

BILL

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THE SPECIAL COURT AGREEMENT, 2002, RATIFICATION ACT, 2002

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SPECIAL COURT AGREEMENT, 2002 (RATIFICATION) ACT, 2002

WHEREAS the Agreement for the Special Court which was, for the part of the Government of Sierra Leone, signed under the authority of the President and is by the proviso to subsection (4) of section 40 of the Constitution of Sierra Leone, 1991 required to be ratified by an Act of Parliament:

AND WHEREAS it is desirable that provision be also made for the implementation of all elements of the Agreement that are not self-executing as well as those which need to be supplemented:

NOW, THEREFORE, it is enacted by the President and Members of Parliament in this present Parliament assembled as follows:-

PART I – PRELIMINARY

Interpretation

1. In this Act, unless the context otherwise requires –

“Agreement” means the Agreement between the Government of Sierra Leone and the United Nations for the establishment for the establishment of a Special Court, signed on the 16th January, 2002, and set out in the Schedule;

“arresting officer” means a person authorised under this Act to arrest another person;

“Attorney-General” means the Attorney-General and Minister of Justice of Sierra Leone;

“Constitution” means the Constitution of Sierra Leone 1991;

“Director of Prisons” has the same meaning as the Prisons Act, 1960;

“indictee” means a person indicted before the Special Court;

“indictment” means an indictment brought before the Special Court;

“Management Committee” means the Management Committee referred to in Article 7 of the Agreement;

“Minister of Internal Affairs” means the Minister for internal affairs of Sierra Leone;

“officer in charge” has the same meaning as in the Prison Act, 1960;

“official” in relation to the Special Court means the Prosecutor, Deputy Prosecutor, Registrar and any other personnel of the Special Court;

“order of the Special Court” means any order, summons, subpoena, warrant, transfer order or any other order issued by a judge of the Special Court;

“prisoner of Sierra Leone” means a person who is in the lawful custody of the Director of Prisons or officer in charge of any prison, whether or not that person has been convicted of an offence;

“prison officer” has the same meaning as in the Prisons Act, 1960;

“Prosecutor” means the Prosecutor of the Special Court;

“Sierra Leone Court” has the same meaning as in the Constitution;

“Sierra Leone prison” or “prison” means a prison as defined in section 2 of the Prisons Act, 1960;

“Sierra Leone sentence” means any sentence of imprisonment imposed by a Sierra Leone court;

“Special Court” means the Special Court established by the Agreement and includes any organ of the Special Court;

“Special Court prisoner” means a person who is for the time being detained under an order of, or sentence imposed by the Special Court.

PART II – ADMINISTRATION OF SPECIAL COURT

Legal capacity of Special Court. 2. (1) The Special Court shall have the capacity to do the following acts in Sierra Leone—

- (a) contract;
- (b) acquire and dispose of moveable and immovable property;
- (c) institute legal proceedings;
- (d) enter into agreements with States or such other bodies possessing international legal personality as may be necessary for the exercise of its functions and for the furtherance of its operations; and
- (e) any other act a company may undertake pursuant to the Companies Act.

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(2) The Special Court shall have a common seal, the affixing of which shall be authenticated by the signatures of—

- (a) the President of the Court, and

the Registrar, or another member of the staff of the Special Court designated in that behalf by the President of the Court after consultation with the Management Committee.

Administration of Special Court for— 3. The Registrar shall be responsible immediately to the President of the Special Court for—

- (a) the servicing of the Chambers of the Special Court and the Office of the Prosecutor;
- (b) the recruitment, administration and discipline of the support staff; and
- (c) the day-to-day administration of the financial and staff resources of the Special Court.

Application of funds of Special Court 4. The funds of the Special Court shall be applied to meet the expenses of—

- (a) servicing the Chambers of the Special Court;
- (b) the salaries, allowances and other costs of the support staff;
- (c) the administrative costs of the Special Court other than those specified in paragraphs (a) and (b).

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Accounts and audit of funds 5. (1) The Special Court shall keep proper books of account and other records in relation to the activities, property and finances of the Special Court and shall prepare in respect of each financial year of the Special Court a statement of accounts in a form designed to ensure the correct use of the finances of the Special Court.

(2) The accounts of the Special Court kept under subsection (1) shall be audited every six months by an auditor appointed by the Management Committee.

Annual report of the Special Court 6. (1) The Registrar shall, within three months after the end of the financial year of the Special Court, submit for the approval of the Management Committee an annual report of the activities, operation, property and finances of the Special Court for that year.

(2) Subject to subsection (1), an annual report shall include—

- (a) a copy of the audited accounts of the Special Court together with the audit report thereon;
- (b) the semi-annual summary financial reports of the Special Court for the preceding year approved by the Management Committee.

Property of Special Court 7. (1) The property of the Special Court shall be inviolable, whether by executive, administrative, judicial or legislative action.

(2) Without prejudice to the generality of subsection (1), the property of the Special Court shall not be subject to any laws regarding any of the following—

- (a) search and seizure;
- (b) requisition;
- (c) confiscation; or
- (d) expropriation.

(3) The Special Court shall exercise exclusive and free enjoyment of its property, in whole or in part and shall not be dispossessed of any real property unless the President of the Special Court gives express consent otherwise.

(4) Without prejudice to the generality of subsection (3), any real property owned or occupied by the Special Court or any of its organs shall not be subject to any laws or executive or administrative action regarding compulsory acquisition of property.

Financial arrangements of Special Court 8. (1) The Special Court, its funds, assets or property, wherever located and by whomsoever held, shall be immune from every form of legal process in Sierra Leone, unless the President of the Special Court expressly waives this immunity.

(2) Notwithstanding an express waiver of immunity, no funds, assets or property of the Special Court may be subject to any measure of execution.

(3) The Special Court shall be exempt from any financial controls, regulations or moratoriums.

(4) Without prejudice to the generality of subsection (3), the Special Court may—

- (a) hold and use funds or negotiable instruments of any kind;
- (b) maintain and operate accounts in any currency;
- (c) convert any currency held by it into any other currency; and
- (d) transfer its funds or currency from Sierra Leone, or within Sierra Leone, or to the United Nations or any other agency, free of any charges or restrictions.

Premises of Special Court **9.** The Government shall endeavour to provide to the premises of the Special Court such utilities, facilities and other services as may be necessary for the operation of the Special Court and shall ensure that the Special Court is not dispossessed of all or any part of the premises of the Special Court without the express consent of the President of the Special Court.

PART III—EXERCISE OF JURISDICTION OF SPECIAL COURT

Jurisdiction, procedure and evidence **10.** The Special Court shall exercise the jurisdiction and powers conferred upon it by the Agreement in the manner provided in the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda in force at the time of the establishment of the Special Court as adapted for the purposes of the Special Court by the judges of the Special Court as a whole.

Special Court may sit in Sierra Leone **11.** (1) The Special Court may sit in Sierra Leone in such place as may be determined by the President of the Special Court after consultation with the Attorney-General for the purpose of performing its functions under the Agreement.

(2) The Special Court shall not form part of the Judiciary of Sierra Leone.

Special Court may administer oaths **12.** The Special Court may, at any of its sittings, administer an oath or affirmation giving an undertaking as to truthfulness.

Offences before Special Court **13.** Offences prosecuted before the Special Court are not prosecuted in the name of the Republic of Sierra Leone.

Request for deferral or discontinuance of proceedings **14.** Where, pursuant to Article 8 of the Statute of the Special Court, the Attorney-General receives any request for deferral or discontinuance in respect of any proceedings, he shall grant the request, if in his opinion there are sufficient grounds for him to do so.

PART IV—MUTUAL ASSISTANCE BETWEEN SIERRA LEONE AND SPECIAL COURT

Request to Sierra Leone for assistance

Request by Special Court for assistance **15.** (1) The Attorney-General shall, upon receiving from the Special Court a request for assistance, including an urgent request for assistance, consider such request without any undue delay.

(2) A request for assistance made by the Special Court may include, but shall not be limited to—

- (a) identification and location of persons;
- (b) service of documents;
- (c) arrest or detention of persons; and
- (d) transfer of an indictee to the Special Court.

(3) Nothing in this Act shall—

- (a) limit the type of assistance the Special Court may request under the Agreement; or
- (b) prevent co-operation with the Special Court otherwise than pursuant to this Act, including co-operation of an informal nature.

Execution of request for assistance **16.** (1) Subject to subsection (2), if the Special Court makes a request for assistance, it shall be dealt with in accordance with the relevant procedure

(2) If the request for assistance specifies that it should be executed in a particular manner or by using a particular procedure that is not prohibited by Sierra Leone law, the Attorney-General shall use his best endeavours to ensure that the request is executed in that manner or using that procedure.

Confidentiality of request **17.** A request for assistance and any supporting documents shall be set confidential by the Sierra Leone authorities who deal with any aspect of the request whenever the request includes a stipulation that it shall be kept confidential, except to the extent that disclosure is necessary for execution of the request.

Response to request **18.** (1) The Attorney-General shall notify the Special Court, without undue delay, of his response to a request for assistance and the outcome of any action that has been taken in relation to it.

(2) If the Attorney-General decides to refuse or postpone the assistance requested, in whole or in part, he shall notify the Special Court accordingly and shall set out the reasons for that decision.

(3) If the request for assistance cannot be complied with for any other reason, the notification to the Special Court shall set out the reasons for the inability or failure to comply with the request.

Special Court Agreement, 2002 (Ratification) Act, 2002

(4) If the request for assistance relates to material that may be prejudicial to the national security of the Republic of Sierra Leone, the Attorney-General shall, without undue delay, notify the Special Court of that fact together with the reasons therefor.

(5) If—

(a) the Special Court has been notified pursuant to subsection (4); and

(b) a Judge of the Special Court nevertheless orders disclosure of the material; that material shall be transferred to the Special Court.

Act No. 10 of
1963

(6) The disclosure of material to the Special Court under subsection (5) shall be deemed to be an authorised disclosure for the purposes of the Treason and State Offences Act, 1963.

Request to Special Court for assistance

**Request by
Attorney-
General for
assistance**

19. (1) The Attorney-General may make a request for assistance to the Special Court for the purposes of any investigation into or trial in respect of any act or omission that may constitute a crime within the jurisdiction of the Special Court.

(2) A request for assistance by the Attorney-General and Minister of Justice may include, but shall not be limited to—

(a) the transmission of statements, documents or other types of evidence obtained in the course of an investigation or trial conducted by the Special Court; and

(b) the questioning of any person detained by order of the Special Court.

PART V—ORDERS OF SPECIAL COURT

**Orders of
Special Court**

20. For the purposes of execution, an order of the Special Court shall have the same force or effect as if it had been issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone court.

**Execution of
orders**

21. (1) Any person executing an order of the Special Court shall comply with any direction specified in that order.

(2) Notwithstanding any other law, every natural person, corporation, or other body created by or under Sierra Leone law shall comply with any direction specified in an order of the Special Court.

(3) Without prejudice to the generality of subsection (1), any person executing an order of the Special Court shall deliver forthwith any books, documents, photographs, tangible objects or other physical objects seized during the execution of that order into the custody of the Special Court.

Special Court Agreement, 2002 (Ratification) Act, 2002

(4) If a person to whom an order of the Special Court is directed is unable to execute that order, he shall report forthwith the inability to the Special Court and give the reasons therefor.

Forfeiture orders of Special Court

22. (1) When a forfeiture order issued by the Special Court is executed and property, proceeds or assets are delivered to the State, the Minister of Internal Affairs shall—

- (a) if a use is specified in the forfeiture order, use the property, proceeds or assets according to that use; or
- (b) if no use is specified in the order, either—
 - (i) use the property, proceeds or assets for a purpose aimed at addressing the consequences of the armed conflict in Sierra Leone between 1991 and 2002; or
 - (ii) sell such property, proceeds or assets as may be sold and deposit the amount realised together with any money forfeited under the forfeiture order into the War Victims Fund established pursuant to the Lome Agreement.

(2) The Minister of Internal Affairs shall make such regulations as are necessary to give effect to subsection (1).

PART VI—ARREST AND DELIVERY OF PERSONS

Warrant of arrest

23. For the purposes of execution, a warrant of arrest issued by the Special Court shall have the same force or effect as if it had been issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone court.

Execution of warrant of arrest

24. Where a warrant of arrest issued under section 23 is executed, the arresting officer shall serve on the person against whom the warrant is issued certified copies of—

- (a) the warrant of arrest issued by the Special Court;
- (b) where appropriate, the indictment;
- (c) a statement of the rights of the accused; and
- (d) if necessary, a translation thereof into a language understood by the accused.

Delivery of persons arrested

25. Where a warrant of arrest is executed, the person arrested shall be delivered forthwith into the custody of the Special Court.

Detention after delivery

26. Notwithstanding formal delivery of a person into the custody of the Special Court, a Sierra Leone prison may continue to detain that person on behalf of the Special Court if so requested or ordered by the Special Court.

Execution of warrant of arrest

27. (1) Where a warrant of arrest is issued against a prisoner of Sierra Leone, the arresting officer shall present the warrant of arrest to the Director of Prisons or the officer in charge, who shall deliver the prisoner into the custody of the arresting officer.

(2) After delivery of the prisoner of Sierra Leone into the custody of an arresting officer under subsection (1), the arresting officer shall deal with the prisoner in accordance with sections 24 and 25.

Arrest without warrant 28. Where a person against whom a warrant of arrest is issued under section 23 escapes or is unlawfully at large, he may be arrested without warrant by an arresting officer and, if so arrested, shall be delivered into the custody of the Special Court.

Official position of the accused no bar to arrest etc. 29. The existence of an immunity or special procedural rule attaching to the official capacity of any person shall not be a bar to the arrest and delivery of that person into the custody of the Special Court.

PART VII—JUDGEMENTS AND SENTENCES

Judgements

Proof of orders or judgements 30. (1) Any order or judgement of the Special Court purporting to bear the seal of the Special Court, or to be signed by a person in his capacity as a judge or official of the Special Court, shall be deemed to have been duly sealed or signed by that person, as the case may be.

(2) A document, duly authenticated, which purports to be a copy of any order made or judgement given by the Special Court shall be deemed to be a true copy.

Evidence regarding Special Court procedures and orders 31. (1) For the purposes of this Act, a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given, in proceedings before the Special Court is admissible as evidence of any fact stated in it.

(2) Nothing in this section shall be taken to affect the admission of any evidence, whether contained in a document or otherwise, which is admissible apart from this section.

Sentences

Enforcement of sentences of imprisonment 32. (1) Where a sentence of imprisonment imposed by the Special Court is to be served in Sierra Leone, it shall be served in accordance with the terms of the imprisonment.

(2) Subject to subsection (1), the conditions of imprisonment shall be governed by the relevant laws of Sierra Leone.

Modification of sentences 33. (1) The length of a sentence shall only be modified or altered by the Special Court.

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(2) If the length of the sentence is modified or altered by the Special Court, upon notification of the modification or alteration to the Director of Prisons, the length of the sentence of a Special Court prisoner serving his sentence in a Sierra Leone prison shall be modified or altered accordingly.

Supervision of sentences **34.** (1) The imprisonment being served by a Special Court prisoner in a Sierra Leone prison shall be subject to supervision by the Special Court.

(2) In allowing the Special Court to supervise the conditions of imprisonment, the Director of Prisons shall ensure—

- (a) the facilitation of communication between the Special Court prisoner and the Special Court, including the confidentiality of that communication; and
- (b) the provision of any information, report or expert opinion as requested by the Special Court about the imprisonment of the Special Court prisoner; and
- (c) the access of a judge or other official of the Special Court to a Special Court prisoner without the presence of any other person, except with the consent of the Special Court prisoner.

(3) Nothing in this section shall prevent the Director of Prisons from complying with any other request of the Special Court in relation to the supervision of sentences.

Pardon or commutation of sentences **35.** (1) A Special Court prisoner may only be pardoned or have his sentence commuted by order of the Special Court.

(2) If it appears to the President of the Republic of Sierra Leone that a Special Court prisoner is eligible for pardon or commutation of sentence under the relevant laws of Sierra Leone, he shall notify the Special Court of that fact together with the reasons therefor.

Concurrent Sierra Leone sentences **36.** (1) Where a Special Court prisoner is also subject to a Sierra Leone sentence imposed before his sentence of imprisonment is imposed by the Special Court, any sentence of imprisonment imposed by the Special Court shall be deemed to run concurrently with the Sierra Leone sentence, unless the Special Court orders otherwise.

(2) Where a Special Court prisoner is also subject to a Sierra Leone sentence imposed after his sentence of imprisonment is imposed by the Special Court, any sentence of imprisonment imposed by the Special Court shall be deemed to run concurrently with the Sierra Leone sentence, unless the Sierra Leone court orders otherwise.

PART VIII—OFFENCES AGAINST ADMINISTRATION OF JUSTICE AND OTHER OFFENCES

Offences against administration of justice

Obstructing justice **37.** (1) Any person who wilfully obstructs, perverts or defeats the course of justice in relation to the Special Court commits an offence and shall be liable, on conviction to a

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fine not exceeding two million leones or a term of imprisonment not exceeding two years or to both such fine and imprisonment.

(2) Without prejudice to the generality of subsection (1), a person is deemed wilfully to obstruct, pervert or defeat the course of justice who, in any existing or proposed proceeding of the Special Court—

- (a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence; or
- (b) accepts, obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence.

Obstructing officials

38. Any person who resists or wilfully obstructs—

- (a) an official of the Special Court in the execution of his duty, or any person lawfully acting in aid of such an official; or
- (b) any person executing an order of the Special Court,

commits an offence and shall be liable on conviction, to a fine not exceeding two million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Bribery of judges and officials

39. Subject to articles 12 and 13 of the Agreement, any person who—

- (a) being a judge or an official of the Special Court, corruptly accepts, obtains, agrees to accept or attempts to obtain for himself or any other person any money, valuable consideration, office, place or employment—
 - (i) in respect of anything done or omitted or to be done in his official capacity; or
 - (ii) with intent to interfere in any other way with the administration of justice of the Special Court; or
- (b) gives or offers, corruptly, to a judge or an official of the Special Court any money, valuable consideration, office, place or employment—
 - (i) in respect of anything done or omitted or to be done in his or her official capacity; or
 - (ii) with intent to interfere in any other way with the administration by justice of the Special Court;

commits an offence and shall be liable on conviction to a fine not exceeding thirty millions leones or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

Intimidation of officials and witnesses

40. Any person who, wrongfully or without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing, in relation to a proceeding of the Special Court, causes the other person reasonably, in all the circumstances, to fear for his safety or the safety of any other person commits an offence and shall be liable on conviction to a fine not exceeding two million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Fabricating evidence **41.** Any person who, with intent to mislead the Special Court in an existing or proposed proceeding, by any means other than perjury or incitement to perjury—
 (a) fabricates anything with intent that it be used as evidence before the Special Court; or
 (b) knowingly makes use of fabricated evidence;
commits an offence and shall be liable on conviction to a fine not exceeding two million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Offences outside Sierra Leone **42.** Any person who commits outside Sierra Leone any act or omission in relation to the Special Court that, if committed in Sierra Leone, would be an offence under this Act, may be tried as if he had committed the act or omission in Sierra Leone.

Other offences

Illegal possession of property **43.** (1) Any person who possesses any property or any proceeds of property knowing that all or part of the property or proceeds were obtained or derived directly or indirectly as a result of—
 (a) any act or omission that constitutes a crime within the jurisdiction of the Special Court; or
 (b) the commission of any offence under this Act;
commits an offence and shall be liable on conviction to a fine not exceeding thirty million leones or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

(2) A person is not guilty of an offence under this section by reason only that he is in possession of property or the proceeds of property mentioned in subsection (1) for the purpose of—
 (a) executing an order of the Special Court;
 (b) complying with a request by the Special Court; or
 (c) otherwise acting for the purpose of a lawful investigation

Money laundering **44.** (1) Any person who—
 (a) knowingly uses, transfers the possession of, sends or delivers to another person or to any place, transports, transmits, alters, disposes of or otherwise deals with, in any manner or by any means, any property or any property or any proceeds of property with intent to conceal or convert the property or proceeds; or
 (b) knowing or believing that all or part of the property or proceeds was obtained or derived directly or indirectly as a result of—
 (i) any act or omission that constitutes a crime within the jurisdiction of the Special Court; or
 (ii) the commission of any offence under this Act;
commits an offence and shall be liable on conviction to a fine not exceeding

thirty million leones or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

(2) A person is not guilty of an offence under this section by reason only that he is in possession of property or the proceeds of property mentioned in subsection (1) for the purpose of—

- (a) executing an order of the Special Court;
- (b) complying with a request by the Special Court; or
- (c) otherwise acting for the purpose of a lawful investigation.

PART IX—MISCELLANEOUS

Compensation of victims **45.** Any person who has been a victim of a crime within the jurisdiction of the Special Court, or persons claiming through him, may claim compensation in accordance with the Criminal Procedure Act, 1965 if the Special Court has found a person guilty of that crime.

Obligations imposed by Agreement **46.** Unless this Act provides otherwise, for the purposes of any provision of the Agreement that confers a power, or imposes a duty or function on the State, that power, duty or function may be exercised or carried out on behalf of the Government of Sierra Leone by the Attorney-General.

Regulations **47.** The Attorney-General may, after consultation with the Special Court, make regulations to give effect to this Act.

SCHEDULE

AGREEMENT BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF SIERRA LEONE ON THE ESTABLISHMENT OF A SPECIAL COURT FOR SIERRA LEONE

(Text of Agreement and Statute: see www.specialcourt.org)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to make provision for the ratification and implementation of the Agreement between the Government of Sierra Leone and the United Nations signed on 16th January 2002, for the establishment of the Special Court for Sierra Leone.

It is a requirement of the Constitution under the proviso to subsection (4) of section 40 thereof, that an international agreement which, among other things imposes any charge on the finances of the State, i.e. the Consolidated Fund, must be ratified by either an Act of Parliament or by resolution of Parliament supported by a simple majority vote in Parliament. In addition to compliance with the Constitution, ratification by an Act of Parliament also serves the purpose of transforming the Agreement into local statute and therefore directly applicable in Sierra Leone.

However, not all the provisions of the Agreement are capable of being implemented either in the form of the substance in which they appear in the Agreement. There are quite a number of those provisions for which supplementary provisions are needed for their implementation. Thus, for instance, Article 25 of the Statute attached to the Agreement provides that the President of the Special Court shall submit an annual report on the operations and activities of the Court to the Secretary-General and to the

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Government of Sierra Leone. This provision calls for not only operational but also financial accountability on which the Agreement is silent, hence the need for clauses 3 to 5 of the Bill. Similarly, as a corporate body, the Court must have its own common seal for the authentication of its documents and other instruments of process, provision for which is now made clause 2 of the Bill.

Then again, although the Agreement spells out clearly the jurisdiction of the Special Court, the Agreement is almost silent about the manner in which the jurisdiction may be exercised. Much of the Bill, starting from Part III is devoted to providing for the details needed to effectuate the exercise of jurisdiction by the Special Court.

Solomon E. Berewa

Attorney-General and Minister of Justice

Freetown

Sierra Leone

March, 2002