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## THE SPECIAL COURT FOR SIERRA LEONE: PROMISES AND PITFALLS OF A “NEW MODEL”

### I. OVERVIEW

Nineteen months after its eleven-year civil war was declared over, Sierra Leone is attempting to bring to justice “those who bear the greatest responsibility for war crimes and crimes against humanity”. On 10 March 2003, under the codename, “Operation Justice”, the Special Court for Sierra Leone issued its first public indictments and carried out its first arrests, targeting top commanders of armed groups, including the prominent cabinet minister and national commander of the civil defence forces Chief Sam Hinga Norman.<sup>1</sup> On 4 June, it took a more dramatic step, one that upset a number of capitals, including Washington, and brought it into the global spotlight: as President Charles Taylor of Liberia travelled to Ghana for peace talks, Prosecutor David Crane unsealed an indictment originally issued against him on 3 March, served an arrest warrant on Ghanaian authorities, and transmitted the warrant to Interpol.

This is a status report on the Special Court, which was created in January 2002 and officially started to function on 1 July 2002. The Chief Prosecutor (Crane) and the Registrar (Robin Vincent) arrived in Freetown by early August.<sup>2</sup> The former’s office was working at full capacity by November.<sup>3</sup> Though the Registry and Chambers are less fully developed, and trials are not expected to start until November 2003, the relative rapidity with which it has been moving suggests it may meet the target it has set for itself of completing its work within three years.<sup>4</sup> Nevertheless, the Special Court is only in its first stages. The main task of running fair and

expeditious trials is still ahead. The role of its judges will be crucial, as will that of the Defence Office, which is only now being formed.

It is early days but a number of concerns have arisen about the way the prosecutor has interpreted Sierra Leone’s conflict in various statements, the procedures surrounding some indictments, and in particular, the perceived Americanisation of the Court. The U.S. government, its main donor, wishes the Special Court to succeed at least in part in the expectation that a demonstration of how such an ad hoc tribunal can handle the gravest of war crimes and crimes against humanity will reduce the widely perceived need for the new International Criminal Court that the Bush administration strongly opposes. While the subtle links alleged on several occasions by Prosecutor Crane between diamonds and al-Qaeda terrorist networks can be interpreted as an attempt to increase U.S. interest, they are also seen by many in Sierra Leone as examples of the Court being used to promote U.S. foreign policy interests. Against this background, it is important that the Court not lose focus. It needs to be careful not to appear to be subject to outside influence if it wants to fulfil its mandate with impartiality and provide a “new model” for international justice.

One of the main challenges faced by the Special Court is ensuring that its workings are transparent. Substantial security concerns have arisen around the arrests and indictments of the civil defence force commanders, the Director of War Operations for the Kamajors, Moinina Fofana, and the former Kamajor High Priest, Allieu Kondewa, as well as Chief Norman. Some of the security problems result from the fact that the Court is located in Sierra Leone, unlike the UN tribunals for former Yugoslavia (ICTY) and for Rwanda (ICTR), which

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<sup>1</sup> Chief Sam Hinga Norman was Minister of Internal Affairs when he was indicted and arrested. See the Appendix for profiles of all those indicted by the Special Court.

<sup>2</sup> Robin Vincent had also visited Freetown on several occasions before August 2002.

<sup>3</sup> ICG interview with David Crane, Freetown, 7 March 2003.

<sup>4</sup> ICG interview with Special Court Registry official, April 2003.

sit outside the countries of concern.<sup>5</sup> However, the location can also be the advantage it was meant to be if the Court makes a constant effort to keep the population and the media fully informed of its thinking and its actions. Its outreach dimension has come some way but more effort is required to educate about its work a population that is 80 per cent illiterate. The Court has been accused of being distant from local journalists and insufficiently attentive to opportunities to involve them in informing Sierra Leone's citizens.

The controversial question of what the Special Court experience may mean for the future of the ICC aside, it was established as a hybrid body – part international, part national – in order to provide a cheaper and more expeditious alternative to the fully international tribunal of the type used for Yugoslavia and Rwanda. Donors must now give it a fair chance to demonstrate its value by providing political support and delivering on their financial pledges. This is all the more necessary because in the eyes of many in Sierra Leone, it suffers from a crisis of legitimacy. The former commander of the RUF insurgents, Foday Sankoh, died while under arrest on 29 July 2003; the former battlefield commander of the RUF, Sam Bockarie apparently also is dead, as may be Johnny Paul Koroma, the leader of the Armed Forces Revolutionary Council (AFRC) 1997 military junta. Charles Taylor has thus far escaped arrest. The absence of these high profile indictees undermines the Court's credibility in the eyes of ordinary citizens.

Another important question is whether the UN Security Council will enhance the Court's power and prestige by giving it a mandate under Chapter VII of the Charter, which would require all member states of the world organisation to comply with its orders,

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<sup>5</sup> The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in May 1993 by the UN Security Council to try those held responsible for genocide, crimes against humanity and war crimes committed in the Balkans conflict since 1991. It is based in The Hague, the Netherlands. ([www.icty.org](http://www.icty.org)). The International Criminal Tribunal for Rwanda (ICTR) was created in November 1994 with a mandate to try those considered responsible for similar offences committed in that country in 1994. It is based in Arusha, Tanzania ([www.icttr.org](http://www.icttr.org)). See ICG Balkans Report No. 103 *War Criminals in Bosnia's Republika Srpska: who are the people in your neighbourhood?*, 2 November 2000; ICG Africa Report No. 30, *International Criminal Tribunal for Rwanda: Justice Delayed*, 7 June 2001, and ICG Africa Report No. 50, *The International Criminal Tribunal for Rwanda: The Countdown*, 1 August 2002.

including its indictments and arrest orders for high profile figures such as Charles Taylor. Both the ICTY and the ICTR have Chapter VII mandates.<sup>6</sup> While the issue has been complicated by the diplomatic manoeuvres under way to remove Taylor from Liberia as part of the effort to end that country's civil conflict, ICG believes that such a decision is needed.<sup>7</sup> A Chapter VII mandate would not guarantee state compliance, but without it, the Special Court will continue to face unnecessary obstacles.

## II. ORIGINS AND STRUCTURE

On 12 June 2000, President Ahmad Tejan Kabbah of Sierra Leone wrote to Secretary General Kofi Annan requesting the UN to establish a court to try those who had committed civil war atrocities.<sup>8</sup> On 14 August 2000, the Security Council (Resolution 1315) asked the Secretary General to negotiate with Sierra Leone to establish such a court.<sup>9</sup> The agreement was signed on 16 January 2002 in Freetown.

The Special Court is to try "those who bear the greatest responsibility" for the worst offences committed since the Abidjan Peace Accord of 30 November 1996.<sup>10</sup> Its jurisdiction comprises crimes against humanity, war crimes, other serious violations of international law such as attacks against peacekeepers and conscription of children under the age of fifteen, as well as certain crimes

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<sup>6</sup> See websites of the ICTY and the ICTR, at [www.icty.org](http://www.icty.org) and [www.icttr.org](http://www.icttr.org) respectively.

<sup>7</sup> Since the announcement of Charles Taylor's indictment, ICG has called upon the UN Security Council to enhance the powers of the Court under a Chapter VII mandate. See ICG Memorandum, "Crisis in Liberia: A Call to Action", 10 June 2003; Gareth Evans and Comfort Ero, "How to secure peace in Liberia", *Observer Online*, 29 June 2003; and ICG Media Release, "Liberia: ICG urges U.S. to lead a robust multinational force", 16 July 2003, all available at the ICG website, [www.crisisweb.org](http://www.crisisweb.org).

<sup>8</sup> President Kabbah requested a court "to try and bring to credible justice those members of the Revolutionary United Front (RUF) and their accomplices responsible for committing crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages".

<sup>9</sup> This is an important distinction between the Special Court and both the ITCY and the ITCT, which were not negotiated with their respective governments but were established directly by the UN Security Council.

<sup>10</sup> The Abidjan peace accords were signed by the Sierra Leone government and the RUF after five and a half years of war but quickly collapsed. The Court's life span is not addressed by either its Statute or the agreement between the UN and the government.

under Sierra Leonean law like abuse of girls younger than fourteen and wanton destruction of property. It has primacy over Sierra Leone national courts, is independent from any government and cannot impose the death penalty.

There was an important debate about how the Court would deal with minors and child soldiers. According to its Statute, it can try individuals who were between fifteen and eighteen when the alleged acts were committed. However, during his various town hall meetings in the provinces, Prosecutor Crane stated categorically that he would not prosecute anyone who was under eighteen since they were not among those who bore the greatest responsibility.<sup>11</sup>

The Special Court has its seat in Freetown and is composed of international and national staff.<sup>12</sup> Its "mixed" nature is illustrated by the fact that one of the three trial judges and two of the five appeal judges, as well as the deputy prosecutor, were appointed by the Sierra Leone government.<sup>13</sup> Unlike the ICTY and ICTR, the Special Court is not a subsidiary organ of the UN. It is a treaty-based body, operating within its own administrative/financial framework, with a three-year budget funded by voluntary international contributions.

Concerns to avoid appearing to be another overly large, cumbersome and virtually open-ended tribunal largely determined how the Special Court was set up. Its mandate to handle only a limited number of cases is tied directly to the desire of all states that supported its creation to keep it much smaller and less costly. The UN representative to its Management Committee explained:

No one ever said that the Special Court for Sierra Leone would try a large number of people. That it can be done in three years remains to be seen. Statutes do not limit the

mandate in time. What limits it is the funding. On a strictly legal point of view, there is no reason why these trials could not be completed within three years. We are expecting them to be completed within this deadline. Donors do not want it to become another ICTR or ICTY. I think that three years is a reasonable time-frame.<sup>14</sup>

There has been a general assumption that the Special Court would try no more than 30 individuals. Early in 2003, the Management Committee<sup>15</sup> was concerned about David Crane's reluctance to give any rough estimation of the number he would eventually indict.<sup>16</sup> In fact, there is every indication that he intends to stick to the limited mandate, and it is likely he will move against even fewer than 30 persons. The reasoning behind such a limited number is two-fold: the Court is specifically designed to prosecute those few individuals who were in key positions of authority and power, and it should complete its work quickly so that Sierra Leone can put its past behind it. Yet, experience shows that international trials usually last longer than expected. If the Special Court can resolve twenty cases within three years, it would be a major improvement over other war crimes tribunals.<sup>17</sup>

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<sup>11</sup> "Sierra Leone: Special Court Prosecutor will not indict children – prosecutor", UN Integrated Information Network, Abidjan, 4 November 2002.

<sup>12</sup> For information on the national composition of the Court's senior personnel, including the judges, see footnote 125 below.

<sup>13</sup> There were suggestions of international pressure on the government to select a particular candidate also known to be close to President Kabbah. ICG interview, June 2003. The Deputy Prosecutor (as well as the Prosecutor) was appointed in close consultation with the government and the UN Secretary General. See "Article 3: Appointment of a Prosecutor and a Deputy Prosecutor" of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone.

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<sup>14</sup> Statement made during a press conference in Freetown on 20 February 2003. The Registrar, Robin Vincent, also made the following remark during the same press conference: "What is also at stake with this Court is to prove that we can have an efficient court with a much smaller budget than the two other international tribunals".

<sup>15</sup> Article 7 of the agreement between the UN and the government establishing the Special Court specifies that a Management Committee be set up "to assist the Secretary General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States". The Special Court Management Committee is comprised of nominees of the UN Secretariat, the Sierra Leone government, the U.S., the UK, the Netherlands, Canada, Lesotho and Nigeria, who represent the donors to the Special Court. Chaired by Canada, it mainly addresses administrative and budgetary issues. It meets at least once a month and approves the Special Court budget.

<sup>16</sup> ICG interviews with Management Committee members, Freetown, February 2003.

<sup>17</sup> For example, the initial mandate of the ICTR was four years, but it has been renewed twice. Its budget for 2003 is about U.S.\$87 million. Similarly, ICTY has been operating since 1993. Its budget for 2003 is about U.S.\$109 million. The Special Court's provisional budget for three years is U.S.\$56.8.

### III. FAST TRACK TO JUSTICE

From its creation, many people in Sierra Leone as well as some abroad have worried that the operation of the Special Court could endanger the country's peace process.<sup>18</sup> These concerns were reinforced by the indictments of the most notorious war faction leaders and some of the dramatic events that followed. A second concern has been that by operating within its limited mandate, the Court might either be "rushing justice" or taking a highly "selective" approach in determining who ought to be held accountable for war crimes and crimes against humanity.<sup>19</sup>

#### A. "OPERATION JUSTICE": TARGETING WAR LEADERS

On 10 March 2003, five out of seven known indictees were arrested in Freetown during what the Office of the Prosecutor called "Operation Justice". The location of the detainees was kept secret until their initial court appearances on 15 and 17 March in Bonthe, Sherbro Island, off the southwestern coast. They pleaded not guilty to all counts, except for the former RUF commander, Foday Sankoh, who was ordered by Presiding Judge Benjamin M. Itoe (Cameroon) to undergo a medical and psychiatric evaluation after he failed to answer his questions.<sup>20</sup>

Through July 2003, one year after it began operating, the Court has indicted twelve individuals who held high leadership positions in the three main armed groups that fought the civil war: from the Revolutionary United Front (RUF), Foday

Sankoh, Issa Sesay, Sam "Mosquito" Bockarie, Morris Kallon and Augustine Gbao; from the Armed Forces Revolutionary Council (AFRC) and its splinter group, the West Side Boys, Johnny Paul Koroma, Alex Tamba Brima and Ibrahim "Bazzy" Kamara; from the Civil Defence Forces (CDF), Chief Sam Hinga Norman, Moninina Fofana and Allieu Kondewa. Additionally, the Court indicted President Taylor of Liberia for fuelling and sustaining RUF's insurgency. All are charged with crimes against humanity, war crimes and other violations of international humanitarian law. The chief-in-command of each group is among the indictees.

On 30 April 2003, the Special Court Chief of Investigations, Dr Alan White, declared that Bockarie, the former RUF battlefield commander, was in Liberia.<sup>21</sup> Liberian authorities denied this but on 5 May announced that he had been killed in a gun battle on the border with Côte d'Ivoire.<sup>22</sup> The report of his death raised suspicions that he might either have been killed by his erstwhile Liberian colleagues to prevent his appearance before the Court or that they were attempting to shield him by putting out false information. Following heated demands by Crane and White, a body was flown to Freetown on 1 June. The Court has yet to determine whether it is Bockarie's body, although Crane indicated the Court believes it is.<sup>23</sup>

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<sup>18</sup> See ICG Africa Report No.35, *Sierra Leone: Managing Uncertainty*, 24 October 2001, pp. 15-17. See also Peter Penfold, "Will Justice Help Peace in Sierra Leone?", *Sunday Observer*, 20 October 2002.

<sup>19</sup> ICG interview with various international NGOs and private Sierra Leone and third country citizens, October 2002 and May 2003. This theme has been raised on a number of occasions since ICG began writing on the Special Court in October 2001.

<sup>20</sup> On 11 June 2003 the Special Court announced that Foday Sankoh "urgently needed to travel outside of Sierra Leone for a medical assessment", but it had not found a country prepared "to accept him temporarily". "No Country Found to take Sankoh for Medical Treatment", Special Court Press Release, Freetown, 11 June 2003. It was still searching for a country to satisfy the Judge's ruling when Sankoh died on 29 July 2003.

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<sup>21</sup> Alan White told *Sierra Leone News* he had "credible information" that Bockarie was in Liberia, 30 April 2003. Interview available at [www.sierra-leone.org](http://www.sierra-leone.org).

<sup>22</sup> Sam Bockarie left Sierra Leone about December 1999 for Liberia. While there, he recruited and trained Liberian fighters and commanded RUF fighters who fled to that country with him. Following UN-imposed sanctions on 7 May 2001, which also requested that Liberia ask all RUF fighters to leave, the Liberian government denied that Bockarie had been living in Monrovia or Nimba County, where he was frequently seen recruiting fighters. From October 2002, his whereabouts have remained unclear although there were suggestions that he was moving between Ghana and Burkina Faso. In November 2002, a number of Ivorians claimed that he was actively involved in the fighting taking place in the west of Côte d'Ivoire following a failed coup attempt on 19 September 2002. For details of Bockarie's involvement in both the Liberian and Ivorian conflicts, see ICG Africa Report No. 62, *Tackling Liberia: The Eye of the Regional Storm*, 30 April 2003, pp. 14-15, 18.

<sup>23</sup> During a question and answer session with the press on 25 June 2003 at the United Nations Mission in Sierra Leone (UNAMSIL) Headquarters, Freetown, David Crane stated that he believed the body was Bockarie's.

Similarly, it was announced on 16 June that Johnny Paul Koroma might also be dead, although the Prosecutor maintains that until the Court receives his body, he is considered alive.<sup>24</sup> Koroma, though indicted in March, has been in hiding from about 17 January 2003 when he escaped arrest after a coup attempt in which he is suspected of involvement failed four days earlier.<sup>25</sup> That event itself – first seen as a sign of the fragility of national security<sup>26</sup> – increased fears, including among some Western military officials, of the Special Court's potential to undermine peace in the country.<sup>27</sup> Koroma is relatively well regarded by some Sierra Leoneans and internationals as one who in May 2000 joined the government side in defeating the RUF and eventually supported the peace process.<sup>28</sup> Koroma's case also raised specific concerns because he received significant support within the Armed Forces (RSLAF) during the May 2002 elections when he was elected to Parliament.<sup>29</sup> There have been numerous suggestions that those loyal to Koroma within the army may have given him protection following the coup attempt and helped him flee to Liberia.<sup>30</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> On 13 January 2003, the army barracks in Wellington, east of Freetown, were attacked by armed men. After the attack was repulsed, dozens of former RUF and AFRC supporters were arrested and charged with attempting to overthrow the government. While the government has released no evidence, and Johnny Paul Koroma, though admitting knowledge of the event, denied his involvement, he is still under suspicion.

<sup>26</sup> As stated in a local newspaper, "it merely confirms that despite the numerous strides taken by both the international community and the poor people of this nation, we are still sitting on a time bomb that would just explode if we do not take our time to detonate it". "Rejoicing for an inglorious doom", *Concord Times*, 27 January 2003.

<sup>27</sup> ICG interviews with private Sierra Leonean citizens and Western military officials, January and June 2003.

<sup>28</sup> Koroma also headed the Commission for Peace and Reconciliation created following the conclusion of the July 1999 Lomé peace accords.

<sup>29</sup> ICG Africa Report No. 49, *Sierra Leone After Elections: Politics as Usual?*, 12 July 2002, pp. 1, 9-10. Witnesses in the ongoing trials over the January coup attempt have claimed that the objective was to overthrow the government and put Johnny Paul Koroma in power since he had been cheated of the 14 May 2002 presidential election. See "55 told us to overthrow for Johnny Paul", *Awoko*, 21 May 2003, and "Treason: Kabbah's overthrow planned at Rambo's house", *Concord Times*, 21 May 2003.

<sup>30</sup> ICG interviews in Zimmi, Freetown and Kenema, February-June 2003. Special Court officials maintain that Koroma fled to Foya Kamala, a Liberian town in the north-

There is hardly any security threat attached to the former RUF leaders' arrests because it is widely assumed that the insurgents' military and political structures have disintegrated in the last year. However, surprise was expressed by some Sierra Leoneans over the indictment and arrest of the RUF's former interim leader, Issa Sesay, who played a key role in bringing the war to an end and helping the RUF to demobilise and disarm. In the northern town of Makeni, where RUF had its headquarters from late 1998 to the end of the war, Sesay is often seen by the youth as a "liberator who brought peace to the country".<sup>31</sup> Prior to becoming interim leader following the arrest of Foday Sankoh in May 2000 for undermining the 1999 Lomé peace accords, he was not well known. Sesay's cooperation in the peace process may eventually gain him credit when he comes before the Special Court but it properly has not brought him immunity from its jurisdiction.

## **B. THE CASE OF CHIEF SAM HINGA NORMAN**

Many Sierra Leoneans were shocked by the arrest of Sam Hinga Norman, Minister of Internal Affairs and former national co-ordinator of the CDF, who fought for the government against the RUF and AFRC junta. However, if large sections of the population shared this reaction, victims' groups were pleased. As the National Chairman of the War-affected Amputees Association said:

We are very pleased with actions taken by the Special Court. May God give them the strength and courage to go on. If no example is being set, nothing will ever go straight in this country. [War leaders] all worked together. They are all the same people. We told Mr Crane that our great concern was security. But we already died once. We are

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west, close to the Sierra Leone border. Dr White announced that Koroma was seeking refuge in Liberia, and David Crane supported the Foya Kamala story during a meeting with the Friends of Sierra Leone in the U.S. on 27 May. The full transcript is at [www.sierra-leone.org](http://www.sierra-leone.org). ICG was unable to verify this in private meetings with members of the Freetown diplomatic community.

<sup>31</sup> ICG interviews with youths in Makeni, April 2003. During a meeting with youths in Makeni a week earlier, some expressed the desire to demonstrate peacefully in support of Issa Sesay, but indicated fears of being forcefully stopped.

not afraid of dying a second time. We are the symbol of why this Court was created. We are the exhibits. Nothing will replace what we have lost. We know that the Special Court is on the victims' side and will make sure that this country is never again under attack.<sup>32</sup>

Special security measures were taken with regard to Norman's detention. The location was kept secret when that of the other detainees was revealed. His initial court appearance was in a closed session, and an effort was made to hold him outside Sierra Leone pending trial.<sup>33</sup> These are grave measures that have never been applied in other international tribunals<sup>34</sup> and must be duly justified and explained.

The Court has said that it received warnings about the negative reaction of Kamajors<sup>35</sup> and former CDF members to Norman's arrest. Indeed, there were worrying rumours in Freetown about CDF meetings, supposedly to consider action possibly including a march on the capital. In a sense, therefore, the measures taken by the Court in this particular case derived both from the perception of a specific threat and the fact that, unlike the ICTY and ICTR, it is located in the country concerned. In the current climate, it is difficult to assess such a threat with certainty. ICG's own field research was unable to confirm it,<sup>36</sup> though rumours of Kamajor

threats persisted prior to and after the arrest of two other of their commanders on 28 May.<sup>37</sup> ICG understands that the Special Court chose to avoid as much as possible any risk of serious disturbances that could, according to Court officials, have forced a decision to move the institution out of the country. The same officials rightly note that, in the event of trouble, they would have been even more heavily criticised had they not taken precautions.

Nonetheless, the security precautions in the Norman case significantly challenged the proclaimed objective of making the judicial process a transparent one owned by Sierra Leone's citizens. It would have been useful had all organs of the Court at least provided fuller public explanations.

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to all interviewees, including those in Valunia Chiefdom – Norman's hometown where some 2,400 Kamajors had been registered during the war – there have been no spontaneous meetings to address the arrest. Kamajor leaders as well as traditional chiefs unanimously denied any intention to protest or demonstrate publicly, let alone march on the capital or threaten the Court. At least in the month following the arrest, the only confirmed meetings took place in Bo and Kenema around 13 March. They were convened by two close associates of Hinga Norman, based in Freetown, who were sent to these two districts to address small groups of former CDF commanders as well as the accused's family. It is unclear who assigned this mission, although there are indications that they had a meeting first at President Kabbah's office. This is how one of Norman's associates recounts these meetings: "I told them that Chief Norman was expecting it, that everybody should understand it if we wanted peace in our country and that the man was ready to face justice. We explained to them that the Special Court was requested by the government and that therefore they had to back the government. We went to Bo and Kenema as soon as possible and I think they were satisfied with it. How could they march on Freetown? I have never heard of this and I will never believe it. These are civilians who are busy farming. This government is the one they fought for. It isn't easy for them to do anything against it. They were only asking about the way he was arrested and if it were true that RUF was invited to come to the police instead. They were upset about the way their chief had been arrested". This account is consistent with the reactions gathered by ICG. All individuals interviewed stated that they "felt bad" about their leader being indicted as they consider him a national hero who stood up first against all armed groups attacking defenceless civilians. However, they consistently said that the CDF were not made "to fight for Norman, but to fight for the country", and they did not view the Special Court as a threat to government or nation. ICG interviews in Southern districts, 19-21 March 2003, Freetown, 1 and 3 April 2003, and Zimmi, 2 April 2003.

<sup>37</sup> ICG interviews, May-June 2003.

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<sup>32</sup> ICG interview, Freetown, April 2003.

<sup>33</sup> This transfer did not materialise. There is no clarity surrounding the event. One story alleges that the ICTY Registry failed to make sure the Dutch government agreed on such a transfer. Another story claims the Dutch refused a request by the ICTY on behalf of the Special Court. A subsequent attempt was made to have Norman transferred to the ICTR detention facility in Arusha, Tanzania. This also failed with both the UN Legal Affairs Office and the President of the ICTR claiming legal obstacles. ICG interview, June 2003.

<sup>34</sup> The only exception could be the case of Jean Kambanda before the ICTR. The former Rwandan Prime Minister was held for several months in a confidential place and was flown to The Hague immediately after his initial appearance in Arusha, Tanzania. However, his arraignment was public, and his case was specific in the sense that he had entered into a plea agreement with the Prosecutor.

<sup>35</sup> Kamajors are traditional hunters from the Mende regions in the south and southeast of Sierra Leone. They constituted the largest and most important group of the civil defence forces.

<sup>36</sup> Between 19 and 21 March 2003, ICG visited former Kamajor leaders and Paramount Chiefs in the five districts of Bo, Kenema, Pujehun, Bonthe and Moyamba, that is, most Kamajor strongholds. These interviews gave a very different picture of the alleged security threats. According

The grievance felt by Norman supporters is, however, directed less at the Court than at the government. A majority of people interviewed by ICG in southern districts looked at the Special Court actions as "government policy" or "a government issue".<sup>38</sup> A leading local NGO representative working with ex-combatants noted to ICG:

There is total confusion between the government and the Special Court, between the government and the TRC (Truth and Reconciliation Commission), between the Special Court and the TRC. This is all the more harmful [because] ex-combatants want to know to what extent the Court is independent from the government.<sup>39</sup>

Norman's supporters also expressed their discontent that President Kabbah "did not protect" a minister who had served him over the last seven years.<sup>40</sup> There are indications that the case may be used by some of President Kabbah's competitors within the ruling Sierra Leone People's Party (SLPP) to further their political goals. "Some want Chief Norman's case to become an affair in the party. I want to avoid it and Hinga Norman doesn't want politics at all", said his lawyer.<sup>41</sup>

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<sup>38</sup> ICG interviews in Bo, Kenema and Moyamba districts, 19-21 March 2003.

<sup>39</sup> ICG interview, Freetown, 4 April 2003. On the relationship between the Special Court and the TRC, see ICG Africa Briefing, *Sierra Leone's Truth and Reconciliation Commission: A Fresh Start?*, 18 December 2002, p. 4.

<sup>40</sup> On 24 July 2003 Hinga Norman supporters held demonstrations outside the Commonwealth Club in London where President Kabbah was to deliver a speech. A small crowd of about fifteen held placards, some of which read "Kabbah's corrupt government must go. We stand by our hero Hinga Norman. Arrest the corrupt Kabbah and release Hinga Norman the patriot", "Kabbah Insulted in London", *Independent Observer*, 28 July 2003.

<sup>41</sup> ICG interview with James Blyden Jenkins-Johnson, Freetown, 7 April 2003. In a telephone interview Hinga Norman was asked if he felt "betrayed or let down by President Kabbah". He is alleged to have replied that "I feel more than being let down or betrayed...what I feel is that the impunity which is prevailing here today through the Special Court, with state complicity, if not checked, would plunge this country into another bloody conflict even when some of us are behind bars". "Hinga Norman Fears New Rebel War", *The Exclusive*, 27 May 2003. See also, "Hinga Norma Speaks from Detention", *Independent Observer*, 28 May 2003. There are mixed views as to whether this indictment and arrest will split the SLPP.

The Government has kept a very low profile on the Special Court's actions as it does not want to appear to be interfering in the judicial process.<sup>42</sup> However, informing citizens about the Special Court is a responsibility shared between the Court and government, and national authorities have done too little in this regard.

### C. THE INDICTMENT OF CHARLES TAYLOR

The unsealing of the indictment of Liberian President Taylor on 4 June 2003 created both panic and resentment in West Africa and beyond – not for the *fact* he was indicted, but for the *timing* of the announcement, which came as Taylor was arriving for the opening ceremony of Liberian peace talks in Accra, Ghana. Though awkward for those who put that conference together with considerable difficulty and in particular the Ghanaian hosts, the Special Court's initiative should have been no surprise for those who had followed its actions and the statements of the Chief Prosecutor during the preceding several months.<sup>43</sup>

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Several people interviewed by ICG indicated that this is unlikely primarily because key personalities in the party had long assumed that Norman would be indicted, and enough groundwork had been done to prevent fall out; others suggested that Norman lacks a large constituency among the Mende ethnic group in the south that traditionally supports the SLPP; others argued that individual supporters have yet to come together in any coordinated manner and that it is too early to make political mischief over the indictment. Finally those who could make political mischief have personal differences that would inhibit them from building a coalition to split the party. ICG interviews with local journalists, April 2003.

<sup>42</sup> President Kabbah's first public statement on this issue came on 14 April 2003 at the opening of the TRC public hearings. He declared that "no one, not even a President, can interfere in [the Special Court] deliberations; and no one, again not even a President of this or any other country, is immune from prosecution". Then he added: "Let me also state here that I have every confidence in all my collaborators during the conflict, some of whom are ministers in my government up to this date. Within the confines of the law, which I as President willingly uphold, I continue to do all that can be done to support them".

<sup>43</sup> A close reading of all the indictments illustrate that Taylor's should have come as no surprise. Taylor was consistently cited as the central figure in what the Prosecutor defined as a "joint criminal enterprise". David Crane had gone on record at least nine times before the first round of indictments to identify Taylor as potential

The indictment of Taylor and the warrant for his arrest and the order for his transfer and detention were signed by the Presiding Judge of the Trial Chamber, Judge Bankole Thompson (Sierra Leone), on 3 and 7 March, respectively. Since Taylor was (and is) a president in office under a UN travel ban, however, the Court kept the indictment sealed until there was a prospect that a third country would be in a position to assist it to obtain control over him, which meant on one of the rare occasions when he left Liberia.<sup>44</sup>

The indictment was welcomed by many Sierra Leoneans, who painfully recall Taylor's statement in October 1990 that they would "taste the bitterness of war" because their then president, Joseph Momoh, supported the West African peacekeeping mission that he believed had prevented his quick victory in the earlier Liberian civil war.<sup>45</sup> Nevertheless, the Court has been criticised by some political leaders internationally and in the West Africa region for releasing the indictment on the day Liberia's warring factions finally chose to enter peace talks. It has also been

privately and publicly criticised for not giving Ghanaian authorities enough warning.<sup>46</sup>

ICG was informed that the Court had given 24 hours notice to all relevant security personnel attached to diplomatic missions, including UN security in Monrovia, that the Prosecutor intended to announce the Taylor indictment when it was clear that he was travelling to Accra. The Registrar (Robin Vincent) was informed on 3 June (a day before) of the Prosecutor's intention to unseal the indictment, though the time at which the Registrar was informed remains unclear. In his press release on 4 June, the Registrar stated that "copies of all the relevant documents were served this morning personally on the Ghanaian High Commissioner in Freetown. In addition, copies of those documents were electronically transmitted to the Ghanaian Ministry of Foreign Affairs and acknowledgement of receipt of those documents has been received by telephone from a senior official in that ministry".<sup>47</sup> Speaking on BBC World Service radio in the late afternoon of 4 June, an official of the Ghanaian Foreign Ministry denied receiving any documents relating to the arrest warrant and order for transfer and detention.<sup>48</sup>

The Court explained not having given earlier notice to Ghana on the grounds that it could not be certain officials would not warn Taylor against travel. The issue of trust was critical and involved more than Ghana. Western diplomats were also involved in convincing President Taylor to attend the Accra peace talks and pressing the host country to guarantee immunity to all participants.<sup>49</sup> The Special Court was, however, insensitive in not giving Ghana adequate time to discuss a delicate case of arresting a sitting head of state. President John Kufuor, who was hosting the peace talks, had personally invited Taylor.

It might have been advisable for the Registrar to have requested UN Secretary General Kofi Annan

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indicttee. For example, when asked whether he could "indict the leader of a neighbouring nation", he stated, "I have the appropriate legal power to indict those who I think bear the greatest responsibility. You can logically follow that through to wherever you'd like to go", Eric Pape, "A New Breed of Tribunal", *Newsweek International*, 10 March 2003. The clearest indication was on 25 May 2003 when he told the Voice of America (VOA) radio service that there were nine indictments of which one was sealed, 25 May 2003. Crane repeated this on the record sixteen times before the indictment was unsealed. ICG interview with Office of the Prosecutor staff, June 2003.

<sup>44</sup> The Court was either unprepared or unaware of Taylor's travel to Togo in late April to attend peace talks with President Laurent Gbagbo of Côte d'Ivoire over the conflict in the west of that country. The only other time would have been the Ghana peace talks, which had been heavily discussed throughout May.

<sup>45</sup> Stephen Ellis, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War* (London, 1999), p. 93. For the first time since the Court started announcing its indictments, many Sierra Leone NGOs, including the War Affected Amputee Association, issued press statements that spoke volumes about local feelings. More than all the other indictments, Taylor's produced significant emotion because many Sierra Leoneans see him as being primarily responsible for their pain and suffering.

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<sup>46</sup> In several ICG interviews with Western and West African diplomats in Freetown, Taylor's indictment was described as "naïve", June-July 2003.

<sup>47</sup> Statement by the Registrar, Special Court Press statement, 4 June 2003.

<sup>48</sup> BBC Focus on Africa, 4 June 2003.

<sup>49</sup> ICG interviews, June 2003. ECOWAS hosted the 4 June peace talks under the auspices of Ghana whose President, John Kufuor is chairman of the organisation. See also Ryan Lizza, "Charles Taylor's Terror Ties: Ace of Diamonds", *The New Republic*, 10 July 2003, available at [www.tnr.com](http://www.tnr.com) and in the *Concord Times* (Freetown), 21 July 2003, p. 5.

– a Ghanaian – to speak with President Kufuor about Security Council Resolution 1470, which emphasised “the importance of the Special Court for Sierra Leone...in taking effective action on impunity”, and expressed the Security Council’s “strong support for the Special Court for Sierra Leone”.<sup>50</sup> A direct call from Annan would certainly have increased pressure on Ghana. It would also have been desirable to have contacted other delegates and heads of state gathered in Accra for the peace talks, including the International Contact Group for Liberia, the Economic Community of West Africa States (ECOWAS), the African Union and Presidents Olusegun Obasanjo and Thabo Mbeki of Nigeria and South Africa, respectively, to encourage them to act and maintain the spirit of Resolution 1470 rather than put all responsibility on the Ghanaians.<sup>51</sup>

Even if the Secretary-General had intervened on the Court’s behalf, however, it is unlikely that Taylor would have been arrested. In a region where solidarity and brotherhood links are strong among heads of state, the scenario of one president handing another over to the Court was implausible.<sup>52</sup>

Special Court officials have defended themselves against the charge that announcement of the Taylor indictment just as the peace talks were about to begin damaged prospects for their success by saying that the peace process could only *legitimately* take place with the full knowledge by all parties of Taylor’s indictment and his removal (though not that of the Liberian government) from the political scene. The Prosecutor has argued that to have announced the indictment during or after the peace talks would have “pulled the rug” from under the talks and had a more damaging effect.<sup>53</sup> To have allowed Taylor to participate knowing that he was indicted for war crimes would have sent a message that war criminals could negotiate a way out for themselves.

It is certainly true that Taylor has shown little evidence of any willingness to reach an agreement in the past, preferring instead to buy time to rearm his troops and continue the conflict. At every stage of negotiations to end Liberia’s first civil war (1989-1996), he worked to stall, divide the other warring factions, buy off opponents and, ultimately, win time to position himself for victory, both politically and militarily.<sup>54</sup> Taylor was likely set to pursue the same strategy again. Militarily he was hurting, with over 60 per cent of the country loosely in the hands of one of the two rebel groups, the Liberians United for Reconciliation and Democracy (LURD) or the Movement for Democracy in Liberia (MODEL). Taylor needed space to manoeuvre, and the peace talks offered a respite.

Arguments can be made both ways about the impact of the Special Court’s action on the Liberian situation. The Court’s initiative, while risky because it catapulted that country’s war to a more dangerous level, also increased the pressure for a peace settlement. However, that important subject was not the concern of the Special Court – and rightly so. Its job is not to conduct diplomacy with respect to Liberia but rather to carry out its mandate to bring to justice those accused of responsibility for the worst of the crimes committed during Sierra Leone’s conflict. While the announcement of the indictment and the attempt to persuade Ghana to hand over Taylor when the Liberian president was within its physical control probably had little chance of success from the start, they at least demonstrated to Sierra Leoneans the Court’s serious intention to put its responsibilities to international law and to them above calculations of politics and diplomacy. It must be asked what more the international community can do to show that it supports the Court’s efforts to fulfil its mandate.

One important step would be for the UN Security Council to stand by the commitment it made to the people of Sierra Leone when it signed a treaty with their government to help bring to trial “those who bear the greatest responsibility for war crimes and crimes against humanity” in the civil war. Especially if Charles Taylor is allowed to accept under certain conditions the offer of asylum Nigeria made him in early July, it is important that the

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<sup>50</sup> United Nations Security Council Resolution 1470 (2003), 28 March 2003, preamble and operative paragraph 11.

<sup>51</sup> ICG interviews with various UN officials and private individuals, Freetown, 4-6 June 2003.

<sup>52</sup> The War Affected Amputee Association of Sierra Leone stated clearly their reaction to ECOWAS and Ghanaian authorities when they noted that “We are angry that our own African leaders let him go”, press release, 5 June 2003.

<sup>53</sup> Interview with BBC World Service Radio, 4 June 2003.

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<sup>54</sup> Overall nine peace agreements and at least thirteen ceasefires were concluded in Liberia during its seven-year civil war.

Security Council strengthen the Special Court's credibility and capacity to deal with other indictees by granting it explicit authority to operate under Chapter VII of the UN Charter and henceforth to require all member states to enforce its orders. Having previously argued that he has been able to operate without it so far, Chief Prosecutor Crane now says that he needs this authority.<sup>55</sup> The President of the Court, British barrister Geoffrey Robertson QC, wrote to the UN Secretary General on 9 June requesting a Chapter VII mandate.<sup>56</sup>

Whatever effect such authority would have on the Taylor situation – and it would at least keep a realistic threat over his head and serve as a deterrent to the temptation to meddle in Liberia again if he were allowed to take up asylum in Nigeria – it would be of considerable value with respect to the remainder of the Court's work. The argument of Chapter VII powers for the Court is not limited to the Taylor case but extends to issues such as enforcement of sentences or witness protection relevant to much of its docket. Each time the Registry has to request state cooperation – for instance, to transfer an accused for medical or security reasons – it experiences difficulties because the request is only that, and the country that receives it has no legal obligation (and perhaps as a result no legal basis) upon which to comply.

#### **D. SELECTIVE JUSTICE**

The Taylor indictment aside, a lingering issue for observers of the Court is how the Prosecutor defines "who bears the greatest responsibility" for the crimes of the Sierra Leone civil war. While

Sierra Leoneans are generally happy with the twelve indictments that have been issued thus far (although there is still some unease over the detention of Norman and the two CDF commanders, Moinina Fofana and Allieu Kondewa), there is also concern about whether the limited mandate of the Court will allow for the most notorious fighters to be charged. The term "those who bear the greatest responsibility" is highly subjective. The Prosecutor has chosen to interpret it to mean the "masterminds of the war", or those who "*ultimately* bear the greatest responsibility".<sup>57</sup> Ordinary citizens frequently argue that trying only the top commanders will not produce sufficient justice. They consider that those who carried out the orders, mainly lower ranking officials and foot soldiers, also bear serious responsibility and must be brought to trial.<sup>58</sup>

With a restrictive mandate that suggests only 15 to 30 persons are likely to be indicted, victims of the war should not expect that every individual they perceive to be responsible will face the Special Court. The Court, however, needs to explain more widely and persuasively its rationale for indicting only a handful of individuals as war criminals, while a better understanding is needed of the complementary role the Truth and Reconciliation Commission (TRC) plays.

Indeed, the TRC has arguably a more complex task – to lay the broad foundations for reconciliation throughout society while the Special Court deals with those relative few who were responsible as leaders for war crimes and crimes against humanity. It began holding public hearings throughout the country on 14 April 2003 and is scheduled to finish in the first week of August. A final report is expected in October 2003. By the end of May, it had already collected over 7,500 statements. Crucially, it enables many victims to tell their story about the war and reveal atrocities and human rights abuses. It was hoped that perpetrators would also come forward to account for their actions, but relatively few have given statements.<sup>59</sup>

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<sup>55</sup> ICG interviews, Freetown, 16 April and 6 June 2003. In various interviews and statements, David Crane has sought to link the Taylor case to a threat to international peace and security, which is the threshold for a Chapter VII measure. For example, on the day after the indictment was announced: "We call on the international community, particularly the United Nations Security Council, to immediately take action regarding this threat to international peace and security, and bring Taylor to justice so that he may answer for the crimes he has committed in Sierra Leone". Statement by David Crane, Special Court press release, 5 June 2003.

<sup>56</sup> For the full text of the request see [www.sierra-leone.org](http://www.sierra-leone.org). On 17 July 2003, Robertson made a further appeal for better international assistance for international criminal courts during a speech in Rome to commemorate the fifth anniversary of the Rome Statute which set up the International Criminal Court (ICC).

<sup>57</sup> ICG interviews, October 2002 and April 2003.

<sup>58</sup> ICG interviews with Sierra Leoneans either in their private capacity or working with local NGOs, September-October 2001, April-June 2002 and May-June 2003.

<sup>59</sup> While the TRC is mandated to give an historical account of the war, it is not specifically mandated to force

## **IV. FACING IMMEDIATE CHALLENGES**

The expeditious manner in which the Prosecutor brought indictments caught the rest of the Special Court by surprise. Key organs like the Registry, the Defence and the Chambers had to move quickly to deal with the consequences of the arrests.

### **A. FIRST LEGAL STEPS**

Within a week of their arrests, Sankoh, Sesay, Kallon, Brima and Norman appeared before a judge to hear the charges against them.<sup>60</sup> These hearings took place in the remote town of Bonthe, on Sherbro Island, some 40 minutes by helicopter from the capital city, on 15 and 17 March under tight guard provided by UNAMSIL troops and the Special Court security staff. The accused were provided duty counsel, and the indictments were read in both English and Krio. A similar process took place for Augustine Gbao (25 April), Ibrahim "Bazzy" Kamara (4 June), and Allieu Kondewa and Moinina Fofana (2 July). Eight of the nine defendants in custody have pleaded not guilty to all charges.<sup>61</sup> At least 100 people attended the hearings, including a group of local and international journalists, a few international NGOs representatives, Special Court staff and several dozen Sierra Leoneans native to Bonthe.

It is normal, especially in the early days of international tribunals, to experience some hiccups. The rights of Issa Sesay were not fully protected when, in response to his offering information about historical events rather than merely entering his plea, the judge asked him follow up questions that

had a bearing on the merits of not only Sesay's case but also those to follow. On several occasions during his hearing, it seemed that, although Sesay had been given a duty counsel, he had no clear legal understanding of the charges against him. He asked the judge questions to clarify some of the charges and changed his plea on one charge. Even the judge appeared confused at times about the listing of the charges in the indictment.<sup>62</sup>

Specific but informal training for the judges might have reduced or even prevented such small embarrassments. Geoffrey Robertson, the elected President of the Court, may wish to consider such in house sessions in future to ensure the smooth running of the Court. Valuable lessons could also be drawn from the work of the ICTY and ICTR, which have dealt with many of the same issues.

Another concern has been how the right to a defence was handled at the pleadings. The judge asked each accused whether he wanted to defend himself, had his own lawyer, or wished to be assigned one. However, not all the accused – who initially gave different answers – had a clear idea of the legal and financial implications. Senior officials of the Special Court have repeatedly stated that defendants must be offered high-level legal assistance to ensure fair trials. While the Special Court and the Management Committee are rightly concerned to avoid the high costs for defence teams paid by the ICTR and ICTY, the experience of both institutions showed that almost all indictees were eventually considered indigent and required legal assistance.<sup>63</sup> This is likely to be the case before the Special Court as well, and as efforts are being made to provide this, it remains important that each accused obtains qualified counsel.<sup>64</sup>

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perpetrators to talk or to participate in the reconciliation process.

<sup>60</sup> All accused appeared before the Benjamin Mutanga Itoe (Cameroon), one of the three trial judges of the Special Court.

<sup>61</sup> All but Foday Sankoh. The former leader of the RUF was brought slumped in a wheelchair, his hair and beard unkempt, his right leg trembling and his head falling on his chest. He barely moved and never said a word while the judge asked him several times about his identity. The Judge ordered that Sankoh undergo medical and psychiatric evaluation before entering his plea. This evaluation never took place. There are inadequate facilities in Sierra Leone, and the Registry had a difficult time finding a qualified third country willing to take him. On 22 July, Judge Itoe denied a request by lawyers representing Sankoh for a stay of proceedings. However, Sankoh died on 29 July 2003.

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<sup>62</sup> These observations were made by an ICG representative present at the hearings. See also an account of the 15 March 2003 hearing by No Peace Without Justice, available at [www.specialcourt.org](http://www.specialcourt.org).

<sup>63</sup> None of the ICTR accused has ever paid for his/her defence, and only four ICTY accused are reported to have done so. See No Peace Without Justice, "Report on defence provision for the Special Court for Sierra Leone", 28 February 2003.

<sup>64</sup> All the indictees currently in custody initially requested legal assistance except Sam Hinga Norman. According to the Defence Office, he has now also requested legal assistance. The Registry will conduct financial investigations of all accused requesting legal assistance to determine their eligibility. While the Registry conducts these investigations, the accused will be treated as indigent

The hearings for Augustine Gbao (25 April) and Ibrahim "Bazzy" Kamara (4 June) showed clear improvement in the way the accused were provided with legal advice.<sup>65</sup> This suggests the confusion witnessed in March is gradually disappearing. The strategy for developing the Defence Office is also becoming clearer. Each defendant given legal counsel by the Court will be allowed to choose from a list drafted by the Defence Office, which will act as the liaison between the Registry and the independent defence teams, and be responsible for administering the funding of those teams. Defence counsel will be provided with materials to enable them to hit the ground running and avoid duplication.<sup>66</sup> The defence teams will be paid in block sums rather than set fees to avoid cost overruns.<sup>67</sup>

## **B. THE PRE-TRIAL STAGE**

Trials are not likely to start until November 2003, as a number of preliminary items need to be completed. The court building in Freetown will not be finished before September. The Court has requested the establishment of a second Trial Chamber, and it would like to resolve a number of pre-trial procedural issues before the trials begin.<sup>68</sup>

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and provided counsel. ICG interviews with the Registry and Defence Office, June-July 2003.

<sup>65</sup> All defendants who have entered their pleas were represented by the same Duty Counsel team – two Sierra Leonean lawyers and one Gambian lawyer.

<sup>66</sup> These materials will include a copy of the Conflict Mapping Project, currently under production by the international NGO No Peace Without Justice, and the materials and evidence collected by the duty counsel. In addition, the duty counsel, who already has a good understanding of the Sierra Leone war and the defendants' cases, may provide research assistance to the defence teams.

<sup>67</sup> Each defence team will be awarded roughly the same sum of money for the trial. There will be some flexibility in this depending on the case and the needs of the lawyer. For example, any travel or research costs the defence wants to have paid by the Court must first be considered by the Registrar, who will approve those deemed reasonable expenditures.

<sup>68</sup> Since indictments were first announced on 10 March 2003 and through 29 July, 56 motions have been filed by defence counsel. Most relate to questions on the Court's jurisdiction, the amnesty granted by the Sierra Leone government under the July 1999 Lomé peace agreement, the issue of joinder (whether individual indictments can be tried in common trials), or the alleged lack of independence of the Court. On 23 July, Taylor's defence counsel filed a motion requesting the Court to quash his indictment. On 26

The defence teams are legitimately asking for reasonable time to prepare their cases.

The Registrar points to budgetary constraints to explain why the entire Court structure was not fully in place when the first indictments were issued.<sup>69</sup> Robin Vincent said primacy was given to establishing the Office of the Prosecutor and ensuring it had the necessary staff and resources but acknowledged that many did not expect the Prosecutor to operate so quickly.<sup>70</sup> The final structure of the Defence Office was only agreed upon by the Management Committee in February 2003. Since it was initially understood that the Trial Chamber would not be "on duty before the end of the investigations",<sup>71</sup> recruitment of supporting staff for the Judges was postponed.

Since 10 March 2003, the Registry has been busy keeping up with the rapid pace of the Office of the Prosecutor, in particular doing what is necessary to bring the Chambers and Defence to full strength. Recruitment is underway for legal assistants and a senior legal adviser for the Chambers while the Judges are finalising Court rules and procedures.<sup>72</sup>

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June, Hinga Norman's defence counsel filed a series of motions pertaining to the jurisdiction of the Court. There are 27 motions pending; 98 decisions/orders have been rendered; and 26 hearings have been held. ICG interview with Registry officials, July 2003.

<sup>69</sup> It is unlikely that the Court can operate within its original budget of U.S.\$56.8 million for three years. The Special Court budget for the first year is U.S. \$16.8 million. The proposed budget for the second year is U.S.\$35 million. One Court official suggested the cost for the three years will be closer to U.S.\$75 million, although the final amount will depend on the number of trials, their length, and whether a second Trial Chamber is created. The Court is still awaiting a decision by the Management Committee on the budget for the second year and the approval to hire judges for the second chamber (construction of the second courtroom has already been approved).

<sup>70</sup> ICG interview, Freetown, 11 April 2003. As of 29 July 2003, the Court had 191 employees. The eventual full personnel complement is expected to be 256.

<sup>71</sup> According to Article 19.4 of the agreement between the UN and the government signed on 16 January 2002, "Judges of the Trial Chamber shall take permanent office shortly before the investigation process has been completed. Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed". The Trial Judges began working full time on 10 March 2003, the day the first set of indictments was announced.

<sup>72</sup> ICG interview, London, May 2003. These rules are mainly drawn from those of the ICTR, though the Special Court judges have the power to settle their own.

Recruitment is also ongoing for the Defence Office, including the position of head of the office (the Public Defender). The defendants have selected their lawyers, and these teams should be finalised by the Defence Office by August.<sup>73</sup>

As the Court enters the trial phase, it will be important to educate the public about the various required legal steps. Dissemination of information of this kind and holding the hearings in public<sup>74</sup> would go a long way toward lessening near-inevitable misunderstandings.

## V. SHADOWS OVER THE COURT

The Special Court's seat in the country where the crimes were committed and the fact that its officers, including judges, are both international and national make it quite different from the UN tribunals for Rwanda and the former Yugoslavia. Both the ICTR and the ICTY have suffered as a result of their distance from the war-affected societies with which they deal. Apart from the complication that the Special Court for Sierra Leone's physical location makes for security, it gives it an opportunity to make a more direct and lasting impact on the society. An international lawyer in Freetown noted: "The most special thing about the Special Court is that its leaders are trying to ensure that the tribunal has a real effect in the country where the atrocities occurred".<sup>75</sup>

At times, however, Sierra Leoneans have been left uneasy about aspects of the Court's work. A key concern is that while the Prosecutor (an American citizen) has been hard-working and has achieved much within a short time, he has also sent confusing signals about how he views the decade-long conflict.<sup>76</sup> A perception has developed, based

on his statements, that he at times appears to be acting in U.S. government interests rather than strictly independently. Another concern is the perceived sense that the Court is essentially an extension of U.S. thinking about how international criminal justice should be pursued or even an organ of U.S. foreign policy. A somewhat different worry relates to how the Court informs Sierra Leoneans about its work. It is still too early to measure the impact of the Court, but much more outreach is required.

### A. THE DIAMOND WAR, A "BLACK AND WHITE" STORY

International courts face the difficulty of dealing with mass crimes in a specific historical context and in a particular society, which is often foreign to those responsible for bringing the charges. The Truth and Reconciliation Commission, which has a much wider mandate that covers the early years of the civil war and addresses root causes, is primarily responsible for developing an "impartial" record of the conflict, but the Special Court also has a contribution to make.<sup>77</sup> Some statements of the Chief Prosecutor have raised doubts about how the civil war is to be portrayed before the Special Court.

The indictments offer their own clear explanation of how the charges were arrived at. They state that:

The RUF and the AFRC shared a common plan, purpose and design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in

<sup>73</sup> The Defence Office is in the process of finalising the contracts of the defence teams, including the conditions of service, terms of reference, and code of conduct. ICG interview with Defence Office, July 2003.

<sup>74</sup> ICG understands there may be a need at times to hold a hearing behind closed doors. However, if this is done, the Court should explain its reasons to the public in some detail.

<sup>75</sup> ICG interview, Freetown, June 2003.

<sup>76</sup> On 17 April 2002, the Secretary General of the United Nations appointed David M. Crane as Prosecutor of the Special Court for a three-year term. An American national, he served for over 30 years in the U.S. government, most recently as senior Inspector General at the Department of Defence. He has also been an Assistant General Counsel to

the Defence Intelligence Agency, legal adviser to the U.S. forces stationed in Egypt, a professor of international law at the U.S. Army Judge Advocate General's School, and a Judge Advocate General in the U.S. army.

<sup>77</sup> The TRC is mandated to create "an impartial, historical record of the conflict"; address impunity; respond to the needs of victims; promote healing and reconciliation; and prevent a repetition of the violations and abuses suffered". See the Truth and Reconciliation Act of 2000, Part III, "Functions of the Commission", 22 February 2000 and ICG Briefing, *Sierra Leone's Truth and Reconciliation Commission*, op. cit., p. 1.

return for assistance in carrying out the joint criminal enterprise.<sup>78</sup>

This acknowledges one dimension of the war – the plundering of natural resources – that is especially pertinent for the period under the jurisdiction of the Special Court, which is only from 30 November 1996, five and a half years after the beginning of the conflict. However, on several occasions, David Crane has publicly gone much further in his interpretation of the war, stating:

This civil war was not caused by a political vision or for religious reasons or for ethnic reasons. Not that that excuses war crimes or crimes against humanity. This was done for pure greed. This was done to control a commodity, and that commodity was diamonds.<sup>79</sup>

And again, when asked whether the war was political or about diamonds during a press conference in Freetown on 18 March, Crane answered:

To put it very simply, there are many side issues but the cause of this conflict is diamonds. In 30 years of public service, I have never seen a more black and white situation in my life, of good versus evil. Fundamentally the cause of this war was to control a commodity and that was diamonds.<sup>80</sup>

Reducing the conflict to its business dimension and thus oversimplifying the root causes of the civil war risks undermining the credibility of the Prosecution in the eyes of many Sierra Leoneans.<sup>81</sup> A number of

Sierra Leone and international NGOs and journalists based in Freetown have privately expressed great frustration at Crane’s statements.<sup>82</sup> According to several staff members within the Office of the Prosecutor, they are primarily directed to the American people and the wider international audience.<sup>83</sup>

Crane acknowledged to ICG that “no conflict is black and white” and claimed that he wanted “to draw to the attention of the world that [a commodity] can cause incredible damage”.<sup>84</sup> Considering that diamond dealers, whether they are war leaders or important businessmen, have been pulling many strings behind the scene, it is legitimate for the Prosecutor to focus on the role of diamonds. As he says, the Special Court provides “an incredible opportunity to say that there is an economy behind the conflict, even if it’s not a direct cause”.<sup>85</sup> An appropriate move for the Prosecutor might, therefore, be to bring cases against those businessmen who bear the greatest responsibility in the war in Sierra Leone. But it seems unnecessary and possibly counter-productive to use this reality to support a theory of the conflict that essentially confuses what fuelled the war with what it was all about. To some extent, such a theory allows Sierra Leoneans to shift the blame for the conflict outside their borders and so avoid responsibility for addressing the numerous internal problems that caused their civil war.

## B. THE AMERICAN ANGLE

The Court has struggled hard to shake off allegations that it is an American instrument,<sup>86</sup> allegations resulting in the first instance from the strong presence of U.S. personnel in the first few months of operations in the Office of Prosecutor. The U.S. has been keen to dispel these suspicions, and its officials often stress the distancing of

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<sup>78</sup> See indictments against Sankoh, Sesay, Kallon, Brima, Koroma, Kamara and Bockarie available at [www.scscl.org](http://www.scscl.org).

<sup>79</sup> David Crane made this statement during an interview with the Public Broadcasting Services, 10 January 2003. Available at [www.pbs.org](http://www.pbs.org).

<sup>80</sup> David Crane press conference, Freetown, 18 March 2003. See also Eric Pape, “A New Breed of Tribunal”, *Newsweek International*, 10 March 2003, and Douglas Farah, “Sierra Leone Court May Offer Model for War Crimes Cases: Hybrid Tribunal, With Limited Lifespan, Focuses on Higher-Ups”, *The Washington Post*, 15 April 2003.

<sup>81</sup> While diamonds have certainly played a large part in sustaining Sierra Leone’s war, a number of other factors contributed to the start of the lengthy conflict, including corruption, government mismanagement of state institutions, an unaccountable military, alienated youth, and poor economic development, all of which resulted in chronic grievances. For a discussion of the root causes of the conflict, see ICG Africa Report No. 28, *Sierra Leone: Time for a New Military and Political Strategy*, 10 April 2001.

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<sup>82</sup> ICG interviews, March-June 2003.

<sup>83</sup> Stressing the fact that the U.S. is a major diamond buyer, David Crane said in a program broadcast on PBS on 10 January 2003 that “the American people need to understand that a diamond is a wonderful gift, but one has to remember that the origin of some of those diamonds may be, in fact, coated in blood”.

<sup>84</sup> ICG interview with David Crane, Freetown, 16 April 2003.

<sup>85</sup> *Ibid.*

<sup>86</sup> Sierra Leone journalists and NGOs have referred to it in that manner during numerous interviews conducted by ICG since the Court started operations in August 2002.

American diplomats in Freetown and Washington from the workings of the Court. The U.S. Embassy in Freetown has maintained separation, at least publicly, from the Court and has never issued a statement on any indictment. Indeed, the announcement of Charles Taylor's indictment annoyed a number of U.S. officials and might help rebut claims that the Special Court is Washington's institution.<sup>87</sup> The reserved response to the indictment by the U.S. State Department was seen as a sign of tension with the Court.<sup>88</sup> That the Africa Bureau of the State Department has yet to release monies earmarked by the U.S. Congress has also given an impression of anti-Court feeling within the Bush administration.<sup>89</sup>

The Taylor indictment, however, is a special and highly sensitive matter because of its close connection to an ongoing political and humanitarian crisis. The frustration of some U.S. officials, particularly in the State Department, over the timing of the indictment does not, therefore, necessarily counter perceptions of U.S. influence in the overall running of the Court.<sup>90</sup> The U.S. was instrumental in creating the Special Court and was the first to contribute to its budget.<sup>91</sup> It

is widely speculated in Freetown that it has two dimensions to its political agenda, one officially assumed but the second strenuously denied.

The former relates to the U.S. position on how international justice should be pursued. Washington is strongly opposed to the International Criminal Court (ICC), the permanent body created by the 1998 Rome Statute that has been operating since 1 July 2002 out of The Hague.<sup>92</sup> The Bush Administration expresses concern that the ICC could be misused for politically-motivated suits against its troops and senior officials, and it seeks to prevent the possibility of such prosecutions by concluding bilateral agreements with as many states as possible.<sup>93</sup> The U.S. ambassador-at-large for war crimes, Pierre-Richard Prosper, was clear in explaining his government's reasoning in support of the Special Court model in preference to the ICC:

The ICC does not have the oversight and safeguards that a Security Council created body has. The ICC really leaves it at the discretion of the Prosecutor and the Judges to pursue cases as they wish. There are not enough safeguards to prevent a case being brought forward based on politics rather than facts and law...In creating this Court [for Sierra Leone], we decided to make it a court that provides as much ownership of the matter to the State as possible. Making it a UN subsidiary organ would not achieve that purpose. It would have been possible to have state participation but not state responsibility. Here we reached an independent court through an international agreement that shares the responsibility between the Sierra Leone government and the Security Council and the Secretariat of the United Nations. It fits into our global

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<sup>87</sup> ICG interviews with Western diplomats, June 2003.

<sup>88</sup> During the State Department Daily Press Briefing on 6 June 2003, the spokesperson, Richard Boucher, announced "support" for "the work of the court" and its decisions, but was hesitant to talk about the decision to indict Taylor.

<sup>89</sup> See the letter written on 13 June 2003 by U.S. Representative Henry J. Hyde (Republican), Tom Lantos (Democrat), Edward Royce (Republican) and Christopher H. Smith (Republican) to the U.S. Secretary of State, Colin Powell, which called for further support of the Court. The Bush administration was obligated to release U.S.\$10 million in Fiscal Year 2003 Economic Support Funds, to bring the total U.S. contribution to the Special Court to U.S.\$20 million, as provided by the Consolidated Appropriations Act of 2003. The Taylor indictment was welcomed by a number of U.S. legislators, including Senators Patrick Leahy and Russ Feingold (both Democrats) and Representatives Hyde, Lantos and Edward Royce, who issued bipartisan and individual statements.

<sup>90</sup> ICG interviews, June 2003.

<sup>91</sup> The U.S. has given U.S.\$5 million for each of the first two years of the Court's operation but has made no pledge for the third year. It turned over U.S.\$5 million in late July 2003, however, and the Court is seeking clarification as to whether this is additional funding for 2003 or a contribution for 2004 that has been brought forward. ICG interview, July 2003. The U.S. is the main donor at approximately 26 per cent of the provisional three-year budget of U.S.\$56.8 million. Other principal donors are The Netherlands (20 per cent), the UK (16 per cent), Canada (2.5 per cent), Germany and Japan (1.8 per cent each).

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<sup>92</sup> Since 1998 (and as of 27 July 2003), 139 countries have signed the Rome Statute and at least 89 have ratified it. Judges for the ICC were elected in February 2003. U.S. President Clinton signed the Rome Statute on 31 December 2000, just before he left office, but it was not ratified by the Senate. Clinton's successor, George W. Bush, withdrew the U.S. signature. On 6 May 2002 a letter was delivered to the UN Secretary General giving formal notice that the U.S. would not become a party.

<sup>93</sup> While the origins of the Special Court for Sierra Leone date back to the previous Clinton administration, anxieties about the ICC were already in existence at that time.

philosophy. It's not part of the UN and it's not part of the Sierra Leonean legislative body.<sup>94</sup>

Ironically, the very independence that the U.S. Prosecutor at the Special Court has shown in pursuing the Taylor indictment against the apparent political wishes of the U.S. State Department and others may well be seen by some in Washington as justifying their fears about what independent prosecutors at an independent tribunal might some day do. Too much should not be made, however, of the proposition that the Special Court is conceived as the antithesis of the ICC. Chief Prosecutor Crane has carefully spoken of the Special Court as different from but potentially complementary to the ICC rather than a fully competitive concept.<sup>95</sup> Among its main donors, only the U.S. strongly opposes the ICC but it is certainly not alone in hoping that the Special Court achieves its mandate in a more expeditious and cost-effective manner than the ICTR and the ICTY. Thus, although the U.S. has a special stake in its success, the Court itself is not internationally contentious.

However, the U.S. objective of calling into question the need for the ICC is known to Sierra Leone intellectuals, and it reinforces their suspicions that the Special Court is an instrument of U.S. policy and that their country is being used as "a guinea pig".<sup>96</sup> These feelings were strengthened on 31 March 2003, when Sierra Leone signed a so-called Article 98 agreement with the U.S. guaranteeing that it would not turn over American nationals to the ICC.<sup>97</sup> As a local journalist stated: "They are

telling us that this medicine is good for us but that they are not going to drink it".<sup>98</sup>

The second alleged U.S. political goal relates to broader policy in West Africa and the "war against terror". The specific inclusion in the Foday Sankoh indictment of a reference to the role behind the rebellions in Liberia and Sierra Leone of long-time Washington *bête noire*, Libyan leader Colonel Mu'Ammar Qadhafi, although factually correct, is disturbing because it is highly selective in a manner that adds to popular perceptions of a hidden agenda.<sup>99</sup>

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interests of international co-operation and good relations with our American partner, and within the framework of, and as it is compatible with, the Rome Statute, to subscribe our consent and signature to this Agreement", declared Attorney General and Minister of Justice Eke A. Halloway. The signing of the Non-Surrender Agreement under Article 98 also coincided with a U.S. grant of U.S.\$25 million in loan guarantees to restart and expand the operations of the mining company Sierra Rutile Limited. Article 98 (Cooperation with respect to waiver of immunity and consent to surrender) of the ICC reads "1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of the third State for the waiver of the immunity. 2. The Court may not proceed with a request for surrender which should require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender", Rome Statute of the International Criminal Court, 17 July 1998. By July 2003 at least 38 countries had signed Article 98 agreements with the U.S.

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<sup>94</sup> Interview with Pierre-Richard Prosper in *Diplomatie Judiciaire*, 9 February 2002, available at [www.diplomatiejudiciaire.com](http://www.diplomatiejudiciaire.com).

<sup>95</sup> Crane has said: "The ICC as well as the Special Court for Sierra Leone can coexist rather well together. It's my opinion that the Special Court in the future can still work closely with the ICC or work in concert or coexist with [it]. They were created at the same time but they are fundamentally different concepts....I firmly believe that the Special Court concept can work again in the future and that this particular experiment here in Sierra Leone is going to be a model to which other countries and other regions may look to resolve those issues". Press conference in Freetown, 18 March 2003. Previously, Crane had announced that the Special Court is "the next generation of tribunals", *The Wall Street Journal*, 12 February 2003.

<sup>96</sup> *Christian Monitor*, Freetown, 12 March 2003.

<sup>97</sup> This agreement was ratified in the Sierra Leone parliament on 6 May 2003. "The United States is a very important partner for Sierra Leone. Our country, ravaged by recent conflict, still depends heavily on the goodwill of its friends....Subject to ratification by Parliament, it is therefore my duty today, in the

<sup>98</sup> ICG interview, Freetown, April 2003. On 8 April, a columnist with *Salone Times* also wrote: "The signing coincides with the American-sponsored Special Court trying our own citizens for war crimes....First, we ratify protocols for the establishment of the International Criminal Court to impress other West African brothers like Nigeria and Ghana. One year later, we turned around 90 degrees to condone a country rebelling against the court at a time when we are prosecuting our own citizens against similar crimes. Is it that government values Americans more than Sierra Leoneans? Poverty seems to be eating away very quickly the things that we stand for as a nation....Let the government explain to us why such a cheap deal was signed with the U.S. government". See also Campaign for Good Governance press release, 14 April 2003, available at [www.slccg.org](http://www.slccg.org), and *West Africa*, 21-27 April 2003, p. 10.

<sup>99</sup> Paragraph 18 of Sankoh's indictment states that "in the late 1980's the Accused received training in revolutionary tactics and guerrilla warfare in Libya from representatives of the Government of Colonel Mu'Ammar Qadhafi. While in Libya the Accused met and made common cause with Charles Ghankay Taylor". David Crane is not the

Chief Prosecutor Crane has spoken publicly of a Qadhafi connection,<sup>100</sup> while neither he nor the indictments make any mention of other leaders in the region, such as Blaise Compaoré of Burkina Faso, who gave important support to both the RUF and Taylor. Crane has told ICG that "there are many players. We're dealing with many things. There are specific reasons to mention Qadhafi, and they are not American reasons. He is the one who drew up this enterprise. Then there were middle players. Burkina Faso is not off the hook".<sup>101</sup> Nevertheless, a selective historical approach at least to this point in the Court's public dealings can only fuel Freetown concerns that it has a political bias.

Likewise, the Prosecutor's oft-heard statement that "al-Qaeda is here"<sup>102</sup> does not help to defuse the perception that the work of the Special Court is to a certain extent undertaken through an American prism or, as some suggest, that the Court is being used to gather intelligence on international terrorist networks unrelated to its mandate. David Crane says his office "is not looking at al-Qaeda" since "there is no link at all between al-Qaeda and the criminal enterprise [underlying the war in Sierra Leone]. It's just not there, not even close".<sup>103</sup> In explaining why he has repeatedly stated in the media that his team uncovered "very specific evidence of al-Qaeda ties to the blood diamonds of West Africa",<sup>104</sup> however, he has said that he wants "to bring attention to the fact that if we don't pay attention to some parts of the world, it will cause terrible damage. What I want to tell Europe and the United States is that they cannot ignore this region because it will come and haunt them. The international community must stay engaged in all parts of the world". He is "morally bound", he

added, "to transmit whatever information he finds to the international community".<sup>105</sup>

These local suspicions of extra-judicial U.S. objectives may well have little plausibility but they are undoubtedly affecting the Sierra Leone people's sense of ownership in the process.

### C. OUTREACH

An opinion poll conducted by the Sierra Leone organisation Campaign for Good Governance found that 67 per cent of the population had heard about the Special Court, 62 per cent considered it necessary, and 61 per cent thought it was intended to benefit the people of Sierra Leone.<sup>106</sup> However, only 10 per cent stated that they fully understood the purpose of the Court, while 43 per cent expressed no understanding whatsoever, and 68 per cent did not know the main differences between the Special Court and the TRC. Information is especially scarce in the provinces. Misunderstanding and lack of information and transparency are key factors that can work against the smooth running of the judicial process. Lessons can be learned from how these shortfalls have jeopardised the impact of the ICTR and ICTY on the societies they were meant to help. Clearly, the Special Court cannot comprehensively address this issue alone, especially in a country that has an 80 per cent illiteracy rate and poor mass media and communications networks.<sup>107</sup> The Special Court focuses its outreach on two key populations: Sierra Leone citizens and the media. Unfortunately, it has

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drafter of the indictments – this was largely handled by international and senior Sierra Leone investigators and attorneys – but he has oversight of the process. ICG interview, June 2003.

<sup>100</sup> Crane made reference to Qadhafi in a BBC interview on 5 June 2003.

<sup>101</sup> ICG interview, Freetown, 16 April 2003.

<sup>102</sup> ICG interview with David Crane, 7 March 2003. See also Douglas Farah, "Sierra Leone Court May Offer Model for War Crimes Cases: Hybrid Tribunal, With Limited Lifespan, Focuses on Higher-Ups", *The Washington Post*, 15 April 2003.

<sup>103</sup> ICG interview, Freetown, 16 April 2003.

<sup>104</sup> See Douglas Farah, "Sierra Leone Court May Offer Model", *op. cit.*

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<sup>105</sup> ICG interview with David Crane, Freetown, 16 April 2003. Crane said: "As to the al-Qaeda issue...we have found a connection of terrorists in West Africa. We're not investigating that. It's not our mandate, absolutely not our mandate. We turn over any information such as that to appropriate authorities. We continue on with our only mandate, the only reason we're here is to try those who bear the greatest responsibility....But we're surely not going to be shy about passing information on to appropriate international and national...[crime fighting] organisations to give them a lead, tips as we go along and investigate our part of our mandate". Crane made this statement during a meeting with the Friends of Sierra Leone in the U.S. on 27 May 2003. The full transcript is available at [www.sierra-leone.org](http://www.sierra-leone.org).

<sup>106</sup> This poll was conducted in November 2002 and January 2003, before "Operation Justice". It is available at [www.slccg.org](http://www.slccg.org).

<sup>107</sup> The Campaign for Good Governance poll found that 73 per cent of the interviewees had heard about the Court from the radio, while only 3 per cent had done so from newspapers and 1 per cent from television.

faced numerous difficulties in reaching both populations.

Outreach to ordinary Sierra Leoneans has taken place in two phases. The first, September 2002 through February 2003, consisted of town meetings held by the Prosecutor in ten of the country's twelve districts. Additional public gatherings were organised by the Registrar. These moves were in commendable contrast to what senior ICTY and ICTR officials have done. But as Robin Vincent admits, they did not amount to real information sharing.<sup>108</sup> During this same period, the Court employed only two people to hold small community meetings, particularly in Freetown, while a few civil society groups conducted similar programs.

The second phase began in April 2003 when the Registry established an outreach office. Its members understand the huge task facing them and that success depends to a large degree on coordinating with national and international organisations. "Until we implement the participatory dimension of the process, people won't feel it's their Court. The idea is not that only a minority feels that it is their own", stated Binta Mansaray, the coordinator of the office.<sup>109</sup> This small team must explain the legal intricacies of the Court to a largely illiterate population that is not used to seeing justice in action. Although late in starting its work, significant progress has been made in putting in place district offices and a staff that can operate throughout the country,<sup>110</sup> building a network of local NGOs to assist with information dissemination,<sup>111</sup> and developing the profile and visibility of the Court both in Sierra Leone and internationally.

The outreach office needs a clear strategy for reaching the population through intelligent use of local and international NGOs and media outlets to disseminate information and to follow and monitor the Court's work. This strategy appears to be coming together slowly, but it is still too early to judge its effectiveness. Clearly, what is happening now is better than what came before, but there is a long road ahead. As the trials begin, it will be more crucial than ever to ensure timely and widespread availability of information so that the population is informed, and misunderstandings that could lead to instability are avoided.<sup>112</sup>

The performance and social impact of the Court could be improved by the presence of an independent international monitoring team to ensure transparency of the process and dissemination of information. The Court suffers, like the ICTR, from a lack of sustained interest by major international human rights NGOs and the international media. It is about to start the trial phase without the presence of any of these organisations.<sup>113</sup> Sierra Leoneans are left to monitor the work of the Court alone and to help it to find the difficult balance between security and transparency.

The Special Court also needs better liaison with both local and international media. It has attracted significant international attention only with the Taylor indictment, almost a year after it started work. Getting international attention will always be difficult,<sup>114</sup> but more troubling is the apparent lack of interest by local media outlets. Although clearly major ongoing coverage can only be expected when trials are ready to begin, the Public Affairs Office has had problems keeping the national press informed and including it in the daily workings of the Court. Many local journalists have complained that the Court is often

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<sup>108</sup> ICG interview with Robin Vincent, Freetown, 11 April 2003.

<sup>109</sup> ICG interview, Freetown, 9 April 2003.

<sup>110</sup> As of mid-July 2003, the outreach office was still in the process of hiring one District Outreach Officer for each of the twelve districts in Sierra Leone. Nine have been recruited so far, although their contracts have not been finalised. The office hopes to fully establish these officers and their district offices by the end of August 2003. ICG interview with outreach office, July 2003.

<sup>111</sup> The outreach office is in the process of trying to put together a network of NGOs to work with regularly. Until now it has relied upon the goodwill of NGOs already engaged in outreach regarding the Court. The outreach office has also utilised the network of UNAMSIL and the UN military observers spread across the country. However, it realises the need to use local NGOs and local community networks to ensure the Court's message reaches the broadest possible audience. ICG interview with outreach office, July 2003.

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<sup>112</sup> The Court has a number of instruments at its disposal for disseminating information: local and international NGOs, local and international media outlets, the distribution of printed statements, the internet (although its website tends to be out of date), radio programs, and television coverage of events. Collaboration with local and international NGOs working throughout the country will be extremely important if the Court is to reach a largely isolated and illiterate population.

<sup>113</sup> No Peace Without Justice and the International Centre for Transitional Justice are supporting both institutions, but their work does not include independent monitoring. Amnesty International and the International Committee for the Red Cross have only been monitoring the detention conditions of the accused.

<sup>114</sup> The Court's first indictments attracted little international attention in part because they were announced at the height of the Iraq crisis.

distant.<sup>115</sup> Perhaps not coincidentally, the local media has privately and sometimes publicly displayed anti-Court sentiments.<sup>116</sup> For example, at a time when many Sierra Leoneans expressed delight at the Taylor indictment, several papers hit out at the Court.<sup>117</sup> Some local journalists have also been part of the problem. They have difficulty in reporting on the Court because of a lack of interest, a lack of understanding of the law and the institution, and, in some cases, poor journalistic training. Workshops focused specifically on Court reporting were offered in May 2003 but were poorly attended. The local media cannot legitimately complain about the Court if it is unwilling to make the effort to cover Court news.

## VI. WHAT LEGACY?

What will be left in Sierra Leone once the Special Court has completed its work? A superficial answer includes the buildings that are being erected in Freetown to host the Court and its annexes, including two courtrooms, a detention centre and a library.<sup>118</sup> A Court official says that the most important action will be the handing down of

judgements on accused war criminals.<sup>119</sup> A Sierra Leone staff member states that the main legacy can be in "the opportunity to change the legal system and the way we think that some people are above the law".<sup>120</sup> An international lawyer believes that in a society and political system where impunity has been the norm, the Special Court will go some way toward ensuring that in the future the "big men" are forced to account for their behaviour in front of a judge, even if ultimately found innocent.<sup>121</sup> Lastly, there is the hope that in conjunction with the TRC's work, the Special Court will have helped Sierra Leone's citizens to understand their civil war better.

However, the Registrar admits, "expectations are sometimes worrying".<sup>122</sup> There is agreement that Sierra Leone professionals working with the Court will gain substantial experience. According to Registry charts, 56 per cent of all employees at the Special Court are local citizens,<sup>123</sup> though the government chose to appoint an international as deputy prosecutor and nominated only two Sierra Leonean judges out of the three it had authority to designate.<sup>124</sup>

The Special Court has been rather skilled at attracting competent, bright, committed, mostly young Sierra Leoneans. There is also absolutely no doubt that the participation of Sierra Leone investigators and lawyers has been a determining factor in the Prosecutor's capacity to work fast since they provide his office with knowledge of the country that would otherwise be lacking. The initial perception that the Court's personnel was largely American has disappeared, with British and

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<sup>115</sup> A well-prepared and illustrated sixteen-page booklet, "Special Court for Sierra Leone", was issued by the Court in March 2003. It contains substantial information about mandate and personnel and has been widely circulated within Sierra Leone and to donor governments and other interested recipients abroad.

<sup>116</sup> ICG interviews, May-June 2003.

<sup>117</sup> In a long editorial that showed a lack of confidence in the Court, the *Standard Times* asked "What Now Mr Crane?", 6 June 2003. Another paper, the *Independent Observer*, headlined "Defeat: Charles Taylor 1, Special Court 0". The Court could have managed its public affairs in a more robust manner. The days following the announcement of Taylor's indictment required the full machinery of the Public Affairs Office to consistently voice the Court's side of the story. Both David Crane and Robin Vincent spoke at length to the BBC, CNN and other networks, but not wishing to politicise itself, the Court failed to respond fully to the accusations that it misunderstood and acted naively and wrongly in announcing the indictment when it did. More could have been done, for example, to disseminate explanations of the Court's actions and provide updates on the situation in Liberia and the assessment of the threat Taylor posed to Sierra Leone.

<sup>118</sup> In a meeting with the Friends of Sierra Leone in the U.S. on 27 May 2003, David Crane suggested the Court's legacy would include "a wonderful multi-acre justice complex". The full transcript is available at [www.sierra-leone.org](http://www.sierra-leone.org).

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<sup>119</sup> ICG interview, London, May 2003.

<sup>120</sup> ICG interview with a Sierra Leone staff member of the Special Court, Freetown, 4 April 2003.

<sup>121</sup> ICG interview with an international lawyer, Freetown, June 2003.

<sup>122</sup> ICG interview, Freetown, 11 April 2003.

<sup>123</sup> Within the Office of the Prosecutor, they are 31 per cent.

<sup>124</sup> There has been a significant change in the Sierra Leone government's position in this regard. President Kabbah's letter on 12 June 2000 to the UN Secretary General envisaged that "The Court could be structured so that the Attorney-General of Sierra Leone is the chief or co-chief prosecutor of the court", in order for the government "to play a lead role in the prosecution". In an interview with ICG on 14 March 2003 in Freetown, however, Eke Ahmed Hallway, Minister of Justice and Attorney General, said, "We didn't want someone who had been affected by the atrocities. The deputy prosecutor [Desmond de Silva QC] is not foreign to Sierra Leone: he is a member of our Bar. We wanted the best person, be he or she a Sierra Leonean or not. It is not necessarily ideal that this person be a Sierra Leonean".

Canadians now more prominent.<sup>125</sup> There is still, however, concern that senior Sierra Leone lawyers should play a greater role at a strategic level.

## VII. CONCLUSION

There has been talk in recent months about the possibility that the Special Court could serve as a "new model" tribunal to dispense justice in other gravely troubled countries, perhaps including Iraq.<sup>126</sup> Chief Prosecutor Crane speaks of the Sierra Leone experiment as the "next generation" of international courts.<sup>127</sup> Nevertheless, while the Special Court is off to a relatively fast start in its first year, much remains to be done, including by the international community, before it can be called a success worthy of replication.

It is still financially fragile, and donor countries need to deliver on their pledges. But just as crucially, the Special Court requires effective political support and legitimacy. UN Security Council Resolution 1470 (March 2003), which expressed "strong support" for the Special Court and requested cooperation with it, "made a difference in the way we are perceived", says the Registrar, Robin Vincent. However, he added:

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<sup>125</sup> When the Office of the Prosecutor began to function, the key posts of Prosecutor, Chief of Investigations and Chief of Prosecutions (who manages the prosecution lawyers), as well as of the two Senior Trial Attorneys were all filled by Americans, a situation probably unique in the history of international tribunals. By March 2003, however, 25 per cent of the Office of the Prosecutor professional staff was American, 50 per cent African. In the lead up to the first indictments on 10 March, two Sierra Leoneans were acting as senior trial attorneys for most or part of the time. In March, the Chief of Prosecutions was replaced by a Canadian attorney. In May 2003, a U.S. senior trial attorney was replaced by another Canadian. Two of the three judges of the Trial Court are African: Bankole Thompson (Sierra Leone), Benjamin Itoe (Cameroon), Pierre Boutet (Canada); as are three of the five judges of the Appeal Court: Emmanuel Ayola (Nigeria), Hassan Jallow (the Gambia), George Gelaga King (Sierra Leone), Geoffrey Robertson (UK), and Renate Winter (Austria).

<sup>126</sup> Geoffrey Robertson, President of the Special Court for Sierra Leone, on BBC "Hard Talk", 27 January 2003. See also "Tribunal in Africa may serve as a model for trial of Hussein", *The Wall Street Journal*, 12 February 2003.

<sup>127</sup> Eric Pape, "A New Breed of Tribunal", *Newsweek International*, 10 March 2003. Crane also made this statement during a question and answer session with the press on 25 June 2003 at UNAMSIL Headquarters.

In terms of international co-operation, states have been wary. What the ICTR and the ICTY can expect to obtain, we have to invite. This type of tribunal is politically weaker. We have a problem of legitimacy. I have seriously underestimated the difficulty to achieve recognition and international co-operation for this Court. I thought it would just follow. But we are different, we are low profile.<sup>128</sup>

If the Prosecutor makes the request, as he is likely to do in the near future, it would be helpful for the U.S. to expand its rewards program to Special Court indictees who are at large.<sup>129</sup> The use of this tool in 2002 has benefited the ICTR and there are reasons to believe that it could prove useful in Sierra Leone as well.

How the international community handles the Taylor case, with its difficult to reconcile components of law, justice, diplomacy and pragmatic power politics, will also go far toward determining how the Special Court is ultimately viewed in Sierra Leone and abroad. Ideally, Taylor should be made to answer for his actions before the Special Court. At the least, he will need to be removed permanently from power and isolated from Liberia with the threat of trial serving as a guarantee of his non-interference in efforts to rebuild his shattered country.

West Africa is unaccustomed to seeing justice done by courts but Sierra Leoneans eagerly wait for the trials to begin in Freetown. If the Special Court conducts them expeditiously, fairly, and in an open manner that it makes comprehensible to the population, it can do much to keep Sierra Leone on the promising path it has been following since the civil war ended. But most of the tough work is still ahead.

**Freetown/Brussels, 4 August 2003**

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<sup>128</sup> ICG interview, Freetown, 11 April 2003.

<sup>129</sup> ICG interview with Alan White, Chief of Investigations, Special Court, Freetown, 16 May 2003. The U.S. State Department Rewards Program offers up to U.S.\$5 million for information that leads to the arrest of certain international suspects. It has already been extended to ICTY and ICTR suspects who are still at large.

## APPENDIX A

### LIST OF PERSONS INDICTED BY THE SPECIAL COURT FOR SIERRA LEONE

(as of 1 August 2003)<sup>130</sup>

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**Sam Bockarie**, 39, also known as “Mosquito”, from Kono district (East), was an RUF battle group commander from 1992 to April 1997, when he became the battlefield commander, subordinate only to Foday Sankoh. Within the joint-forces of AFRC/RUF, he was Chief of Defence Staff. In December 1999, opposing the peace process, he fled to Liberia where he allegedly fought alongside Charles Taylor. Bockarie was identified by witnesses as active in late 2002 in the western part of Côte d’Ivoire where terror has been widespread in the rebel-held territories. His death was announced by the Liberian Government on 5 May 2003, but the circumstances remain unknown. Following weeks of diplomatic and legal wrangling between the Special Court and the Liberian Government, what was said to be Bockarie’s body was flown back to Freetown on 1 June. The Court has yet to state officially whether the body is in fact that of Bockarie.

**Alex Tamba Brima**, 31, also known as “Gullit”, from Kono (East), was a Sergeant in the Sierra Leone Army and among the soldiers who staged the 25 May 1997 coup. He became the Public Liaison Officer of the AFRC, and after the Junta was forced out of Freetown in February 1998, commanded AFRC/RUF forces in Kono district and “conducted armed operations throughout the northeastern and central areas” of the country, according to the indictment. He was known to be among those who led the attack on Freetown on 6 January 1999. The Sierra Leone authorities provisionally detained him in January 2003 in connection with an apparent coup attempt.

**Moinina Fofana**, 53, from Nongoba Bullom Chiefdom, Bonthe District, was Director of War Operations for the Kamajors. The charges against Fofana are identical to those brought against Allieu Kondewa discussed below. They are listed as co-accused on the same indictment. He was detained, along with Kondewa, on 27 May 2003 and indicted on 26 June, pleading not guilty at his hearing on 1 July.

**Augustine Gbao**, 54, born in Kenema district (East), was held as a suspect by the Special Court a week after “Operation Justice” started. A former police officer, “Colonel” Gbao became RUF’s head of Internal Security. At the time of his arrest, he had already benefited from the National Committee for Disarmament, Demobilisation and Reintegration (NCDDR) program for implementing an agricultural project.<sup>131</sup> He was formally indicted on 16 April 2003.

**Morris Kallon**, 39, from Bo District (South), was a RUF Senior Commander and member of the AFRC/RUF junta regime (1997-1998). In early 2000, when Issa Sesay was promoted to battlefield commander, Kallon became battle group commander. By June 2001, he had become the RUF battlefield commander and had sided with Issa Sesay in bringing the war to an end. At the time of his arrest, he was about to receive funding from NCDDR.

**Ibrahim Kamara**, 35, also known as “Bazzy”, from Wilberforce Village (Western Area), joined the Sierra Leone Army on 20 May 1991 and rose to Staff Sergeant. He was the main architect of the May 1997 coup that overthrew the Kabbah government, then in power for only a year, and established the Armed Forces Revolutionary Council (AFRC), led by Johnny Paul Koroma. Kamara is accused of being one of the AFRC commanders involved in the 6 January 1999 attack on Freetown. He is also charged with involvement in the hostage taking of UN peacekeepers, ECOWAS troops, journalists, and humanitarian aid workers. Kamara

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<sup>130</sup> Indictment texts can be found on the Special Court for Sierra Leone website: [www.sc-sl.org](http://www.sc-sl.org).

<sup>131</sup> All the indictments are available at [www.sierra-leone.org](http://www.sierra-leone.org).

later became head of the West Side Boys, a faction that broke away from the AFRC-RUF coalition and was loyal to Koroma.

**Allieu Kondewa**, believed to be born in Bo district, was thought to be residing at the time of his indictment in Bumpeh Chiefdom, Bo District, and working as a farmer and herbalist. He is described as the former Kamajor High Priest and Chief Initiator of the CDF, a sobriquet he acquired via his reputation as a healer who created a pre-battle anointment and initiation ceremony for CDF fighters that was reputed to give them mystical powers. He was detained on 27 May 2003 and indicted on 26 June. His indictment reads: "Civilians, including women and children, who were suspected to have supported, sympathised with, or simply failed to actively resist the combined RUF/AFRC forces were termed as collaborators and specifically targeted by the CDF...These 'collaborators' and any captured enemy combatants were unlawfully killed". Kondewa pleaded not guilty on 1 July.

**Johnny Paul Koroma**, 43, born in Kono district (East) and a former major in the Sierra Leone Army, he became the head of the AFRC immediately after he was released from jail by renegade soldiers who led the 25 May 1997 coup. Soon after, he invited the RUF to join the AFRC junta and form the Supreme Council. Fighting continued throughout the country after Nigerian forces of the Economic Community of West Africa States Monitoring Group (ECOMOG) ousted the junta in February 1998 but Koroma joined the peace process following the July 1999 Lomé Peace Accords. He turned against the RUF following demonstrations outside Sankoh's house in May 2000. In May 2002, he was elected to the Sierra Leone Parliament as a member of the Peace and Liberation Party. He disappeared four days after the apparent coup attempt on 13 January 2003 in which he was alleged to be involved. The Special Court has said that he has taken refuge with up to 3,000 fighters in Foya Kamala, in northwestern Liberia close to the Sierra Leone border though some diplomats believe he is no longer there. On 16 June 2003, unconfirmed reports surfaced of Koroma's death in Liberia.

**Sam Hinga Norman**, 63, from Bo district (South) and a retired Captain of the Sierra Leone Armed Forces, founded, organised and led the CDF in 1994 in response to attacks on the civilian population by both RUF and the military. In June 1997, after President Ahmed Tejan Kabbah was overthrown, he became the National Coordinator of the CDF, the main indigenous force fighting in support of the government. He served as deputy minister of defence in the first Kabbah government from 1996 until May 2002. Following the 14 May 2002 elections, he was made Minister of Internal Affairs in the second Kabbah government.

**Foday Saybana Sankoh**, 65, from Tonkolili District (North) and a former corporal in the Sierra Leone Army in the early 1970's, was the leader of the RUF from its creation in 1988 or 1989. From May 2000 until his indictment by the Special Court, Sankoh was detained by the government. He appeared to require physical and psychological examinations that were not available in Sierra Leone, and the Court was trying to find a third country with appropriate medical facilities that was willing to host him while his fitness to stand trial was evaluated, when he died on 29 July 2003.

**Issa Hassan Sesay**, 32, from Freetown, joined the RUF in the early days of the war. Between April 1997 and December 1999, he was a battle group commander. He then became the battlefield commander and interim leader of the RUF in June 2002 after Sankoh was arrested for undermining the peace process. At the time of his own arrest, Sesay was about to launch a community development project funded by NCDDR.

**Charles Ghankay Taylor**, 55, has been president of Liberia since 19 July 1991, prior to which he was head of the National Patriotic Front for Liberia (NPFL) rebel group from 1989 to 1997. According to the indictment, the NPFL that Taylor led began organising armed attacks in Liberia in December 1989. Taylor was assisted in this activity by Foday Sankoh and his followers. To obtain access to resources in Sierra Leone, particularly diamonds, the indictment states, Taylor provided financial support, military training, personnel, arms, ammunition and other support to the RUF. When the RUF joined with the AFRC following the 25 May 1997 coup, Taylor is alleged to have supported and encouraged that alliance. Taylor is further accused of widespread attacks on and abduction of UNAMSIL peacekeepers between 15 April and 15 September 2000.

## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 90 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG’s approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG’s reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation’s Internet site, [www.crisisweb.org](http://www.crisisweb.org). ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG’s international headquarters are in Brussels, with advocacy offices in Washington DC, New York, Moscow and Paris and a media liaison office in London. The organisation currently operates

twelve field offices (in Amman, Belgrade, Bogota, Islamabad, Jakarta, Nairobi, Osh, Pristina, Sarajevo, Sierra Leone, Skopje and Tbilisi) with analysts working in over 30 crisis-affected countries and territories across four continents.

In *Africa*, those countries include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Georgia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, the Republic of China (Taiwan), Turkey, the United Kingdom and the United States.

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international  
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