

Special Court for Sierra Leone

A historic decision to reject amnesty for crimes under international law

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Amnesty International welcomed the historic decision by the Special Court for Sierra Leone adopted on 13 March 2004 to refuse to recognize the applicability of a national amnesty for crimes against humanity and war crimes.(1) There are concerns, however, about certain aspects of the Special Court's reasoning in reaching that decision.

The Special Court held that the general amnesty granted in the 1999 Lomé peace agreement was "ineffective" in preventing international courts, such as the Special Court, or foreign courts from prosecuting crimes against humanity and war crimes.(2) It also considered as "in accordance with international law" the instruction by the United Nations (UN) Secretary-General to his Special Representative for Sierra Leone to append to his signature of the peace agreement an explicit proviso that the amnesty "shall not apply to international crimes of genocide, crimes against humanity and other serious violations of international humanitarian law".(3)

To this extent, the Special Court's decision is a significant step forward in the fight against impunity for the worst possible crimes. It makes clear that states cannot use national amnesties to prevent international or foreign national courts from exercising jurisdiction over those accused of crimes against the international community.

In terms of the decision's immediate impact in Africa, it confirmed that amnesties such as the Ugandan amnesty for crimes committed in the northern part of the country do not bar the Prosecutor of the International Criminal Court from investigating and prosecuting any person suspected of crimes against humanity or war crimes.

Although it is to be regretted that the Special Court did not expressly state that the amnesty provision of the Lomé peace agreement is void under international law, the endorsement of the disclaimer by the UN Secretary-General's Special Representative in its conclusions confirms that it would be contrary to international law for Sierra Leonean courts to give any effect to the amnesty provision.

The Special Court's decision of 13 March 2004 explicitly states that: "[T]he interpretative declaration appended by the Secretary-General's representative at the signing of the Lomé Agreement is in accordance with international law and is sufficient indication of the limits of the Amnesty granted by the agreement".(4)

The conclusion that there can be no impunity for such crimes has been reiterated frequently by the UN Secretary-General.(5) It is amply supported by the extensive and consistent jurisprudence of international courts and authoritative interpretations by international bodies, which have concluded that national amnesties for crimes under international law are prohibited and have no legal effect in any court, including the courts of the state where the amnesty was granted.(6)

However, it is troubling that, despite the Special Court's conclusion that the disclaimer of the UN Secretary-General's Special Representative was consistent with international law, another part of its decision appears to endorse assertions by one academic that a national court in the state that issued the amnesty could give it legal effect without violating customary international law.(7) It is also unfortunate that the Special Court accepted the views of another scholar that customary international law permits states to exercise universal jurisdiction over only a limited number of crimes, not including torture,(8) when there is overwhelming evidence of state practice over the past two centuries to the contrary, as demonstrated in a 2001 Amnesty International global study of state practice concerning universal jurisdiction by more than 125 countries at the international and national level.(9)

Nevertheless, despite these flaws in the Special Court's decision, Amnesty International believes that it will have an important impact in the struggle against impunity by encouraging international and national courts around the world to disregard amnesties for the worst possible crimes and to discourage states from seeking

to shield perpetrators of these crimes from justice.

Background information

On 7 July 1999, in Lomé, Togo, the Government of Sierra Leone and the armed opposition Revolutionary United Front (RUF) signed an agreement to end the armed conflict that began in 1991. Article IX of that agreement required the government, "[I]n order to bring lasting peace to Sierra Leone", to "take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon", to grant "absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives" and to adopt "legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict".(10)

The UN Secretary-General subsequently emphasized on 4 October 2000, in his report on the establishment of the Special Court, that "amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law".(11)

The amnesty provisions of the Lomé peace agreement, however, did not prevent the resumption of the armed conflict less than a year later. Following a request by the President of Sierra Leone addressed to the UN Secretary-General on 12 June 2000, the Security Council decided in Resolution 1315 (2000) of 14 August 2000 to create an independent special court to prosecute those bearing the greatest responsibility for crimes against humanity, war crimes and other serious violations of international law, as well as certain crimes under relevant Sierra Leonean law. An agreement establishing the Special Court was signed by the UN and the Government of Sierra Leone on 16 January 2002.

The Special Court has so far indicted 13 people, including Morris Kallon and Brima Bazzy Kamara, who argued in separate motions in June and September 2003 that the prosecution was barred by Article IX of the Lomé peace agreement and that it would be an abuse of process if the prosecution were to go forward in breach of the government's promise to grant them an amnesty. Shortly before oral argument in the Appeals Chamber in late October 2003, Amnesty International submitted a document to the Special Court explaining that national amnesties for crimes under international law could not prevent any court, national or international, from trying a person for such crimes.(12)

Amnesty International also argued in the same document that an amendment to Rule 72 of the Rules of Procedure and Evidence that permits the Appeals Chamber to decide this question itself, bypassing the Trial Chamber, denied the right of the accused to appeal. On 4 November 2003, however, the Appeals Chamber rejected this argument.(13) Amnesty International has called on the Special Court to restore Rule 72 to allow appeals against rulings on preliminary motions.(14)

(1) Case No.SCSL-2004-15-AR72 (E) and Case No.SCSL-2004-16-AR72 (E), Decision No.SCSL-04-15-PT-060-I and Decision No.SCSL-04-15-PT-060-II (Decision rejecting amnesty). The decision was published on 15 March 2004.

(2) Ibid., para. 88.

(3) Ibid., para. 89 (quoting Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, UN Doc. S/1999/836, 30 July 1999, para. 7).

(4) Ibid., para. 89.

(5) See, for example, International Criminal Court judges embody 'our collective conscience' says Secretary-General to inaugural meeting in The Hague, Press Release SG/SM/8628, L/3027, 11 March 2003.

(6) This jurisprudence and interpretation is discussed in Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law (AI Index: AFR/012/2003), 31 October 2003.

(7) Decision on amnesty, supra, n. 1, para. 71 (quoting Antonio Cassese, International Criminal Law 315 (Oxford: Oxford University Press 2003)).

(8) *Ibid.*, para. 68, n. 54 (quoting Malcolm Shaw, *International Law* 597 (Cambridge: Cambridge University Press 5th ed. 2003)).

(9) Universal jurisdiction: The duty of states to enact and implement legislation (AI Index: IOR 53/002 – 018/2001), September 2001.

(10) Peace agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, UN Doc. S/1977, 12 July 1999, Article IX.

(11) Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 4 October 2000, UN Doc. S/2000/915, 4 October 2000, para. 22.

(12) Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law (AI Index: AFR/012/2003), 31 October 2003.

(13) Decision No. SCSL-03-07-PT-127, 4 November 2003

(14) Sierra Leone: Statement at the official opening of the court-house of the Special Court for Sierra Leone (AI Index: AFR 51/004/2004), 9 March 2004.