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AN IMPERFECT BODY?
AN OVERVIEW AND ANALYSIS OF THE SPECIAL COURT OF SIERRA LEONE

Danielle Koehn

It is estimated that between 20,000 to 50,000 people died during the Sierra Leone civil war. 30,000 people had a limb removed by the rebel forces and up to 257,000 acts of sexual violence occurred. The Special Court for Sierra Leone was set up to bring those most responsible for the conflict to justice. This paper will assess the effectiveness and legacy of the court and seeks to show that while the Special Court is not perfect, the positives far outweigh the negatives.

“I want to prosecute the people who forced thousands of children to commit unspeakable acts.” – Special Court of Sierra Leone Prosecutor David Crane

Introduction

For a decade Sierra Leone was caught up in a horrific civil war that featured mass atrocities. In order to try and heal the wounds caused, achieve justice for the victims and come to terms with what had happened, both the Special Court of Sierra Leone and a Truth and Reconciliation Commission were set up through UN Security Council Resolution 1315 at the request of President Kabbah. This paper will focus on the Special Court of Sierra Leone and assess whether it will have a positive or negative legacy. Due to the limitations of this paper and the breadth of this topic, this paper will give only a brief overview of the conflict, the creation of the Special Court for Sierra Leone, the Truth and Reconciliation Commission, and the relationship between the two bodies. In the second part of this paper the Special Court will be analyzed by considering

the arguments for and against the court and its work. This paper seeks to show that while the Special Court is not perfect, the positives far outweigh the negatives. This paper will hold that the Special Court for Sierra Leone has brought much needed justice to the atrocities committed against the Sierra Leonean people.

Overview

The Conflict

Sierra Leone is a former British colony located on the west coast of Africa. The conflict began on March 23, 1991, when the Revolutionary United Front (RUF) first invaded Sierra Leone from Liberia.⁴ Throughout the war, the RUF and the Armed Forces Revolutionary Council (AFRC) rebel groups fought against the government (Sierra Leonean Army) and a government-backed militia group, the Civil Defence Forces (CDF).⁵ During the conflict horrific crimes were committed, including the use of child soldiers and forced marriages of girls and women to combatants.⁶ By 1999 the rebel groups had descended upon Freetown, the capital, prompting the government to request peace.⁷ It is estimated that between 20,000 to 50,000 people died during the conflict, 30,000 people had a limb removed by the rebels and up to 257,000 acts of sexual violence were committed during the civil war.⁸

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⁴ Ibid., 21.
⁷ Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone, 34.
On July 7, 1999, the Lomé Peace Agreement was created through negotiations between the RUF and the Government of Sierra Leone to end the war. The Togolese Government, Economic Community of West African States (ECOWAS), the Commonwealth, the Organization of African Unity (now the African Union), and the UN signed on to the deal as “moral guarantors.” Within the deal there was agreement for an immediate ceasefire, a general amnesty for combatants who committed crimes between the start of the conflict and the date of the agreement, and the creation of a national Human Rights Commission and a Truth and Reconciliation Commission. A qualification was added at the last minute to disassociate the UN from the pardon and amnesty given to combatants to prepare for the establishment of the Special Court for Sierra Leone. The treaty proved to be more of a ceasefire than a transition plan for stability in Sierra Leone. The plan was that the agreement would address human rights violations since the beginning of the conflict in 1991. However, there was an outbreak of fighting in Sierra Leone for a few weeks in May 2000 that was quickly dealt with by the government, which arrested many RUF supporters. Subsequently, a reassessment was

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10 Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone, 34.
made of the amnesty that was granted in the Peace Agreement, resulting in the removal of some signers’ amnesty.\textsuperscript{15}

\textit{The Creation of the Special Court for Sierra Leone}

Sierra Leone’s President Kabbah wrote to the Security Council on August 9, 2000, requesting the establishment of an international tribunal to prosecute members of the RUF and its accomplices who were responsible for committing the crimes against the people of Sierra Leone and UN peacekeepers.\textsuperscript{16} Kabbah’s letter stated that the RUF had “since reneged on [the Lomé Agreement].”\textsuperscript{17} On August 14, 2000, the UN Security Council passed Resolution 1315\textsuperscript{18} requesting that the Secretary General “negotiate an agreement with the Government of Sierra Leone to create an independent special court.”\textsuperscript{19} A UN delegation led by Ralph Zacklin (Assistant Secretary General for Legal Affairs) went to Freetown to negotiate terms for the establishment of a court that would try those who bore the greatest responsibility for the war crimes and crimes against humanity during the Sierra Leone Civil War.\textsuperscript{20} The Special Court was not confined to prosecuting only those of Sierra Leonean nationality; however, as per the Rome Statute, prosecution of foreign nationals was limited to circumstances in which the accused’s national state was “unwilling or unable genuinely” to prosecute.\textsuperscript{21} Due to criticisms over how other international courts had been set up outside of the country whose conflict it

\textsuperscript{15} Schabas, \textit{The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone}, 35.
\textsuperscript{16} Ibid.
\textsuperscript{17} Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 16.
\textsuperscript{18} Schabas, \textit{The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone}, 36.
\textsuperscript{19} Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 56.
\textsuperscript{20} Ibid.
\textsuperscript{21} Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 22.
was investigating, it was agreed that the Court’s hearings should take place in Freetown, where some of the worst atrocities took place. The Court was set up to incorporate a combination of international and Sierra Leonean law.\textsuperscript{22} While the Special Court is similar to a hybrid tribunal (which brings an international component to essentially national prosecutions),\textsuperscript{23} it is in fact more of an ad hoc tribunal because it is a creature of international law, not domestic law.\textsuperscript{24}

The final agreement to establish the Special Court of Sierra Leone was signed on January 16, 2002, by the Government of Sierra Leone and the United Nations.\textsuperscript{25} The Parliament of Sierra Leone ratified the agreement in March 2002 when the Statute of the Special Court for Sierra Leone was passed, providing the legal framework of the Court.\textsuperscript{26} Under the terms of the Statute the Court would cover crimes “committed in the territory of Sierra Leone since November 30, 1996,”\textsuperscript{27} the date of the Abidjan Peace Accord.\textsuperscript{28} In order to be able to prosecute those who should be held accountable, the Statute repudiated amnesties from the Lomé Peace Agreement (and the Abidjan Peace Accord that had previously been signed) which involved crimes against humanity, violated Article 3 of the Geneva Convention and Additional Protocol II, or committed other serious violations of international humanitarian law (crimes from Articles 2 to 4 of the

\begin{footnotes}
\item[22] That being said, while Sierra Leone allows capital punishment, the maximum punishment the Special Court allows is life in prison, which favours international law. On the other hand, international law was not adhered to in regards to not trying children, as the Special Court will try those 15 and over (it has not tried any children yet). Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 56.
\item[23] Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone, 5.
\item[24] Ibid., 6.
\item[25] Ibid., 5.
\item[26] Ibid., 39.
\item[27] Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 59.
\item[28] Ibid., 60.
\end{footnotes}
However, the Statute excluded “any transgressions by peacekeepers and related personnel.”

There are three main bodies that make up the Special Court: the Chambers, made up of a Trial Chambers and an Appeals Chambers; the Office of the Prosecutor; and the Registry. On July 26, 2002, the Special Court appointed Pierre Boutet (Canada), Benjamin Ite (Cameroon), and Bankole Thompson (Sierra Leone) as trial judges. Emmanuel Ayoola (Nigeria), Hassan Jalloh (The Gambia), Renate Winter (Austria), Geoffrey Robertson (UK), and George Gelaga King (Sierra Leone) were appointed as appeal judges. Alternative judgeships were appointed to Isaac Abagye (Ghana) and Elizabeth Muyovwe (Zambia). The Special Court judges were sworn into office in December 2002. Robin Vincent (UK) was appointed to act as the Registrar due to her experience. David Crane was made prosecutor due to his previous work in human rights law and the inability to find an individual from Africa with the necessary experience (which would have been preferred). Originally the statute setting up the Special Court stated that the Deputy Prosecutor was to be Sierra Leonean; however, this was amended

31 Ibid., 57.
34 Ibid., 58.
35 Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone, 39.
to allow for Desmond de Silva (British QC), who had been previously admitted to the Bar in Sierra Leone.\footnote{Ibid.}

Beginning on March 7, 2003, and continuing for the next month, indictments were announced for: Foday Sankoh (leader of the RUF), Sam Bockarie (RUF henchman “Mosquito”), Issa Sesay (senior RUF Commander), Morris Kallon (senior RUF Commander), Augustine Gfbao (senior RUF Commander), Johnny Paul Koroma (AFRC Chairman), Alexa Tamba Brima (AFRC member), Brima Bazzy Kamara (AFRC member), Santigie Borbor Kanu (AFRC member), Chief Sam Hinga Norman (CDF member), Moinana Fofana (CDF member), and Alieu Kondeqa (CDF member).\footnote{Ibid.} Many of the most important indictees and actors, however, had died or were unaccounted for.\footnote{Ozonnia Ojielo, “Beyond TRC: Governance in Sierra Leone,” in \textit{Rescuing a Fragile State: Sierra Leone 2002-2008}, ed. Lansana Gberie (Waterloo: LCMSDS Press of Wilfred Laurier University, 2009): 50.}

For example, by the time the Court was ready to begin trials in July of 2002, Sankoh, Bockarie and Koroma had passed away and Johnny Paul Koroma was missing.\footnote{Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 19.}

This was naturally a very frustrating situation for those involved in the Court, as these men were believed to bear the greatest responsibilities for the atrocities in Sierra Leone’s war. This had such a large impact that some even called for the Court to be disbanded.\footnote{Ibid.} There were concerns over the length of the proceedings, so in March 2004 the Special Court re-issued joint indictments for the CDF, RUF and AFRC trials. Many

\footnote{Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 64.}
witnesses were called throughout the trials, a number of whom gave evidence anonymously behind screens.44

The Truth and Reconciliation Commission

One cannot discuss justice in Sierra Leone without looking at the Truth and Reconciliation Commission as well. The Truth and Reconciliation Commission (TRC), formally established July 5, 2002,45 had an ambitious mandate “to ‘create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone’; to address impunity in the country; to address the causes of the conflict with a view to prevent reoccurrence; to address the needs of victims (especially those of children and those who had been sexually abused); and, to promote reconciliation.”46 The Commission was headed by Bishop Joseph Humper47 as Chairman and Sierra Leonean lawyer, Yasmin Jusu-Sherriff as Executive Secretary. Overall, the TRC was comprised of a mix of local and international commissioners.48 The TRC was given independent status, some financial support for investigations and was granted subpoena powers.49

At first, it was thought that people would not want to talk about abuses suffered or admit to crimes. However, once the TRC began its work it was clear that there was a great need for people to be heard, have their stories recorded and have their perpetrators known.50 Originally, the presence of the Special Court deterred many perpetrators from coming forward as they were afraid that the evidence would be used at the Special Court

44 Ibid.
45 Ojielo, “Beyond TRC: Governance in Sierra Leone,” 43.
47 Ibid., 30.
49 Dugal, “‘Witness to Truth’: The TRC for Sierra-Leone – An Overview,” 29.
50 Ibid., 30.
against them or their former commanders.\textsuperscript{51} As it became evident that only those at the top of command would be prosecuted under the Special Court, more perpetrators came to the TRC.\textsuperscript{52}

The TRC gathered information, had public and camera hearings (for children, victims of sexual abuse and certain perpetrators), and allowed perpetrators to respond to victim allegations when possible. However, this was rare as the accused were difficult to locate due to relocations and fear of retaliation.\textsuperscript{53} Special arrangements were made for the children’s hearings to protect their identities and ensure their well-being with psychological workers present.\textsuperscript{54}

Although the government created the TRC it has failed to give much attention to its activities, final report and recommendations.\textsuperscript{55} Many people utilized the TRC, and the popular experiences and airing of grievances created expectations for the future. Yet, not much has been done by the government with these recommendations.\textsuperscript{56} While there may have been some mistaken identities because of the flexibility of the TRC, information was gathered that would not normally come to light because of the creativity and protection of the TRC.\textsuperscript{57}

The TRC found that “those in leadership in government, public life and civil society failed the people of Sierra Leone.”\textsuperscript{58} The TRC also found that many were eager to

\textsuperscript{51} Ibid.

\textsuperscript{52} Ibid.

\textsuperscript{53} Ibid., 31.

\textsuperscript{54} Ibid., 32.

\textsuperscript{55} Ibid., 29.

\textsuperscript{56} Ibid., 30.

\textsuperscript{57} Ibid., 32.

blame the causes of the war on foreign elements and the search for diamonds as it took away blame for political failure from the elites of Sierra Leone.\textsuperscript{59} However, the Commission ruled that:

\begin{quote}
“the central cause of the war was endemic greed, corruption and nepotism that deprived the nation of its dignity and reduced most people to a state of poverty. The Commission [held] the political elite of successive regimes in the post-independence period responsible for creating the conditions for conflict.”\textsuperscript{60}
\end{quote}

Finally, and perhaps most disturbingly, the TRC held that many of the causes of the conflict still exist in post-war Sierra Leone, and are potential causes of future conflict if not addressed soon.\textsuperscript{61}

In terms of accounting for the atrocities that took place, the TRC found that 60.5\% of the violations reported to the Commission were committed by the RUF, 9.8\% by the AFRC, 6.8\% by the SLA, 6\% by the CDF, and 1.5\% by the ECOMOG force.\textsuperscript{62} The TRC foresaw the reconciliation of Sierra Leone occurring in stages. First was the establishment of the Lomé Peace Agreement, creating a viable environment for reconciliation. Second was the moment when communities began to create activities in which trust could be restored. Truth telling was an important stage of this process as were reparations, which served as a symbolic acknowledgement of the wrongs suffered. The third phase would occur when Sierra Leonean citizens would forgive one another for the atrocities committed during the war, a process which may take decades.\textsuperscript{63}

\textit{The Relationship between the TRC and Special Court}

\begin{footnotesize}
\begin{enumerate}
\item Dugal, “‘Witness to Truth’: The TRC for Sierra-Leone – An Overview,” 33.
\item Truth and Reconciliation Commission of Sierra Leone, “Chapter 2- Findings,” 27.
\item Ibid., 107.
\item Ibid., 27.
\item Ojielo, “Beyond TRC: Governance in Sierra Leone,” 51.
\end{enumerate}
\end{footnotesize}
While both the TRC and the Special Court attempted to investigate and understand the complex Sierra Leonean conflict, they did so from different perspectives. Both explained to the people of Sierra Leone that the bodies were not working as a single unit, but valued each other’s work towards post-conflict justice.\textsuperscript{64} In terms of how the TRC and Special Court interacted, there was confusion and disagreement about each body’s role.\textsuperscript{65} It was initially recommended by some that the two bodies share resources. However, once operational it wasn’t clear how this would be feasible given their distinct mandates and important independent tasks.\textsuperscript{66} While both organizations utilized public education campaigns\textsuperscript{67} throughout the country to promote their functions, the TRC received more widespread support.\textsuperscript{68} The only significant dispute between the two bodies was over testimony by indicted prisoners.\textsuperscript{69}

Geoffrey Robertson, the first president of the Appeals Chamber of the Special Court, argues that the tribunal had a special role to play in achieving reconciliation, stating:

“Within the fallible parameter of human justice, with its fundamentals of due process, transparency and defence of rights, we are charted to do our best to end the impunity that powerful perpetrators would otherwise enjoy. This much is owed to the memory of murdered victims, to maimed survivors and to those who grieve for them. It is a duty we share with another body, the Truth and Reconciliation Commission set up by the Sierra Leone government. We shall work together to uncover the truth, although the Court alone has the power to deliver the justice that is a prerequisite for reconciliation.”\textsuperscript{70}

\textsuperscript{64} Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 5.
\textsuperscript{65} Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 62.
\textsuperscript{66} Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 29.
\textsuperscript{67} Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 62.
\textsuperscript{68} Ibid., 63.
\textsuperscript{69} Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 5.
\textsuperscript{70} Ojielo, “Beyond TRC: Governance in Sierra Leone,” 50.
Analysis

Criticism of the Court

Creation of the Court

As previously mentioned, under the terms of the Statute, the Court would cover crimes from November 30, 1996, onwards\(^ {71} \) (date of the Abidjan Peace Accord).\(^ {72} \) Utilizing this date, however, led many Sierra Leoneans to believe that the Court only cared about the people living in Freetown and the Western Area, as much of the impact of the war was not felt for these people until after November 1996. This further entrenched the divide between the capital and the rest of Sierra Leone, which dates back to the colonial era.\(^ {73} \) Article 8 of this Statute enabled the Special Court to have primacy over the Sierra Leone national courts, which had a significant impact when Defence Counsel appearing before the Court said the Special Court was unconstitutional, since the Sierra Leone constitution states that no court can have higher judicial authority than the Sierra Leone Supreme Court.\(^ {74} \)

Foreign Staff

There have been a number of criticisms regarding the court appointments, namely that all “senior staff at the Special Court were expatriates.”\(^ {75} \) This has been viewed as an indication of a lack of respect and recognition of qualified Sierra Leoneans. Some felt

\(^ {71} \) Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 59.
\(^ {72} \) Ibid., 60.
\(^ {73} \) Ibid.
\(^ {74} \) Ibid., 56.
\(^ {75} \) David Keen, Conflict and Collusion in Sierra Leone (Oxford: James Currey, 2005): 319.
that “[t]he Special Court does not trust Sierra Leone to administer justice. If they are not trusted to administer justice, how can they be expected to accept it?”76

Further, Prosecutor Crane brought in many ex-military personnel as investigators, which gave the Office of the Prosecutor an American military feel.77 Crane also made controversial statements, such as that those indicted “would never see a free day again.” These statements were made before their trials even occurred.78

**Finances of the Court**

When the Court initially began the Office of the Prosecution spent ten times more than the Office of the Defence and employed three times more staff.79 The Special Court was also criticised for the particularly expensive cost of the Court itself, as it has spent 150 million dollars.80 This money comes from over thirty countries with the US, UK, Netherlands, and Scandinavian countries as top donors.81 However, for the second poorest country in the world (according to the UNDP ranking), with people dying of malnutrition, preventable medical diseases and the aftermath of war, it would be quite difficult to see so much money being poured into this Special Court when the most horrible of people are being treated better than the country’s citizens.82 On average the indictments have so far cost 23 million dollars each.83

**Length of the Operation**

76 Ibid.
78 Ibid., 61.
79 Ibid., 68.
80 Ibid., 67.
81 Ibid., 68.
82 For example, those imprisoned by the Special Court get 3 meals and 2 snacks a day, while victims of the perpetrators likely have far less. Ibid., 67.
83 Ibid., 68.
There have been criticisms regarding the length of time the Special Court has been in operation, as it was only meant to last for three years and is still running today. The initial three year plan was unrealistic in part because of the time it took to set up the Court.\textsuperscript{84} While the plan was to have the Special Court complete all trials and appeals by 2010, it has not done so; an expert panel has predicted that the Tribunal will be “unable to fulfil its mission before 2016.”\textsuperscript{85}

\textit{Legal Ramifications}

Some saw criminal prosecution, and thereby the Special Court, as a threat to peace and security “and a Western intrusion in African accountability mechanisms.”\textsuperscript{86} As previously mentioned, three of the perpetrators who were considered the “worst” were unable to be tried, which was a great disappointment and almost cause for dismantling the Special Court.\textsuperscript{87}

Many also saw the Truth and Reconciliation Commission as the more appropriate institution to bring peace and healing to the community. This was supported by pointing to the fact that the TRC was met with more widespread support by Sierra Leoneans themselves.\textsuperscript{88} “The Special Court promotes reconciliation through punishment, while the Truth and Reconciliation Commission does not punish anyone, but promotes healing.”\textsuperscript{89} Or, as the TRC put it “[a] criminal justice body will have largely punitive and retributive aims, whereas a truth and reconciliation body will have largely restorative and healing

\textsuperscript{84} Ibid.
\textsuperscript{85} Schabas, \textit{The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone}, 41.
\textsuperscript{86} Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” 26.
\textsuperscript{87} Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 64.
\textsuperscript{88} Ibid., 63.
\textsuperscript{89} Ibid.
In addition, the TRC also had a direct impact on, and contact with, people’s day-to-day lives. Finally, it did not help the Special Court that the TRC was critical of how the Special Court allowed exceptions to the amnesty some thought they would be granted when signing peace treaties.\footnote{Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 63.}

**Arguments for the Court**

**Creation of the Court**

Fortunately for the integrity of the Special Court, the defence claims that the Special Court was unconstitutional were rejected.\footnote{Ibid., 56.} Also, the choice by the Court to try crimes from after November 1996 was not meant to be a political statement or to value the security of the capital over rural Sierra Leone; rather, it was a strategic decision intended to target crimes committed after the Abidjan Peace Accord.\footnote{Ibid., 60.}

**Foreign Staff**

With an international court, regardless of the location of the country it is hosted in, it is inevitable that the court staff will be mostly foreign to that country. When dealing with issues such as human rights and international criminal law it is best to employ the leaders in the field, rather than take on local citizens for the sake of placating the host country. Further, the situation in Sierra Leone was such that the prolonged conflict inevitably killed and drove away many of the people who would be most qualified to participate in the Court. It is important to note that Sierra Leoneans were not excluded from the makeup of the Court, as Bankole Thompson was appointed as a trial judge and


\footnote{Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 63.}

\footnote{Ibid., 56.}

\footnote{Ibid., 60.}
George Gelaga King was made an appeal judge. Although the prosecutor ended up being American it was clear that the original intent was to have this role filled by an African. The deputy prosecutor was Desmond de Silva (British QC) who had been previously admitted to the Bar in Sierra Leone.

Local Impact

Because the Special Court was held within the country that experienced the atrocities of the perpetrators, the community could feel more included in the justice process than in previous ad hoc tribunals. The Court made outreach very important in its operations with even Prosecutor Crane travelling to rural communities of Sierra Leone that are not easily accessible. The outreach by the Court was so extensive that there was a person designed for outreach in each of the provinces. Every Tuesday and Wednesday school children would be educated about the history of the conflict and the work that the Court was doing. The Court would reach out to the general population in a variety of means including setting up booths at local markets. NGOs such as No Peace Without Justice became involved in community outreach to facilitate public information and sensitisation on the Special Court. The outreach program worked through other local organizations to formulate the issues in a way that was easily understandable for the general public, fostering the role of civil society in promoting accountability within

94 Ibid., 57.
95 Ibid., 58.
96 Ibid.
98 Anna Matas, “The International Criminal Court,” A lecture presented to the Canadian Center for International Justice’s Continuing Legal Education on Criminal and Civil Liability for Crimes Against Humanity, Genocide and Torture, March 5, 2011.
Sierra Leone. By having the local population able to understand and get updates on the trials, the Special Court could bring justice to those who needed it most: the victims. Because of this outreach, the citizens of Sierra Leone understand that those most responsible for the atrocities must be brought to justice so that the society can heal and look to the future. The outreach done by the Court and NGOs is the single most effective way of reaching the Court’s underlying goals of encouraging peace and justice in this fragile post conflict region.

Finances

While initially there was uneven funding between the offices of the prosecutor and defence, it has since evened out. A possible explanation for this is that the prosecutor’s office needed the finances initially to begin investigations before the indictments could be announced. Once it was made public who would be charged it was then time for the defence office to use its resources to defend the accused; to do so before hand would have been impossible. While the expense of the Court overall may seem substantial, it is significantly cheaper than others such as the Rwanda Tribunal, which costs 120 million dollars per year or 10 % of the UN’s overall budget for the ICTY and ICTR combined. Further, the infrastructure that the Court has set up will be able to be utilized by Sierra Leone once the Court has completed its work.

Length of the Operation

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100 Penfold, “The Special Court for Sierra Leone: A Critical Analysis,” 68.
101 Ibid., 67.
When it was necessary to build a new facility, hire staff, investigate allegations, and allow time for defence, initial trials and appeals, it should be of little surprise that the Special Court is running longer than intended. It is better to have more thorough trials when the issues at hand are of such national and international importance rather than rushing through them for the sake of staying on schedule. The Court is currently in the midst of the complex case of Charles Taylor at The Hague; however, on the whole the Court is in the process of wrapping up its operations, as evidenced by the handing over of security responsibilities from UN Peacekeepers to the Sierra Leone Police. This step is significant as “the Special Court is set to become the first international tribunal to complete its mandate and transition to a Residual Mechanism.”

Legal Ramifications

Looking at the Special Court from a legal perspective, the Court has left, and will continue to leave, a positive and significant legacy on the development of law both nationally and internationally.

On the national level, Antonio Cassese, UN commissioned independent expert, reported that the Court’s legacy includes “(a) use of the Special Court’s infrastructures; (b) trials by Sierra Leonean courts of international crimes committed by middle-level alleged perpetrators; (c) impact on the Sierra Leone legal professional and (d) training and redeployment of Sierra Leonean personnel that have worked for the Court.”

By empowering and involving Sierra Leoneans in the international and local justice systems, the Court has brought real justice to the people of Sierra Leone. The legacy of

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bringing to justice those most responsible for atrocities, building up the nation’s justice
system, and empowering the local citizens will help to prevent future atrocities. At a
meeting of the UN Security Council in June 2007, the President of the Council (and
agreeing speakers) described the Special Court as contributing to “strengthening stability
in Sierra Leone and the sub-region and [to] bringing an end to impunity.” Furthermore,
the indictments and arrest of Charles Taylor illustrated that even the most powerful
leaders can be subject to international law.

On an international level, the Special Court has helped to create a “highly
developed and sophisticated body of law, in which the definitions and scope of war
crimes, crimes against humanity and genocide have been explored, along with the various
forms of participation and liability, the available excuses, justifications and defences,
procedural matters, issues concerning the rights of the accused and the relevant
considerations in determining appropriate penalties.” Notably, the Special Court was
the first to try cases about the war crime of forced marriage, conscription, enlistment
or use of child soldiers on an international level with the AFRC and CDF trial
judgements. The RUF sentencing judgement (in April 2009) was “the first ever
[conviction] within an international or internationalized criminal tribunal for the war
crime of attacking personnel involved in a humanitarian assistance or peacekeeping

105 Security Council, “UNSC Statement by the President of the Security Council,”
107 Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and
Sierra Leone, 44.
108 Oosterveld, “The Special Court for Sierra Leone, Child Soldiers, and Forced Marriage:
Providing Clarity or Confusion?” 132.
109 Ibid., 131.
110 Ibid., 137.
mission, and for the crimes against humanity of sexual slavery and forced marriage (as an
inhumane act).”\(^{111}\)

Additionally, international criminal tribunals such as the Special Court provide a great
deal of guidance to the International Criminal Court.\(^{112}\)

These significant additions to international criminal law are important not only on
an international level, but on the domestic as well; there is evidence that international
tribunal law is influencing national courts’ case law.\(^{113}\) By building on international law
and creating precedents in emerging areas of law, such as child soldiers, the Court
achieved significance not only for the people of Sierra Leone, whose worst criminals had
to be brought to justice in order for the society to be able to move on, but also for an
international community that requires guidance in trying future perpetrators of these
crimes. Most importantly, the Special Court of Sierra Leone provided a mechanism for
the carrying out of international legal obligations that were required by the “prosecution
and punishment of perpetrators of serious violations of human rights.”\(^{114}\) No one is above
the law, and the international community has contributed to the furthering of this
principle by creating the Court. This illustrated to Sierra Leoneans and the world that
what happened in Sierra Leone was recognized as unacceptable and that assistance is
always available to help rid the world of impunity.

Conclusion

\(^{111}\) Valarie Oosterveld, “International Decisions: Prosecutor v. Issa Hassan Sesay, Morris Kallon
\(^{112}\) Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and
Sierra Leone, 44.
\(^{113}\) Robert Cryer, Prosecuting International Crimes, Selectivity and the International Criminal
\(^{114}\) Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission
and the Special Court for Sierra Leone,” 26.
It is undeniable that, in a perfect world, the Court would cost less and every person possible would be held accountable for their actions. Indeed, it is easy to criticize and find flaws, especially when there are such great expectations. However, the case of the Special Court of Sierra Leone demonstrates that it is important to be realistic and carefully weigh the positive and negative consequences. What is most important about the Court is its overall positive legacy, not just for international law (although clearly it is immense) but for the people themselves whom the Court was able to reach. It is because the positives far outweigh the negatives that ad-hoc tribunals, international courts, and truth and reconciliation commissions must continue to exist and be used as mechanisms to engender justice in post-conflict societies.

Bibliography


