordered his troops to commit atrocities on large scale). The Special Court may also have some ex-combatants give evidence as witnesses. The TRC wants to hear from all ex-combatants who are willing to tell what happened to them, what they saw happen and what they did during the civil war. Any ex-combatant can give a statement to the TRC. (The TRC also can force someone to speak to it if it thinks this is important, but this is unlikely.) The TRC may also ask some ex-combatants to tell their stories at public hearings. The TRC will not punish anyone, while the Special Court will make the people with the greatest responsibility account for the atrocities committed by sending them to prison or by restitution and forfeiture.

What is the role of victims in each?

Victims of the war will have different roles in the Special Court and TRC. Any victim can tell the TRC what he or she experienced during the war, and the TRC will use this information as it figures out exactly what happened during the civil war. The TRC will invite some victims to tell their stories at public hearings. One of the main purposes of the TRC is to provide victims (and others) with a chance to tell their stories.

The Special Court will not speak to all victims in Sierra Leone, but only those who have information about atrocities the Court chooses to try.

For how long will each institution work?

Both the TRC and the Special Court started working in mid-2002. The TRC will work until the end of 2003, although its work may be extended to the middle of 2004. The Special Court will work at least until the middle of 2005.

Will the Special Court and the TRC appear together in public?

Staff of the TRC and Special Court may appear in public together (for example to explain their institutions). They may also speak about each other—for example, the Special Court’s Prosecutor and Registrar have spoken positively about the TRC on many occasions, and the TRC’s commissioners have said that both institutions have an important role. However, the two institutions will work entirely separately, as noted above.

SHOULD I GO TO THE TRC OR SPECIAL COURT?

My son and other family members were murdered during the war. Should I go to the TRC or the Special Court?

This is for you to decide, but you can do both. You can tell the TRC what happened to you by giving a statement to the statement takers when they visit your area. You may even be able to speak about it in a public hearing if you wish. On the other hand, if you prefer, the TRC can treat your information confidentially.

You may also want to speak to a member of the Special Court's staff to see if your information may help them bring to justice the people with the greatest responsibility for very serious crimes during the war. They can talk to you in confidence. You should tell them if you are afraid of being exposed.

What if I know who murdered my family and he/she is still in our midst?

If you want to do something about this, it is important that you not take any actions yourself against him or her. If people start taking action on their own in these cases, then the peace will not last. You can speak to the TRC or the Special Court or both. It is also possible that the local authorities in your area could address the issue, for example through traditional methods of reconciliation and reintegration.

How can I contact the TRC or the Special Court?

This information is given at the end of Chapter 1 (TRC) and Chapter 2 (Special Court).

COMPARATIVE MATRIX OF THE TRC AND SPECIAL COURT

| | <i>Special Court</i> | <i>TRC</i> |
|--|---|--|
| Way of working | Prosecute the people with greatest responsibility for atrocities committed during the civil war after 30 November 1996. | Establish truthful and impartial historical record of the war, promote healing and reconciliation, make recommendations on how to prevent future abuses. |
| Location | Courthouse, jail, and offices are being built at site on Jomo Kenyatta Road in New England area of Freetown. | Main office in Freetown at the compound of former Brookfields Hotel at Jomo Kenyatta Road, regional offices around Sierra Leone. |
| How created? | Proposed by President Kabbah in June 2000. Created by an agreement between United Nations and the Government of Sierra Leone. | Called for in the Lomé Peace Agreement. Created by Parliament in February 2000. |
| Will it prosecute people? | Yes. Will prosecute the people with the “greatest responsibility” for atrocities committed during the civil war since 30 November 1996. | No. |
| Will it punish people who committed atrocities? | Yes. Will imprison the people with the greatest responsibility for atrocities <i>if</i> they are found guilty in a fair trial that gives them the opportunity to defend themselves. | No. Will not punish anyone. |

Special Court

TRC

| | | |
|--|---|--|
| <p>Enforcement Powers</p> | <p>Government of Sierra Leone to cooperate with all organs of the court: Prosecutor and defense will be granted access to sites, people and relevant documents required for investigation. Court may arrest suspects and detain them before and during trial.</p> | <p>Can gather information from any source, visit any place or establishment, compel the production of information, issue summons, interview individuals, require statements under oath, request and receive police assistance as needed. Failure to cooperate will be referred to High Court for "contempt of court" charges.</p> |
| <p>Who chose key staff?</p> | <p>The United Nations Secretary-General, Kofi Annan, appointed the Prosecutor and the Registrar after consulting with the government of Sierra Leone. The government of Sierra Leone appointed the Deputy Prosecutor. The Secretary-General appointed five of the judges and the government of Sierra Leone appointed the other three judges.</p> | <p>Four Sierra Leonean commissioners were chosen by selection committee consisting of representatives from six groups (Government of Sierra Leone, National Commission for Democracy and Human Rights, National Forum for Human Rights, Revolutionary United Front, ex-Armed Forces Revolutionary Council, and Inter Religious Council, Sierra Leone). UN Special Representative of Secretary General coordinated national selection process and commissioners were appointed by the President of Sierra Leone. Three international commissioners were chosen by the</p> |
| <p>What period will it examine?</p> | <p>30 November 1996 to the end of the war.</p> | <p>Entire civil war.</p> |

Special Court

TRC

| | |
|--|--|
| <p>Types of activities</p> <p>Will investigate cases, obtain evidence, and try those with the greatest responsibility for very serious crimes committed during the civil war. Will imprison those found guilty. Will reach out to the public to explain its work.</p> | <p>Will investigate key events and broad patterns of abuse. Will hold sessions, some public, to hear testimonies and stories from victims and perpetrators. Will take statements from individuals and organizations. Will examine the role of various governments, groups, individuals, and the role of both internal and external</p> |
| <p>What will it produce?</p> <p>Conviction and imprisonment of the people with the greatest responsibility for atrocities committed during the civil war.</p> | <p>Report on the civil war, including what caused it, what was done during it, and who suffered. Report will include recommendations on how to prevent war from recurring.</p> |
| <p>Budget</p> <p>\$57 million donated by the international community over three years.</p> | <p>\$6 million donated by the international community and the Government of Sierra Leone.</p> |
| <p>How long will it work?</p> <p>At least three years, until mid-2005.</p> | <p>One year, until end of 2003. May be extended until middle of 2004.</p> |

