Report from the

Freetown Conference on
Accountability Mechanisms for Violations of
International Humanitarian Law
in Sierra Leone

Freetown, 20-22 February 2001

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Introduction
The Special Court and the Truth and Reconciliation Commission are intended as a means to assist in reconciliation and to prevent a recurrence of conflict. The achievement of these objectives is dependent on the victims being aware of and understanding the war and its causes. While the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda have been heralded as advancing international criminal law and taking a stand against impunity for those who commit the worst atrocities, they have also faced strong criticism for failing to ensure that the people of the regions are informed about the work of the Tribunals and understand their significance.

In both of those cases, the Tribunals were established with little – if any – input from the people of Rwanda or the former Yugoslavia and with little thought as to how to make the operations and outcomes of the Tribunals relevant to the people. Indeed, it has only been recently that measures as basic as translating Tribunal decisions into Bosnian/Serbian/Croatian have been implemented. In failing to address these issues promptly and effectively, the Tribunals are viewed by the people in these communities as being imposed by the international community and having little relevance to them. The failure to adopt such basic informative and facilitative measures has resulted in widespread misconceptions and misinformation about the nature, workings, limitations and successes of the Tribunals.

At the moment, both the Special Court and the Truth and Reconciliation Commission exist only on paper. This allows for a unique opportunity to craft the institutions in a way that avoids structural difficulties that could impede their success, such as failing to take account of the cultural, social and other contexts within which the institutions must operate. One way to address these issues with a view to avoiding these difficulties is to enable the people of Sierra Leone to have input into the establishment and operation of accountability mechanisms addressing the conflict in their country. While the constitutive documents for each body have been agreed upon, there are many grey areas, especially in terms of the relationship between the institutions. These areas can be addressed by considering how the institutions should operate, individually and in relation to each other. This type of examination can serve to highlight potential difficulties or gaps within the constitutive documents themselves which can be addressed prior to the establishment of the institutions.

The Conference program
The Freetown Conference on Accountability Mechanisms for Violations of Humanitarian Law in Sierra Leone, held in the Lagoonda Complex on 20 to 22 February 2001, was attended by over 100 national and international personnel active in the fields of law, human rights and civil society.
The aim of the conference was to provide a vehicle for the exploration of mechanisms designed to provide accountability for atrocities committed in Sierra Leone during the course of the conflict. The focus was on the two mechanisms envisaged for Sierra Leone, namely the Special Court and the Truth and Reconciliation Commission, and the interaction between those institutions. An additional intention was to explore how traditional or customary justice could be incorporated into or operate alongside those mechanisms.

The working groups were designed around issues common to all accountability mechanisms, including international tribunals, truth and reconciliation commissions and national courts. The purpose of these sessions was to get to the heart of the problems facing accountability mechanisms in Sierra Leone and devise concrete solutions for those problems, drawing from solutions adopted for other accountability mechanisms. To this end, each working group was assigned one or more experts who have both theoretical and practical experience in accountability mechanisms in other post-conflict situations. The role of the experts was to guide the working groups by highlighting the various issues involved and discussing proposed solutions, whether they had ultimately been adopted or abandoned, in other situations. It was considered that this would create a more productive and interactive setting to facilitate the adoption of recommendations by participants.

The opening ceremony began on Tuesday, 20 February, chaired by Mr Francis Gabbidon, the Ombudsman. Speakers at the opening ceremony included The Hon Solomon Berewa, Attorney-General and Minister of Justice of the Republic of Sierra Leone; Mr Gianfranco Della’Alba, Secretary General, No Peace Without Justice; Ms Mary Robinson, High Commissioner, UN High Commission for Human Rights, represented by Mr Richard Bennett, acting Head of Human Rights, UNAMSIL; and a message from HE Alhaji Dr Ahman Tejan Kabbah, President of the Republic of Sierra Leone, presented by the Hon Momodu Koroma, the Minister for Presidential Affairs. The speakers all spoke to the importance of accountability for violations of humanitarian law as a means towards peace and reconciliation in Sierra Leone. They also spoke about the necessity for accountability processes to be owned by Sierra Leoneans. For this reason, they welcomed the conference as a means for Sierra Leoneans to explore the issues involved with and between the Special Court and the Truth and Reconciliation Commission.

Following the opening ceremony, the conference met in plenary to introduce the foreign experts, who highlighted some of the issues involved in each working group. The plenary then broke into five separate working groups. The working groups discussed the issues of:

- which process and penalties;
- outreach and transparency;
- documentation and protective measures;
- staffing, appointment of judges and commissioners and financing;
- Paramount Chiefs and traditional or customary justice.
The working groups, comprised of between 15 and 22 people plus a foreign expert, met a number of times to discuss the issues. The debate generated within the working groups was generally lively and focussed, with participants suggesting a range of innovative solutions. The groups were particularly interesting for the foreign experts and guests, who learnt a great deal about Sierra Leonean society and the particular difficulties faced by accountability mechanisms operating in this context.

The conference heard reports from the working groups on the afternoon of Wednesday, 21 February, and the morning of Thursday, 22 February. Plenary discussions were held on the content of the reports from the working groups, during which time dissenting opinions were voiced and incorporated into the record. The conference adopted the recommendations of the working groups by consensus during the final plenary session.

The conference ended with a closing ceremony, at which speakers included Mr Jeremy Tunnacliffe, the Head of Delegation of the European Commission in Sierra Leone and Professor Andrew Conteh, a Sierra Leonean academic working at the State University of Minnesota. During the closing ceremony, speakers stressed that the singular message to come out of the deliberations was the need for ownership of the various accountability mechanisms by the people of Sierra Leone. It was agreed that one way of achieving this sense of ownership was to implement an effective outreach program, in order to inform the public about the nature and workings of the Truth and Reconciliation Commission and the Special Court. It was repeatedly stressed, both during the conference as well as by the closing speakers, that this must occur not only in Freetown but also in the provinces, where special efforts must be made in this regard.

Structure of this report
This report is structured so as to reflect the structure of the conference itself. There are five separate sections reflecting the discussions held during each working group. These discussions were framed as recommendations and form the basis for the final recommendations of both the working groups and the conference. Each section contains specific recommendations made by that particular working group. Individual working group reports are followed by a compilation of the recommendations made during the conference. The recommendations are divided according to which entity they are directed towards: the Government of Sierra Leone; the United Nations; the international community; and non-governmental organisations. This report concludes with a list of participants at the conference, indicating the participants of each working group.
Conclusion
Overall, the Conference yielded thought-provoking discussions and a concrete set of recommendations, as discussed briefly above. It is hoped that both the national and international implementers of the accountability mechanisms for Sierra Leone will take cognisance of these recommendations.

It is particularly important to stress in this regard that these recommendations are not the product of “experts” discussing the issues in the abstract at venues far away from Sierra Leone. Rather, they are the product of Sierra Leoneans – experts and those who will have to work with these institutions on the ground – meeting in Sierra Leone itself. In this context, it is worth noting that while Conference participants met in Freetown, they were comprised of people who live and work both in Freetown and in the provinces. The recommendations therefore reflect the views of a cross section of people who will have to bring the work and messages of the accountability mechanisms of Sierra Leone to the people of Sierra Leone.
Working Group A: Which process and penalties
Many discussions on post-conflict accountability mechanisms focus on whether there should be a truth commission, criminal prosecutions or some other form of establishing accountability. However, in Sierra Leone, there will be both a Truth and Reconciliation Commission and a Special Court, both of which will almost certainly exist alongside more traditional forms of accountability. It is envisaged that the different accountability mechanisms, while they will consider overlapping time periods and events, will target different types of crimes and different levels of responsibility. The working group considered how these mechanisms can work together from a broader perspective, including what structural conditions are necessary for criminal prosecutions and what conditions are necessary for TRC processes to be successful, in terms of having a fair process and, ultimately, the re-establishment of the rule of law.

In terms of penalties, the Statute of the Special Court is limited to imposing penalties of imprisonment and forfeiture. The working group considered whether there should be other forms of penalties, such as fines or traditional conflict resolution methods, what the guidelines for the imposition of penalties should be and whether imprisonment should be served in Sierra Leone or a third country. Although the TRC will not have the power to impose penalties per se, it will have the power to make a number of recommendations. The working group considered whether this should include referring cases to the Special Court for sentencing or recommending sentencing measures in general.

Structural conditions
The working group considered what factors should be taken into consideration in the overall creation of both the TRC and the Special Court. Issues raised included whether both institutions should be created simultaneously or whether there is a stronger argument for the creation of one before the other; and how both institutions should interact with pre-existing processes such as the Demobilisation, Disarmament and Reintegration program. Participants expressed varied and conflicting opinions:
(a) There should be a recognition of the national security situation when considering implementation of both the Special Court and the Truth and Reconciliation Commission, namely that the security situation should facilitate the workings of both mechanisms and that both mechanisms should contribute to the establishment and maintenance of peace
(b) Some participants consider that the DDR process should have been completed before the Special Court and the TRC are set up, while others consider that both processes can be commenced even before the DDR process is complete
(c) Some participants suggested that a sequential approach would be best, with the work of the Truth and Reconciliation Commission being completed before the work of the Special Court starts. This was based in part on the consideration that the nature of the TRC process would have fewer adverse repercussions among sectors of the Sierra Leonean society, and would undermine one of the key propaganda points of the rebels: namely, their assertion concerning the exclusively punitive nature of the whole process
(d) Others suggested that the two processes should operate simultaneously and should be complementary not a substitute for one another, while still maintaining their independence
(e) Regardless of the establishment of a formal Truth and Reconciliation Commission, traditional healing methods should be employed, for example through the Inter-Religious Council

Conditions for successful Special Court and TRC processes

The issues raised by the working group included what minimum conditions would be required to ensure that both the Special Court and the TRC are successful in their operations and overall aims and how the transparency of both institutions can be guaranteed, ensuring that ownership of the overall process is clearly felt by Sierra Leoneans. In discussing these questions, the working group considered that:

(a) The success of both institutions will be determined by the funds available to both. Without sufficient funding neither will be able to function effectively, if at all
(b) The international community should comply with any requests by the Special Court for the surrender of suspects to ensure that those most responsible for violations of international humanitarian law within Sierra Leone are not permitted safe haven in any other country
(c) In terms of ensuring a fair process, the working group placed emphasis on choice and selection of Commissioners and Judges, which must be made by consultative process with the Sierra Leonean people
(d) There should also be input from national and international experts in the selection of Commissioners and Judges
(e) Trials should be held publicly so that the people of Sierra Leone can see justice being done, provided there is adequate protection of victims, witnesses and perpetrators
(f) The TRC should be decentralised and mobile, visiting various towns and villages throughout Sierra Leone, so justice can both be done and seen to be done in every corner of Sierra Leone
(g) The TRC and the Special Court should also have live coverage of their hearings in order to show the wider community that justice is being done
(h) Regulatory measures and a code of conduct concerning live coverage should be established in order to protect the dignity and well being of witnesses; participants gave the example of rape cases, which should be handled confidentially, without extensive coverage and in camera if appropriate
(i) There should be an extensive public education program to highlight the independence of both the TRC and the Special Court, which should explain the difference between international humanitarian law and Sierra Leone law, as well as explain the reasons for limiting the temporal jurisdiction of the Special Court to events after 30 November 1996
(j) The information collected by the Special Court and the TRC should be credible and reliable in order for it to be viewed as a sound record of the truth by the parties involved and the wider community. In particular, the Special Court will need to conduct a thorough review of all information coming from the TRC in order to ensure that the accuracy and credibility of the information meets the more exacting evidentiary standards of a court of law
What criteria should be adopted to decide the type of process to be used for individual cases or for types of cases?
Much discussion surrounding the Special Court in the past has centred on the issue of the prosecution of minors aged 15 to 18. The working group considered the issue and noted that the jurisdiction of the Court extends only to those who bear greatest responsibility, precluding the trial of children in most cases. According to a majority of the Working Group, most children are witnesses, perpetrators and victims at the same time. They should undergo a program of rehabilitation and reintegration and in any case would not qualify in the criteria required for prosecution by the Special Court.

When investigating adults who should be brought before the Special Court, the following factors should be taken into consideration:
(a) Effective Command and Control and command responsibility
(b) Status of the perpetrator within the chain of command (whether the person was an initiator/planner or whether they were a “footsoldier”)
(c) Time frame within which the events occurred

It should be noted that a minority within the working group believed that it should be possible for children to be prosecuted in front of the Special Court, should they fulfil the necessary criteria of bearing the greatest responsibility

Should other forms of penalties, such as fines or traditional conflict resolution methods, be considered?
The Statute of the Special Court is limited to imposing penalties of imprisonment and forfeiture. The working group discussed this issue together with the appropriateness of traditional methods of conflict resolution and other penalties. The following recommendations were made:
(a) The Special Court does not provide for accountability for crimes before 1996, therefore the possibility of exercising domestic jurisdiction for some offences committed before 1996 should be explored
(b) There should be a renovation of juvenile courts, including training of Magistrates in the area of juvenile justice, the provision of probation officers and the establishment of institutions for juvenile offenders
(c) Traditional conflict resolution methods could be employed, including cleansing rites
(d) Participants also discussed the possibilities of penalties encompassing community service, restorative justice and public acknowledgement and confession
(e) The properties of those who were enriched by the war should be returned to the State and their external accounts must be frozen
(f) The Government should activate article 29 of the Lomé Agreement, which speaks of raising funds for victims, including designing measures to ensure that this article will be effectively and fairly adopted
Should imprisonment be served in Sierra Leone or a third country and what are the necessary conditions for either of these cases?
(a) Imprisonment should generally be served in Sierra Leone
(b) If, for security or other reasons, the sentence would need to be served outside Sierra Leone, then it should be within a West African country, although participants expressed concerns regarding imprisonment in Liberia and Burkina Faso
(c) In determining where convicted persons should be imprisoned, consideration should be given to the existing security situation, the strategic position of Pademba Road Prison and its lack of facilities. It may be possible to construct or convert new detention facilities in a less central area.

Additional Recommendations of Working Group A
(a) It is important to consolidate the position of the Special Court and the Truth and Reconciliation Commission to take account of the possibility of a change in Government
(b) Participants in the Truth and Reconciliation Commission should only be referred to the Special Court if Special Court investigations prove that the perpetrator fulfils the criteria of facing prosecution before the Special Court
Working Group B: Outreach and Transparency

There is a need to ensure that the accountability process is visible and transparent to the general public, so that justice is seen to be done as well as being done. It is clear from coverage in national (as well as international) media that there is little awareness of the Special Court. People are aware that the Special Court is to be established but are unclear as to its exact nature. Misconceptions abound. One failure of the International Criminal Tribunals is the level of misconception about the nature and working of the Tribunals and the lack of relevance of the work of the Tribunals to the people of the former Yugoslavia and Rwanda. With its location in Freetown, the Special Court has the potential to be of more direct relevance to the people of Sierra Leone. Yet location alone will not guarantee this. The working group explored this issue and devised recommendations for ensuring that the work and operations of the Truth and Reconciliation Commission and the Special Court are as transparent and relevant to the people of Sierra Leone as possible. The working group discussed all aspects of this process, from the need to educate the public of the existence and nature of both institutions to the methods by which transparency and thus ownership of both processes could be ensured.

Who the target audience should be for an Outreach Program?

The task of ensuring widespread knowledge and understanding of the TRC and Special Court will fall heavily on Sierra Leonean civil society and religious organisations. Such groups would play a central role in disseminating clear and accurate information concerning both institutions to their own constituencies. The number and variety of such organisations would ensure that large parts of the Sierra Leonean population could be reached, to whom the accountability process could be explained. The working group participants identified a number of relevant groups and organisations who would be central to the outreach program:

(a) Local Authorities – these have great influence and control over their constituencies and are often listened to by their constituency members

(b) Community Based Organisations – e.g. Youth groups, Women’s organisations, village groups and others who work at the grassroots level throughout Sierra Leone

(c) Secret Society Organisations – these have some kind of bonding relationship with their membership and as such could be of influence

(d) Educational Institutions – e.g. Schools, colleges, vocational institutions, teachers unions and student unions that raise awareness of both institutions among their pupils who could themselves transmit this information to their local communities

(e) Internally displaced persons, returnees and refugees – these are often the victims of the conflict/crisis situation and themselves may be required to testify before both institutions. A clear understanding of both institutions and processes, including the guarantee of witness protection offered by both, would reassure such people and enhance the effectiveness of the TRC and Special Court

(f) Combatants and ex-combatants

(g) Children associated with the fighting forces
(h) Inter Religious Council of Sierra Leone, ensuring that all religious leaders are aware of and have a clear understanding of both institutions, thereby enabling them to disseminate this information to their congregations
(i) The media
(j) National as well as international NGOs
(k) The three arms of government – Legislature, Executive and Judiciary
(l) War victims – Survivors of sexual abuse, amputees, war widows etc.

What messages and information should be presented to the target audience?
Given the number and variety of organisations identified, discussion within the working group turned to the possible content of any outreach program. Two aspects of the outreach program emerged: the need for an overall uniform message concerning the Special Court and the TRC, thereby ensuring that consistency in the message disseminated is maintained by all participating groups; and the need for this information to be adapted to meet the needs of each particular target group.

General messages / information:
With so many groups and institutions identified as being central to the outreach program, great effort should be taken to ensure that all agree on a uniform message to be disseminated. Without such efforts, the danger exists that competing messages will cause greater confusion among the general public and thus prove detrimental to both institutions. Given this, the following points were identified as being central in the overall program and needing particular emphasis:
(a) The need for and the importance of both the TRC and the Special Court
(b) A distinction should be drawn between the two institutions, clearly explaining the different processes and consequences
(c) Clear explanations of the limitations of each of the institutions
(d) Education about the criteria for selecting members of both institutions
(e) Once both institutions are established, the need for continuing coverage and reporting on the on-going processes and results of sittings and hearings to enhance transparency of each institution

Specific messages/ information to specific target audiences:
(a) Local Authorities
   (i) Their expected role in the work of the two institutions
   (ii) Their active participation is crucial to the success of the process and the benefits of peace and stability in their localities
   (iii) Their leadership and responsibility for the program
   (iv) The need for them to remain objective at all times throughout the process
(b) Community Based Organisations and NGOs
   (i) Their participation and collaboration is crucial to the fulfilment of their own missions
(ii) The use of a unified approach in disseminating information so as to avoid competition that could lead to misinformation and misconceptions

(c) Secret Society Organisations
   (i) Requirement of objectivity
   (ii) Act as bonding institutions by bringing together victims and perpetrators

(d) Educational Institutions and Organisations
   (i) Should be encouraged to undertake discussions on both institutions, e.g. organising a symposium, debates, panel discussions etc.
   (ii) Teachers could also encourage public participation

(e) Internally Displaced persons, Returnees and Refugees
   (i) Messages of forgiveness and reconciliation to enhance resettlement and reintegration
   (ii) Provide information for both institutions and could also serve as witnesses. Of particular importance would be ensuring that the protective measures guaranteed by both institutions are clearly understood

(f) Combatants and ex-combatants
   (i) Provide information
   (ii) Tell sincere stories
   (iii) Education on how they could benefit from both institutions
   (iv) Emphasis on the jurisdiction of both institutions
   (v) Confidence building on how they could be part of the process
   (vi) Objective of the TRC not to punish but enhance reintegration
   (vii) The jurisdiction of the Special Court to investigate “those who bear the greatest responsibility”

(g) Children associated with the fighting forces
   (i) The need to cooperate with both institutions
   (ii) Information on the objectives of both institutions (not to punish children but help reform and reintegrate them)
   (iii) Create a better future for them and their families

(h) Media
   (i) Should be objective in reporting to the public
   (ii) Should be instructional in their reporting
   (iii) Understand the issues at stake
   (iv) Formation of an information committee

(i) The three arms of Government
   (i) Know that the institutions are not political
   (ii) Neutrality and objectivity
   (iii) Encourage the participation of civil society movements in the enhancement of the success of the process
What are the possibilities for collaboration of the different institutions and organisations?
With so many potential agents involved in outreach for the Special Court and TRC, the working group considered the means by which the program could be coordinated.
(a) Facilitate outreach by using existing structures and Child Protection Agencies, NCRRR and institutions that already house victims and perpetrators
(b) On-the-spot radio programs carried out by NGOs like the Talking Drum Studio, etc.
(c) Networking between different committees, within different communities and between the public and the committees
(d) Use of trusted mediators to speak to interested parties, e.g., Paramount Chiefs, NGOs etc.

How should the outreach programs for/of the TRC and the Special Court be integrated?
While the two institutions may have separate mandates, they will both be involved in the process of establishing the truth behind the conflict in Sierra Leone and bringing a measure of accountability for some of the victims. Given their complementarity, the working group agreed the above stated mechanisms could be used for both institutions even though their structures could be different.

Additional Recommendations of Working Group B
1. Training of outreach agents to ensure clarity and uniformity in message disseminated
2. Participatory approach in the outreach itself, including local agents in the adoption of the information to be disseminated, thus ensuring sustainability
3. Designing of questionnaires for the outreach
4. The first target groups should be the media and the three arms of Government
5. Accountability mechanisms could be mobile, holding sittings and hearings in the main headquarters in Freetown as well as in the provinces
6. Hearings should be made as accessible to the public as possible
7. Drafting simplified, explanatory versions of the TRC Act and the Special Court Statute and Agreement
Working Group C: Documentation and protective measures

The issue of documentation concerns how to reach as wide a segment of the witness base as possible by staff of the Special Court and TRC, and/or by NGO interviewers and how to ensure that the interview process itself is as useful and non-traumatic as possible. The fact that the conflict in Sierra Leone has been ongoing since 1991 and has encompassed the whole country means that practically everyone in Sierra Leone is either a victim, witness, perpetrator or a combination of all three. This means that the potential witness base numbers in the tens or hundreds of thousands of people, if not more. Experience in the former Yugoslavia shows that it is not simply a question of gathering information about what happened to those people. Rather, it is a question of gathering and processing the information in such a way as to make it possible for accountability mechanisms to use the information in a beneficial way, such as formulating a picture of the conflict, establishing a record of the truth and pinpointing those witnesses who may be able to give testimony in court. The working group discussed all aspects of documentation, from interviewing and the role of NGOs to the processing and use of the information.

The provision of protection services to victims and witnesses includes ensuring the safety and security of all witnesses brought before the relevant accountability mechanisms, which involves dealing with highly confidential information, liaising with national and local authorities and ensuring safe transfer, accommodation and, if necessary, the relocation of witnesses. Indeed, protective measures are necessary not only for witnesses who actually appear before the TRC or the Special Court but also for potential witnesses. A perception that adequate protection may not be available should people decide to testify before either body will deter people from deciding to testify in the first place. The question facing Sierra Leone is not only what type of protective measures should be adopted but whether the TRC and the Special Court should adopt a joint structure within which to provide those measures.

Training of interviewers

Interviewers will often be the first people from any accountability mechanism to have contact with a witness base. They will therefore be the people who will be required to explain the mechanisms, answer questions and will often be the first people to whom witnesses tell their stories. In light of this, it is important to ensure that interviewers are properly trained both to facilitate the gathering of information as well as to make the process as beneficial as possible for the witness.

(a) Interviewers could be chosen from:
   (i) Social workers
   (ii) Humanitarian organisations
   (iii) Law enforcement agencies

(b) In general, in order to facilitate the gathering and processing of information, interviewers should be literate, have good command of the local language and know the cultural background of the area in which they will be working.
(c) In particular, the gender, age and interviewer’s own war experience should be taken into account when interviewers are being selected so as to ensure a broad cross-section of interviewers to match a broad cross-section of witnesses, which will increase the likelihood of witness comfort during an interview.

(d) Investigators with experience in international or national in criminal investigations could train local community interviewers so as to facilitate widespread collection of information by breaking down possible cultural and language barriers.

(e) Special teams of interviewers should be trained to meet special needs, such as teams for interviewing victims of sexual violence or children.

(f) Investigators and interviewers should be trained in the use of a standardised database which meets the requirements of the institution to which the information will be transferred, so that they can ensure that information needed by that institution is gathered during the interviews.

**Standard interview techniques**

The working group generally agreed that standardised interview techniques would help ensure that the information gathered would be standardised, as far as possible. The group identified a number of areas in which it is important to ensure that the techniques employed are standardised:

(a) Interviewees should know that the information might be used by and for the TRC, Special Court and other agencies. Therefore it is important that consent be sought from the interviewees to transmit their statements to these bodies prior to commencing the interview.

(b) It was generally agreed that interviews must be freely given, but some discussion was held concerning witnesses who may have vital information but who may not wish to give an interview. For those “reluctant” witnesses, the following were considered as possible tools:
   
   (i) Organise timing of the interview to suit the interviewee, for example by setting an appointment.
   
   (ii) Use intermediaries to conduct interviews or to act as moral support.

(c) In order to address difficulties raised by hearsay evidence, particularly in a judicial setting, interviewers should take care to establish and clarify the interviewee’s personal knowledge of an incident, namely whether they were an eye-witness or whether they heard about the incident from a third party. It was generally considered that information from eye-witnesses would be the most useful for both the Special Court and the Truth and Reconciliation Commission in terms of reliability and credibility.

**How to reach and identify witnesses**

(a) Public sensitisation and education is essential to create an atmosphere in which witnesses feel safe and comfortable in giving statements to interviewers and investigators.

(b) Visit obvious sites where witnesses could be found (e.g. displaced and refugee camps).

(c) Identify organisations and institutions that have been working in areas in which there may be a concentration of witnesses (e.g. NGOs, trade unions).
(d) Witnesses may be reached through traditional channels, such as traditional rulers. It was stated that it is vital to abide by local customs, particularly when visiting remoter regions, such as by meeting with traditional leaders when arriving in a village and paying respect to chiefs, for example by paying a small tithe.

(e) Investigators who have a statement to give must be interviewed by another investigator rather than documenting their own experiences for reasons of consistency and credibility.

**How to minimise the likelihood of multiple interviews of the same witness**

(a) Improve co-ordination and networking mechanisms of the organisations involved in data collection.

(b) Seek the interviewee’s consent and establish whether he/she has been interviewed before.

(c) Set up a centralised database system to pool information gathered, taking care to ensure its security (for example using encryption).

(d) Map out operational areas to avoid different interviewers covering the same geographical areas.

(e) Set a time frame for investigations to occur simultaneously throughout the country (to be reviewed as and when necessary).

**Devising appropriate referral systems for humanitarian, psycho-social and other needs**

(a) Identify existing institutions in the community which will meet the needs of victims and witnesses as part of the referral system, such as medical facilities and psycho-social counselling services.

(b) Make concrete arrangements for victims to have access to the referral institutions, ensuring that these services are available free of charge.

(c) Referral institutions should document any relevant information, which should be made available (providing the consent of the witness is obtained).

**What type of information should be shared between the TRC and the Special Court?**

(a) A Committee of Experts, comprised of local and international experts on the Special Court and the TRC, should be formed in order to develop guidelines for the sharing of information between the two bodies.

(b) The Committee should be comprised of national and international experts.

**With what other institutions should the information be shared?**

The group recommended that the same Committee of Experts discussed previously could devise guidelines for the sharing of such information as would be necessary for the purpose for which it is shared. The institutions with which information could be shared included:

(a) UNHCR, for tracing purposes;

(b) Child Protection Agencies, such as UNICEF;

(c) Medical institutions;

(d) Human Rights Organisations, both national and international.
Processing of information
The group generally agreed on the need for a centralised and standard database in which to gather the information collected throughout Sierra Leone. The group discussed the logistical and financial difficulties of undertaking such a task at this time, noting the need to identify possible donors for documentation projects. In order to facilitate the processing and transfer of information in such a way as to make it useful for the institutions to which it is going, participants agreed that information should be gathered according to a standardised format (for example by using a standard form) and processed according to the needs of the institution concerned.

What measures should be taken for persons that go through the TRC and/or Special Court processes, including special measures for children and victims of sexual violence?
It was emphasised during this discussion that “protective measures” does not only refer to physical protection from immediate harm. Indeed, much of what is incorporated within protective measures is aimed at preventing a situations that could lead to immediate harm from arising. The measures that should be employed were considered, at first instance, in the abstract. That is, while being aware of the provision for a Victims and Witnesses Unit in the Statute of the Special Court, it was considered that these measures were important regardless of who is providing the protective measures, and would apply equally to the Victims and Witnesses Unit as to some other body.
(a) There must be adherence to strict confidentiality at all times
(b) Protective measures should be included in any education and sensitisation programs developed for the public (i.e. during an outreach program). There was some discussion of the usefulness of developing a code of conduct for media practitioners in order to facilitate the sensitisation of the media and ensure that misconceptions are not passed on to the public
(c) Legal assistance should be readily available for any individual, whether victim or perpetrator
(d) All personnel should be thoroughly screened before being employed by the Special Court or the Truth and Reconciliation Commission to ensure that strict confidentiality can be maintained
(e) A physical screen for anonymity should be available when vulnerable witnesses testify before either institution; for example, victims giving evidence in sensitive cases, such as rape cases
(f) The potential for the use of recorded testimony was raised, although it was noted that there needs to be adequate opportunity for cross-examination in the case of the Special Court; the possibility of giving evidence by means of video link was raised, although the financial and technical difficulties of this scenario were noted
(g) In the case of the Special Court, witnesses could be provided with guards or confined in protective custody, if necessary. The person providing such protective measures should be chosen with due regard to the circumstances of the person receiving protection; for example, women should provide protection for women and social workers should provide protection for children in conjunction with the child’s family. Further, as security concerns affect not
only witnesses, investigators and personnel of each institution should be provided with adequate security to enable them to carry out their work (if necessary)

Should there be different bodies providing protective measure for victims / witnesses / defendants / perpetrators?
The benefits of having the same body provide protective measures for all parties involved were identified as ensuring that the same standards would be applied for all parties and reducing administrative and other costs. Potential difficulties with having one body providing protective measures for all witnesses were raised, including the dangers of and the possible perception by witnesses of “information bleed” within the body leading to endangerment of witnesses. Nevertheless, it was considered that guidelines could be employed to prevent this situation from arising. Furthermore, a concerted public education campaign about the procedures to be employed by the body would overcome these difficulties.

(a) For the TRC, one body should be used to protect all parties, preferably the National Police, who should work in coordination with other independent security forces, such as UNAMSIL, to provide protection

(b) In the event that the Special Court is set up long after the TRC, the Victims and Witnesses Unit of the Special Court should liaise with the witness protection body for the TRC

How can the Special Court and the TRC work together to establish and carry out protective measures while maintaining independence and privacy?
It was noted that the witnesses before each body would be facing different levels of concern about and threats to personal safety. In some ways, the stakes are higher in relation to the Special Court, since defendants will be facing possible terms of imprisonment. It was therefore considered that witnesses appearing before the Special Court may require higher degrees of protection than witnesses appearing before the Truth and Reconciliation Commission. Nonetheless, it was generally agreed that the same types of concerns would apply for both institutions. Therefore, the working group was of the opinion that one body should carry out protective measures for both institutions in order to maintain standards and share administrative costs. However, given the concerns raised above, it was considered that there should be two separate units (one for the TRC and the other for the Special Court) within that one body, which do not share confidential witness information. Again, there would need to be a public sensitisation campaign about the procedures employed by such a body in order to allay the fears of potential witnesses.
Additional recommendations of Working Group C

1. That funding/donor agencies be identified to provide logistical support for the training of investigators and the gathering and processing of information.

2. That a central coordinating unit be set up and that such a unit should create a database for processing and storing all the information gathered, together with appropriate guidelines to ensure confidentiality and security.

3. That the activities of the various organisations and institutions responsible for information gathering should be harmonised to facilitate their smooth operations.

4. That cognisance be taken of Sierra Leonean traditional methods of meting out justice by the TRC and the Special Court.

5. That a national reparations or compensation committee be established to handle claims of reparations by victims/survivors.

6. That adequate protective measures be put in place for witnesses, victims, perpetrators and defendants prior to either the TRC or the Special Court commencing operations.

7. That there be flexibility in the gathering of information in respect of children, to allow them to express themselves in drama, story telling and other ways.

8. That investigators and interviewers be trained in the special needs of children who may be witnesses, victims and/or perpetrators.
Working Group D: Staffing, Appointment of Judges and Commissioners and financing

The recruitment of competent staff, the selection of highly qualified Judges and Commissioners and the acquisition of adequate funding are all critical pre-conditions to the establishment and successful operation of the Special Court and the TRC. The working group addressed these issues by subdividing them into the following topics: appointment and removal of judges; appointment of commissioners; staffing; translators and interpreters; and financing.

Appointment and Removal of Judges

The group discussed the essential criteria for the selection of Judges, as well as the possibility of removal of Judges. They also discussed ways in which the selection process could be made as fair and impartial as possible, and the importance of preserving the independence of Judges once appointed.

(a) Regarding qualifications for office, the participants agreed that Judges should:
   (i) have a good track record in terms of character
   (ii) be sufficiently mature
   (iii) be conversant in the common law system
   (iv) be highly competent in international human rights and humanitarian law, as well as criminal law

(b) In order to avoid compromising the independence of the Special Court Judges:
   (i) the Judges should not be housed or provided personal transport by the government, as Sierra Leone judges are
   (ii) the Judges should receive sufficient remuneration to provide for their own housing and transportation
   (iii) Sierra Leonean Judges appointed to the Special Court should be required to resign their current posts
   (iv) the Judges should be prohibited from entering contracts, both during as well as after their appointment, to write books about their work on the Special Court

(c) There should be a briefing session for all Special Court Judges (so as not to automatically exclude those who may be lacking expertise in one area). Such session should:
   (i) cover human rights and humanitarian law, the Sierra Leonean legal system and all relevant domestic law, both substantive and procedural
   (ii) be held partly abroad and partly in Sierra Leone
   (iii) be compulsory for all Special Court Judges, both Sierra Leonean and foreign Judges

(d) There should be a selection committee which:
   (i) consists of Sierra Leoneans and foreigners
   (ii) is fully transparent (e.g. all documents should be public)

(e) Regarding removal of Judges, it was agreed that there should be a Disciplinary Committee, perhaps using the procedures outlined in the Statute of the International Criminal Court
Appointment of Commissioners
It was noted that the TRC Act contains a broad consultative process for the selection of Commissioners, enabling input from a broad cross-section of Sierra Leonean society. The group added the following comments:
(a) The selection process must be fully transparent and broad-based:
   (i) The public should be given the opportunity to screen candidates
   (ii) All parties to the conflict should be actively involved in the selection committee
(b) There must be a gender balance within the Selection Committee and among Commissioners
(c) There must be no property requirement (de jure or de facto) for eligibility as Commissioners

Staffing
The group discussed general qualifications, as well as specific ideas to meet some staffing needs.
(a) In general, all staff should:
   (i) Be people of good moral character
   (ii) Be competent in international humanitarian law (desirable but not mandatory)
(b) To assist Judges, the Court should:
   (i) Employ Sierra Leonean law students to serve as interns for the Judges
   (ii) Designate international experts (e.g. professors of international law or criminal lawyers) to serve as resource persons for the Judges

Translators and Interpreters
The role of translators and interpreters was emphasised by the group as critical to the effective functioning of both bodies. Particular attention was paid to the issue of translators working for the Court.
(a) Translators and interpreters should be given a briefing session about the nature of the work of the Court and the Commission and the requirements of their role.
(b) Regarding qualifications for working with the Court, the participants agreed that translators and interpreters:
   (i) Must understand the confidential nature of their work
   (ii) Must have a good track record in terms of character
   (iii) Must take an oath of secrecy
   (iv) Should have a linguistics background (desirable, but not mandatory)
(c) Translation of proceedings should be verified before adoption.
(d) An alternate translator, who should be compensated, should be available.

Financing
The group discussed methods of financing the Court, as well as how the financial affairs of the Court should be overseen.
(a) Contributions should be voluntary
(b) There should be no strings attached to donations and contributions
(c) Local contributions should be sought from foundations and NGOs dealing with peace-building
(d) The UN should be requested to help raise funds through Sierra Leoneans living abroad
(e) Monitoring and control should be performed by the donor agencies
(f) Financial management of the TRC and Special Court should be contracted to an international accounting firm

Additional Recommendations of Working Group D
Since the TRC and Special Court involve people’s lives, bureaucratic red tape must be kept to a minimum to enable the institutions to have a quick impact
**Group E: Paramount Chiefs and Traditional Justice**

The Paramount Chiefs hold a position of great influence and importance in Sierra Leone. The working group was comprised of the Paramount Chiefs, as well as some international and local experts. The Working Group explored concepts of traditional justice in Sierra Leone, examined the workings of the Special Court and the TRC and sought to develop ways in which the Chiefs can disperse information outside of Freetown.

**Introduction**

Due to the fact that the Paramount Chiefs hold great influence in Sierra Leone, they should play a pivotal role in the Special Court and the TRC.

(a) For Paramount Chiefs and Sub-Chiefs to have the necessary authority, the Government of Sierra Leone should do all within its powers to upgrade the status of the chiefs, which has been eroded by previous governments

(b) The financial consideration given to Chiefs and Sub-Chiefs should be upgraded to avoid corruptive practices

(c) The Government should speed up the decentralisation process and strengthen the District Councils, which will enhance the good governance and development of those regions. The Paramount Chiefs however recognised that as custodians of traditional law and practice in their chiefdoms, they should be non-partisan and free from political manipulation

**Involvement of Paramount Chiefs in the accountability processes**

To give a sense of ownership of this process to the people and to facilitate national healing and reconciliation, the Paramount Chiefs recommend that:

(a) A Council of Elders be set up, headed by the Paramount/Regent Chief which will operate in the respective chiefdoms as an affiliate to the TRC to hear and document cases perpetrated by the sons and daughters of these chiefdoms

(b) That Council of Elders have the power to ask their contemporary Chiefs to repatriate perpetrators of crimes residing in chiefdoms which are not their ancestral homes to their respective chiefdoms

(c) That Council of Elders be given the power to dispense justice in accordance with the customary and traditional laws with the aim of bringing about healing and reconciliation between the perpetrators and the victims in the chiefdom

**Relationship of Paramount Chiefs to the Special Court**

(a) The chiefdom structures should be used as a means of dispersing information concerning the Special Court and the TRC, especially with reference to witness protection and assistance to witnesses at court sessions (in terms of transportation, accommodation, etc.)

(b) Some sittings of the Special Court should be held at the provincial level, to ensure that the population will see that justice is being done, as most of the victims and would-be witnesses reside in the provinces
(c) The Special Court and the TRC should reflect back as far as 1970, an era which brought bad governance through one-party politics, injustices and false imprisonment and which is the root of the rebel war in Sierra Leone

(d) Jail sentences imposed by the Special Court on perpetrators must be served accordingly and subsequent governments should bear in mind that such people will not be awarded clemency

**Information sharing**

(a) The Paramount Chiefs recommend that the usual traditional methods of information sharing still be used:
   (i) town crier;
   (ii) religious leaders;
   (iii) societal heads, Pero, Bonde, Wonde etc.;
   (iv) drama groups; and
   (v) praise singers;

   but that all the above should have some financial incentive. Logistical support is also needed in this area in terms of mobility (vehicles) for the Paramount Chiefs.

(b) To complement the above, the Paramount Chiefs also recommend the use of radios and that each village should be provided with a radio, if possible

**After effects of the war**

The Chiefs as fathers and mothers of the Nation have realised that this war has produced many negative after-effects and the Chiefs wish to address two of these after-effects. In this regard, the Paramount Chiefs strongly recommend:

(a) That the Government strongly pursue the infrastructure development of the Nation, especially in the areas of education, health care, agriculture and the acquisition of skills for the nation’s youth

(b) That the Government map out a national drug rehabilitation program which will affect all Chiefdoms nation wide. The Paramount Chiefs request that this be done as a matter of extreme urgency:
   (i) The Paramount Chiefs recognise the good work of Dr Nahim, but recommend that more psychiatrists be brought in from neighbouring African countries
   (ii) The Paramount Chiefs recommend that the government give scholarships to interested and qualified Sierra Leoneans to train as psychiatrists and therapists

**Additional Recommendations of Working Group E**

1. Political interference should be avoided in the processes of the TRC and Special Court
2. Organisations should work together with the Paramount Chiefs and traditional leaders, in particular to raise awareness and educate/train Paramount Chiefs and traditional leaders on the TRC and the Special Court
Recommendations of the Conference

We, the participants in the Freetown Conference on Accountability Mechanisms for Violations of International Humanitarian Law in Sierra Leone, do hereby recommend:

That the Government of Sierra Leone:

- ensure that the Special Court and the Truth and Reconciliation Commission are consolidated within the domestic law of Sierra Leone
- make provision for hearings of the Truth and Reconciliation Commission and the Special Court to be held across the territory of Sierra Leone in preparation for the accessibility of currently inaccessible areas
- establish a National Reparations mechanism through which victims of the conflict may seek reparations, both monetary and non-monetary
- work with national and international agencies to ensure that adequate protective measures are available for witnesses, prior to the establishment of the Truth and Reconciliation Commission and the Special Court
- ensure that gender balance is implemented in practice in the selection of Judges and Commissioners and other personnel of the Special Court and the Truth and Reconciliation Commission

That the United Nations:

- strive for the speedy and effective resolution of outstanding issues impeding the establishment of the Truth and Reconciliation Commission, such as the nomination of Commissioners, and the Special Court, such as the financing of the Court
- take cognisance of traditional methods of conflict resolution when establishing accountability mechanisms for Sierra Leone
- work with the Government of Sierra Leone and national and international agencies to ensure that adequate protective measures are available for witnesses, prior to the establishment of the Truth and Reconciliation Commission and the Special Court
- identify an international accounting firm to manage the financial affairs of the Truth and Reconciliation Commission and the Special Court so as to enhance transparency and accountability of the processes
- ensure that gender balance is implemented in practice in the selection of Judges and Commissioners and other personnel of the Special Court and the Truth and Reconciliation Commission

That the international community:

- continue to press for the establishment of effective accountability mechanisms for atrocities committed in Sierra Leone
- give its political and financial support to the establishment of accountability mechanisms for atrocities committed in Sierra Leone
give its political and financial support to the establishment of a National Reparations mechanism to assist victims of the conflict to attain monetary and non-monetary reparations

That non-governmental organisations:

- produce simplified, explanatory versions of the TRC Act and the Special Court Statute and Agreement so as to enhance their understanding by the wider community
- identify funding/donor agencies who can provide financial and logistical support for the training of investigators, both general and specialised training for vulnerable witnesses, and the gathering and processing of information
- establish a central co-ordinating unit for the harmonisation of outreach and documentation efforts, including the creation of a database for processing and storing the information gathered, together with appropriate guidelines to ensure confidentiality and security
- work together with the Paramount Chiefs and traditional leaders, in particular to raise awareness and knowledge among the Paramount Chiefs and traditional leaders on the TRC and the Special Court
CONFERENCE PARTICIPANTS

1. Dr Ibrahim Abdullah, UAWC; Address: 7 Peter Lane, Freetown, Sierra Leone; ph: 022 242191; Email: a11199@hotmail.com; Working Group: D

2. Mr Raphael Abiem, Rule of Law Specialist, UNAMSIL; Address: Mammy Yoko, Aberdeen, Freetown, Sierra Leone; ph: 022 273183/6

3. Mr Patrick Adu, Chairman, Movement for the Restoration of Democracy; Address: 9 Wesley Street, Kenema, Sierra Leone; ph: 042 427; Working Group: B

4. Mr Paul James Allen, National Forum for Human Rights; Address: 29 Big Waterloo Street, Freetown, Sierra Leone; ph: 022 220396 / 226216; GSM: 076 610773; Working Group: D

5. Mr Joe Philip Amara, Human Rights Clinic; Address: Fourah Bay College Freetown, Sierra Leone; Email: fbchrc@excite.com; Working Group: C

6. Professor George Andreopoulos, Associate Professor of Government, City University of New York; Address: New York, USA; Email: gandreopoulos@jjay.cuny.edu; Working Group: A

7. Ms Dorothy Awoonor-Gordon, AWOKO Press; Address: 15 Lamina Sankoh Street, Freetown, Sierra Leone

8. Mr Joselyn T Ayodle-Manley, Chair, Western Area Headman’s Association; Address: 24 Regent Road, Wilberforce Village Freetown, Sierra Leone; Working Group: A

9. Mr Gibril Massie Bah, Monitor, Campaign for Good Governance, Bombali District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: C

10. Mr Kalilu Bah, Monitor, Campaign for Good Governance, Koinadugu District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; Working Group: B

11. Mr Edward Bangura, OPARD; Address: 5 Lake Lane Mile 91; c/o 14A George Street, Freetown, Sierra Leone; Working Group: E

12. Mr Kizito Bangura, DADA-SL; Address: Freetown, Sierra Leone; ph: 022 220396

13. Mr Sulliman Bangura, Campaign for Good Governance; Address: 1 Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: D

14. Mr Hassan Barrie, Chair, Civil Society Movement and United Mine Workers Union; Address: Labour Congress Building Freetown, Sierra Leone; ph: 022 240093

15. Ms Helen Bash-Taqi, Council of Churches of Sierra Leone; Address: King Harman Road Freetown, Sierra Leone; ph: 022 240568 / 240554; Working Group: C

16. Mr Richard Bednarek, Outreach Coordinator, No Peace Without Justice; Address: 32C The Loop, Wilberforce, Freetown, Sierra Leone; GSM: 076 609026; Email: richard@sensible.it; Working Group: B

17. Ms Marie Benjamin, FAWE; Address: 83A Fort Street, Freetown, Sierra Leone; ph: 022 227076; Working Group: C

18. Mr Richard Bennett, ff.Head of Human Rights, UNAMSIL; Address: Mammy Yoko, Aberdeen, Freetown, Sierra Leone; Working Group: A, B
19. Hon Solomon Berewa, Attorney-General and Minister of Justice, Office of the Attorney General and Ministry of Justice; Address: Guma Building, Lamina Sankoh Street, Freetown, Sierra Leone; ph: 022 229303
20. Inspector General Keith Biddle, Inspector General, Sierra Leone Police Force; Address: Freetown, Sierra Leone; ph: 022 223033 / 022 225899
21. Ms Sarah Blackmore, Director, GOAL (Ireland); Address: 53 Freetown, Road Lumley Freetown, Sierra Leone; ph: 022 230042; Working Group: C
22. Mr David Blaise, New Citizen; Address: 7 Wellington Street, Freetown, Sierra Leone; ph: 022 228693; Working Group: A
23. Mr John B Bora, Newton; Address: Freetown, Sierra Leone; ph: 022 229531
24. Ms Gladys Branche, Sierra Leone Labour Congress; Address: 35 Wallace Johnson Street, Freetown, Sierra Leone; ph: 022 2240440; GSM: 076 608037; Working Group: B
25. Mr Alfred Carew, National Program Officer, Campaign Against Violent Events; Address: 19 Sanders Street, Freetown, Sierra Leone; ph: 022 228601; Email: cavehumanrights@hotmail.com; Working Group: D
26. Mr John Caulker, Forum of Conscience; Address: 7 Percival Street, Freetown, Sierra Leone; ph: 022 222140; Working Group: D
27. Father John Ceresoli, Religions for Peace, World Conference on Religion and Peace; Address: New Signal Hill Freetown, Sierra Leone; GSM: 076 603185; Working Group: B
28. Mr John Cerone, International Law Consultant, UNMIK - OSCE; Address: Prishtina, Kosovo; Working Group: D
29. Mr Antonio Cerrone, Webcaster, Radio Radicale; Address: Napoli, Italy
30. Ms Basita Chazzugui, Human Rights Clinic; Address: 11 Garrillon Street, Freetown, Sierra Leone; ph: 022 228868; Working Group: A
31. Mr Jonathan Cina, Legal Officer, UNTAET; Address: Dili, East Timor; Working Group: B
32. Ms Jill Clark, Save the Children; Address: 8 Noacka Drive Freetown, Sierra Leone; ph: 022 274190 / 022 272190; Email: SLMSCF@sierratel.sl; Working Group: B
33. Mr Tunde Cole, Solicitor General, Ministry of Justice; Address: Guma Building, Lamina Sankoh Street, Freetown, Sierra Leone; ph: 022 229303
34. Mr George Collerige-Taylor, Commissioner, National Commission for Democracy and Human Rights; Address: 9th Floor, Youyi Building Freetown, Sierra Leone; ph: 022 240230; Working Group: B
35. Mr Abdul Aziz Conteh, OPARD; Address: 1 Turay Street, PMB 214, Mile 91 Sierra Leone; Working Group: D
36. Professor Andrew Conteh, Professor of International Law, State University of Minnesota; Address: State University of Minnesota, Moorehead, Minnesota, USA; Working Group: D
37. Mr Soluku Conteh, Sierra Leone Police Force; Address: CID, Police Headquarters Freetown, Sierra Leone; ph: 022 223032; GSM: 076 701896; Working Group: C
38. Mrs Olayinka Creighton-Randall, Campaign for Good Governance; Address: 1 Richard Street, Freetown, Sierra Leone
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39. Mr Uriah Davies, President, Sierra Leone Labour Congress; Address: 35 Wallace Johnson Street, Freetown, Sierra Leone; ph: 022 226647/022 226869; Working Group: A
40. Mr I. K. Deen, Sierra Leone Labour Congress; Address: 35 Wallace Johnson Street, Freetown, Sierra Leone; ph: 022 226869; Working Group: C
41. Hon Gianfranco Dell'Alba, Secretary General, No Peace Without Justice; Address: European Parliament, Rue Wiertz, 60, Bruxelles B-1047, Belgium; Working Group: E
42. Ms Corrin Dukka, Human Rights Watch; Address: 3 Ngobeh Drive Freetown, Sierra Leone; ph: 022 272848
43. Ms Lavina Dumbaya, Research and Information Assistant, Campaign for Good Governance; Address: 1 Richard Street, Freetown, Sierra Leone; ph: 022 222205; Working Group: A
44. Mr Ezekiel Dyke, Sierra Leone Labour Congress; Address: 35 Wallace Johnson Street, Freetown, Sierra Leone; ph: 022 222205; Working Group: C
45. Ms Udeme Essien, UNAMSIL; Address: Mammy Yoko, Aberdeen Freetown, Sierra Leone; Working Group: D
46. Mr Patrick Fatorma, Forum of Conscience; Address: 7 Percival Street, Freetown, Sierra Leone; ph: 022 222140; Email: conscience@sierratel.sl; Working Group: C
47. Mr Niccolo Figa-Talamanca, Program Director, No Peace Without Justice; Address: Via di Torre Argentina, 76, Roma I-00186, Italy, ph:+32 (0)2 2841896; GSM: +39 (0)3487 813888; Email: niccolo@figatalamanca.net; Working Group: A
48. Mr Kandeh A Foinoh, Chief, Paramount Chief, Bombali District; Address: 52 Goderich Street, Freetown, Sierra Leone; Working Group: E
49. Mr Gibril Foday-Musa, J, Search for Common Ground; Address: 44 Bathurst St Freetown, Sierra Leone; ph: 022 223082; GSM: 076 611848; Working Group: B
50. Mr Foday B Fofanah, J, The Punch Newspaper; Address: 31 Garriem Street, Freetown, Sierra Leone; ph: 022 225033; Email: ffbfofanah@hotmail.com; Working Group: C
51. Regent Chief Sahr A Fomba, Chief, Paramount Chief, Kono District; Address: Tengbe Town Kono District Sierra Leone; ph: 022 241521; Working Group: E
52. Rev. Usman J. Fornah, Religions for Peace, World Conference on Religion and Peace; Address: 65 Robert Street, Freetown, Sierra Leone; GSM: 076 606194; Working Group: A
53. Rtd Capt James S Foyah, Chief, Paramount Chief, Kenema District; Address: 13 Aitkin Street, Freetown, Sierra Leone; ph: 022 241726; Working Group: E
54. Mr Francis Gabbidon, Ombudsman/Solicitor of the High Court, Ombudsman; Address: 84 Dundas Street, Freetown, Sierra Leone; ph: 022 224702; GSM: 076 610166; Working Group: A
55. Mr Moses M. Gbetu, Campaign Against Violent Events; Address: 68 Regent Road, Lumley Freetown, Sierra Leone; ph: 022 272254; Working Group: B
56. Ms Jennie George, UNAMSIL; Address: 4 Cole Street, Murray Town Sierra Leone; ph: 022 273183/4/5 x6822; Email: georgeio@un.org; Working Group: A
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57. Ms Hannah Gilleh, Monitor, Campaign for Good Governance; Address: 1 Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: C

58. Ms Mirza Gnecco, Representative of Columbia at the UN Security Council, Mission of Columbia to the United Nations; Address: 140 East 57th Street, New York 10017 USA, Email: mgnecco@un.int; Working Group: A

59. Hon Samba B Hindowah, Paramount Chief, Bo District; Address: 6 Juba Estate, Freetown, Sierra Leone; ph: 022 238456; Working Group: E

60. Mr Elkie Hubbard, Sierra Leone Broadcasting Service; Address: New England Ville Freetown, Sierra Leone; Working Group: D

61. Mr Charles James Hughes, Forum for Democratic Initiatives; Address: 12 Ecowas Street Freetown, Sierra Leone; ph: 022 224791; Email: ford@sierratel.sl; Working Group: D

62. Mr Brima G Jalloh, Centre for Democracy and Human Rights; Address: 1 Back Street, Mile 91 Sierra Leone; Working Group: B

63. Ms Isata Jalloh, Campaign for Good Governance; Address: 1 Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl

64. Mr Patrick Johnbull, Amnesty International; Address: Pademba Road Freetown, Sierra Leone; ph: 022 227354; GSM: 023 502918; Email: pjohnbull@hotmail.com; Working Group: B

65. Mr Daniel Johnson, SLBS TV; Address: New England Ville Freetown, Sierra Leone; ph: 022 241976

66. Ms Bernadette Jojo, FAWE; Address: 83A Fort Street, Freetown, Sierra Leone; ph: 022 227076; Working Group: A

67. Mr Rajendra Joshi, Civilian Police, UNAMSIL; Address: Mammy Yoko, Aberdeen Freetown, Sierra Leone

68. Mrs Iyesha Josiah, SLANGO; Address: 147 Wilkinson Road Freetown, Sierra Leone; ph: 022 333680 / 022 228497; Email: slango@sierratel.sl; Working Group: B

69. Mr Musa A Kabbah, People United to Save Humanity; Address: Agr Building, Freetown, Sierra Leone; ph: 022 225098 / 221017; Email: push32@hotmail.com; Working Group: E

70. Mr Arnold B Kaima, Monitor, Campaign for Good Governance, Kenema District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: D

71. Mr Ahmed Kallon, Sierra Leone Broadcasting Corporation; Address: New England Ville Freetown, Sierra Leone; ph: 022 241976; GSM: 076 607070

72. Mr Abu Bakarr Kamara, Paramount Chief, Port Loko District; Address: 18 James Street, Freetown, Sierra Leone; ph: 022 227163; Working Group: E

73. Mr Idrissa Kamara, Monitor, Campaign for Good Governance, Kambia District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; GSM: ; Email: cgg@sierratel.sl; Working Group: D
Mr Mohamed Kamara, Monitor, Campaign for Good Governance, Port Loko District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: C

Mr Morlai Kamara, Network Movement for Justice & Development; Address: 18, Big Waterloo Street, Freetown, Sierra Leone; ph: 022 229937; Email: nmjd@sierratel.sl; Working Group: C

Insp Usman Kamara, Sierra Leone Police Force; Address: Police Headquarters Freetown, Sierra Leone; ph: 022 223007; Working Group: A

Mr Jia Kangbai, Standard Times; Address: 22 Liverpool Street, Freetown, Sierra Leone; ph: 022 229634; Email: cg@sierratel.sl; Working Group: E

Ambassador Allieu Kanu, Representative of Sierra Leone to the United Nations, Mission of Sierra Leone to the United Nations; Address: New York 10017, USA; Working Group: A

Mr Allieu Badara Kargbo, SAM; Address: Freetown, Sierra Leone; ph: 022 221480; Working Group: A

Mr Franklin Kargbo, Chairman, Manifesto 99; Address: 8 Walpole Street, Freetown, Sierra Leone; ph: 022 224733

Mr Howard Katzman, Independent Media Observer; Address: c/o UNAMSIL, Mammy Yoko Freetown, Email: hkatzman@sprintmail.com; Working Group: B

Mr Kenneth Kawa, Religions for Peace, World Conference on Religion and Peace; Address: New Signal Hill, Freetown, Sierra Leone; ph: 022 227562

Mr Kalilu Kemokai, Civil Society Movement; Address: 20 B Old Railway Line Freetown, Sierra Leone; ph: 022 238239; Working Group: A

Ms Tamba Konah, Monitor, Campaign for Good Governance, Kono District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: E

Mr Foday Koroma, SLERDO; Address: Lungi, Sierra Leone; Working Group: E

Mr John Koroma, Monitor, Campaign for Good Governance; Address: 13B-live Sewa Rd, Bo, Sierra Leone; ph: 032 326; Working Group: C

Ms Martha Koroma, SLERDO; Address: Freetown, Sierra Leone

Hon Momodu Koroma, Minister, Ministry for Presidential Affairs; Address: King Harman Road, Freetown, Sierra Leone

PC YM Samuel Murana Koroma II, Paramount Chief, Bonthe District; Address: 2 Oldshoro Stream, Freetown, Sierra Leone; Working Group: E

Ms Christine Kuna-Fita, UNAMSIL; Address: Mammy Yoko, Aberdeen Freetown, Sierra Leone; ph: +1 212 9639590; Working Group: B

Mr Sheku B S Lahai, National Forum for Human Rights; Address: 29, Big Waterloo Street, Freetown, Sierra Leone; ph: 022 220396 / 226216; GSM: 076 603044; Email: sbslahai@hotmail.com; Working Group: B

Mr Alie Lakoh, Monitor, Campaign for Good Governance, Tonkolili District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: C
93. Mr Kandeh Lansana, Paramount Chief, Kambia District; Address: Wellington Sierra Leone; ph: 022 232643; Working Group: E
94. Mr Sheku Magba III, Paramount Chief, Koinadugu District; Address: 10 Freetown, Road, Wilberforce Sierra Leone; Working Group: E
95. Mr J. A. Manley, Western Area Headman's Association; Address: 24 Regent Road Wilberforce Freetown, Sierra Leone
96. Ms Natalie Mann, Consultant, UNICEF; Address: New England Ville Freetown, Sierra Leone; GSM: 076 609004; Email: nmann@unicef.org; Working Group: C
97. Mr Ibrahim Mansaray, SLERDO; Address: 2 Gloucester Lane Freetown, Sierra Leone; ph: 022 222507; Working Group: B
98. Mr Marju Mansaray, Council of Churches of Sierra Leone; Address: King Harman Road Freetown, Sierra Leone
99. Ms Marie Manyet, UNICEF; Address: New England Ville Freetown, Sierra Leone; ph: 022 241422
100. Mr Foday Massquoi, National Forum for Human Rights; Address: Pudrara-Pujehun, Pujehun, Sierra Leone; Working Group: B
101. Mr Eric Mbok, Civilian Affairs, UNAMSIL; Address: Mammy Yoko, Aberdeen, Freetown, Sierra Leone
102. HE Joseph Melrose, Ambassador, Embassy of the United States of America in Sierra Leone; Address: Walpole / Siaka Stevens Street, Freetown, Sierra Leone; ph: 022 226481
103. PC YM Matilda Minah, Paramount Chief, Pujehun District; Address: 24 Juba Hill, Freetown, Sierra Leone; ph: 022 238245; Working Group: E
104. Mr Alfred S Momodu, Amnesty International; Address: 7 Mustapha Street, Bo, Sierra Leone; ph: 032 412; Working Group: B
105. Mr Andrew Musa, Monitor, Campaign for Good Governance, Kailahun District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: D
106. Mr Alex Nallo, CSM-Bo / NMJD; Address: 9 Mallo Lane, Bo; Mailin Address c/o NMJD 18 Big Waterloo Street, Freetown, Sierra Leone; ph: 022 229 937; Working Group: B, C
107. PC Charles Ngebeh-Lamin, Paramount Chief, Kailahun District; Address: Babadorie, Sierra Leone; ph: 022 232773; Working Group: E
108. Mr Sahr R Ngegba, EDRA Consultancy; Address: 50 Bathurst Street, Freetown, Sierra Leone; ph: 022 227562; Email: EDRA_Consultancy@sierratel.sl; Working Group: A
109. Mr A. D. Ngombu, Amnesty International; Address: 1 Coronafimok Road, Bo, Sierra Leone; ph: 032 326; Working Group: C
110. Mr Mathew Ngombu, Monitor, Campaign for Good Governance, Moyamba District; Mailing Address: c/o CGG Richard Street, Freetown, Sierra Leone; ph: 022 228454; Email: cgg@sierratel.sl; Working Group: C
111. Chief Sam Hinga Norman, Chairman of the Civil Defence Forces and Deputy Minister of Defence, Civil Defence Forces; Address: Freetown, Sierra Leone; ph: 022 287369
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112. Ms Valerie Oosterveld, Minister Counsellor, Canadian Ministry of Foreign Affairs; Address: Ottawa Canada; Working Group: D

113. Mr Geoff Peterson, Human Rights Officer, UNAMSIL; Address: Mammy Yoko, Aberdeen, Freetown, Sierra Leone; Working Group: B

114. Ms Andrea Reidy, British High Commission in Sierra Leone; Address: Spur Road, Freetown, Sierra Leone

115. Mr B. M. Rogers, Director/Chair, Casopa SL; Address: 37 Percival Street, Freetown, Sierra Leone; ph: 022 224534; Working Group: B

116. Mr Kafari Bai Ropolor, Paramount Chief, Tonkolili District; Address: 3 College Road, Freetown, Sierra Leone; Working Group: E

117. Mr Edward Sam, Commissioner, National Commission for Democracy and Human Rights; Address: 9th Floor, Youyi Building Freetown, Sierra Leone

118. Mr Jonathan P Samai, J, Democrat Press; Address: 14A George Street, Freetown, Sierra Leone; ph: 022 228103; Working Group: D

119. Mr S.M. Sandi, Director/Chair, Kwayor; Address: 41 Upper Brook Street, Freetown, Sierra Leone; ph: 022 220396 / 225911; Email: kwayor@hotmail.com; Working Group: C

120. Mr Mohamed Sankoh, Independent Observer; Address: 11 Regent Road Freetown, Sierra Leone; GSM: 076 611986; Working Group: D

121. Mr Eddie Sawyer, Sierra Leonean Ex-Combatants Reintegration Development Organisation; Address: 76 Bass Street, Brookfield Freetown, Sierra Leone; Working Group: A

122. Mrs Priscilla Schwartz, State Counsel and Special Adviser to the Attorney General, Office of the Attorney General and Minister of Justice; Address: Guma Building, Laminoh Sankoh Street, Freetown, Sierra Leone

123. Mr Fayia Sellu, J, Democrat Press; Address: 14A George Street, Freetown, Sierra Leone; GSM: 076 603458; Email: fsellu@hotmail.com; Working Group: B

124. Mr Ahmed Mukson Sesay, OPARD; Address: 1 Turay Street, PMB 214 Mile 91, Sierra Leone; Working Group: A

125. Mr Alpha Sesay, Human Rights Clinic; Address: Fourah Bay College Freetown, Sierra Leone; ph: 022 233163; Email: sesayalpha@yahoo.com; Working Group: B

126. Mr Salieu Sesay, SLBS TV; Address: New England Ville Freetown, Sierra Leone

127. Mr Ibrahim Sesey, Caritas Makeni; Address: 22 Wilkinson Road Freetown, Sierra Leone; ph: 022 223760; Email: caritasm@sierratel.sl; isesay@hotmail.com; Working Group: A

128. Ms Josephine Shaw, Gender and Children Desk Officer, Campaign Against Violent Events; Address: 19 Sander Street, Freetown, Sierra Leone; ph: 022 228601; GSM: 076 602336; Working Group: C

129. Ms Zainab Shyllon, GOAL; Address: 53 Freetown, Road, Lumley Freetown, Sierra Leone; ph: (w) 022 230342, (h) 022 225153; Email: zseinga@yahoo.co.uk; Working Group: B

130. Mr Saramba Sillah, Network Movement for Justice & Development; Address: 18, Big Waterloo Street, Freetown, Sierra Leone; ph: 022 229937; Working Group: D
131. Rev Edward Samuel Sinnah, Youth Desk Co-ordinator, Campaign Against Violent Events; Address: 19 Sanders Street, Freetown, Sierra Leone; ph: 022 228601; Email: samuelleticia@hotmail.com; Working Group: E
132. Ms L. Alison Smith, Country Director, No Peace Without Justice; Address: 32C The Loop, Wilberforce, Freetown, Sierra Leone; GSM: 076 601726; Email: alison@sensible.it; Working Group: C
133. Ms Sheila L Smythe-Macaulay, WCRP; Address: 26 Signal Hill Road Freetown, Sierra Leone; ph: 022 233514; Email: sheillacsonny-davis@hotmail.com; Working Group: E
134. Ms Christiana T. Solomon, Campaign for Good Governance; Address: 1 Richard Street, Freetown, Sierra Leone; ph: 022 228454
135. Ms Florence Soluku, Sierra Leone Broadcasting Service; Address: New England Ville Freetown, Sierra Leone; ph: 022 241976; Working Group: D
136. Mr Mohammad Stevens, Human Rights Clinic; Address: Mount Aureol Freetown, Sierra Leone; Working Group: D
137. Mr Abubakarr Tailu, Amnesty International; Address: Kenema Sierra Leone; ph: 032 584; Working Group: A
138. Mr Abdul Tejan Cole, Barrister at Law, Sierra Leone Bar Association; Address: 40 Rawdon Street, Freetown, Sierra Leone; ph: 022 227384; Email: atejancole@yahoo.com; Working Group: A
139. HE Jeremy Tunnaciffe, Head of Delegation, Delegation of the European Union in Sierra Leone; Address: Wesley House, 4 George Street, Freetown, Sierra Leone
140. Mr Patrice Vahard, UNAMSIL; Address: Mammy Yoko, Aberdeen Freetown, Sierra Leone
141. Mr M. B. Williams, Sierra Leone Labour Congress; Address: 35 Wallace Johnson Street, Freetown, Sierra Leone; ph: 022 226869
142. Mr Kandeh Yillah, Sierra Leone Labour Congress; Address: 35 Wallace Johnson Street, Freetown, Sierra Leone; Working Group: D