

**ACCOMPLISHMENTS, SHORTCOMINGS AND CHALLENGES:  
EVALUATION OF THE SPECIAL COURT FOR SIERRA LEONE**

**Submitted in partial fulfilment of the requirements for the degree**

**LL.M (Human Rights and Democratisation in Africa)**

**By**

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**27 November 2000**

## DECLARATION

I, **Tesfamicael Negash Tsegay**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that secondary information used has been duly acknowledged in this dissertation. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

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## DEDICATION

I dedicate this work to my right hand, Milen Abay and to all Eritreans who have become victims of deportation from Ethiopia.



## ACKNOWLEDGMENT

I could not have achieved the completion of this dissertation without Gods love and grace. Therefore my special thanks go to him first. Many people and institutions with out whose help I could not have written this paper also deserve my gratitude. Accordingly I would like to thank the Centre for Human Rights, University of Pretoria for making my admission, arrival and study to this prestigious programme possible. I would particularly like to express my heartiest appreciation to the commitment and encouragement of Mr Martin Nsibirwa, Mr Norman Taku, Prof Frans Viljoen, Prof Christopher Heyns, Prof Michelo Hansungule, Mr Jeremy Uwimana and Mr John Wilson.

I am also grateful to the staff of the Community Law Centre, University of Western Cape. I would like to particularly forward my special thanks to Mrs Trudy Fortuin and Mrs Jill Claassen for their invaluable support and care during my stay in UWC. They made me feel at home while I was away from home sweet home.

My heart felt thank goes to my girl friend Milen Abay whose contact and encouragement on a daily basis meant a lot during the whole period of my stay away from home. You have a special place in my heart.

My sincere appreciation goes to my supervisor Professor Lovell Fernandez with out his forbearance and congenial revision of my successive drafts, and his subsequent constructive comments which helped me to be more concrete, this study would have been impossible. Overall he was not only an advisor but also a father. Thanks a lot professor.

My thanks would be incomplete if I don't acknowledge the assistance and love I received from my friends. My special thanks go to Adiam Tsegay, Winttta Keleta, Simret Tesfay, Alisa Herrero, Marina Budeyeva, and Mohammed Omer.

To my family, all my friends and colleagues, whom I could not mention due to the constraint of space, I am truly grateful.

God bless you all.

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## CHAPTER ONE

### 1.1 Abstract

In response to President Kabah's request of June, 2000, the United Nations Security Council called on the Secretary-General to negotiate an agreement with the government of Sierra Leone for the creation of a special court for Sierra Leone, (hereafter SCSL), to investigate the atrocities committed within the country by resolution 1315 of 14 August 2000. Under the agreement concluded in February 2001, the SCSL has jurisdiction over crimes against humanity, war crimes and other serious violations of international humanitarian law committed since November 1996. The author assesses in detail the efficacy of the SCSL in dispensing justice up to date. The author concludes that, although the SCSL has accomplished much, it has shortcomings and faces changes that hamper the attainment of its objectives.

### 1.2 Introduction

Sierra Leone was plagued by a bloody and shocking civil war for a decade<sup>1</sup>. I have never witnessed such a scale of acts of horror as took place in Sierra Leone, the results of which I saw when travelling around the country and talking to Sierra Leoneans from 4 to 14 April 2006<sup>2</sup>. During the civil war many terrible atrocities carried out by different forces, included, but were not limited to summary executions, rape, sexual slavery, forced pregnancy, hacking of limbs of men, women and children, child abduction, mass displacement, looting of property, burning of villages, use of child soldiers, and trafficking of drugs, guns and diamonds<sup>3</sup>. In short, gross human rights abuses were rampant during this decade-long civil war<sup>4</sup>.

The United Nations, (hereafter UN) in agreement with the government of Sierra Leone, established the SCSL by an agreement signed on 16 January, 2002 to try people who committed the above atrocities and to bring justice to the victims of the of the war in the country<sup>5</sup>.

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<sup>1</sup> Special Court for Sierra Leone (2006), Challenging impunity: Bringing Justice to the People of Sierra Leone 1.

<sup>2</sup> From 4—14 of April I travelled to Sierra Leone with 9 other students under the auspices of the Centre for Human Rights, University of Pretoria, to visit the SCSL.

<sup>3</sup> Second Annual Report of the President of the Special Court for Sierra Leone (for the period 1 January 2004 – 17 January 2005) 4 <<http://www.sc-sl.org/documents.html>> (accessed 20 August 2006).

<sup>4</sup> A Tejan-Cole 'Human rights under the Armed Forces Revolutionary Council (AFRC) in Sierra Leone – a catalogue of abuse' (1998) 1 *African Journal of International and Comparative Law* 481.

<sup>5</sup> Report of the Secretary-General on the establishment of a Special Court for Sierra Leone (2000) <<http://www.un.org/Docs/sc/reports/2000/sgrep00.htm>> (accessed 20 August 2006). See also WA. Schabas 'The relationship between the truth commissions and international courts: The Case of Sierra Leone' (2003) 25 *Human Rights Quarterly* 1064.



The SCSL represents an entirely new kind of court in the arena of international criminal justice. Firstly, it is a hybrid court, applying both national and international law<sup>6</sup>. Secondly, unlike the International Criminal Tribunal for Rwanda (hereafter ICTR) and the International Tribunal for Former Yugoslavia (hereafter ICTY), which were established by the Security Council under Chapter VII of the UN Charter, the SCSL was established by a treaty between the UN and the Sierra Leonean government<sup>7</sup>. The Court is administered under joint UN-Sierra Leonean jurisdiction. Thirdly, it is located in the country in which the crimes were committed<sup>8</sup> unlike the ICTY and the ICTR, which are situated outside the countries where the atrocities were perpetrated. This has the advantage that the trials are taking place in Freetown, Sierra Leone. This sends a powerful message to the people of Sierra Leone that justice is being seen to be done before their eyes. It is thus a unique forum in international criminal justice for bringing perpetrators of war crimes to justice<sup>9</sup>.

### 1.3 Statement of the problem

The Court started its trials in March 2003. Since then it is playing a crucial role in dispensing justice on account of horrific human rights abuses committed during the Sierra Leone armed conflict. However this does not mean that it does not need improvements in order to conduct and complete its work as fairly and effectively as possible. Despite some obstacles it faces, the SCSL has accomplished a number of unusual major achievements, unlike the other *ad hoc* tribunals. These include the development of new jurisprudences and new approaches in the field of international criminal justice. For example the Court has established an independent Defence Office, which generally enjoys a high degree of institutional support, to promote and guarantee fair trials for the accused<sup>10</sup>. As we shall see in detail in Chapter Three of this thesis, it has developed new jurisprudence in the area of child soldiers<sup>11</sup>, forced marriage<sup>12</sup>, head of state immunity<sup>13</sup>, and in the application of amnesty to international crimes<sup>14</sup>.

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<sup>6</sup> A Tejan-Cole 'The Special Court for Sierra Leone: Conceptual concerns and alternatives'(2001) 1 *African Human Rights Law Journal* 124.

<sup>7</sup> Security Council resolution 1315 (2000) on the situation in Sierra Leone, U.N. SCOR. 4186<sup>TH</sup>. Mtg. U.N. DOC. S/RES/ 1315/ (2000).

<sup>8</sup> The Special Court for Sierra Leone is located in the country's capital, Freetown <<http://www.sc-sl.org/documents.html>> (accessed 21 August 2006).

<sup>9</sup> M Malan et al *Sierra Leone: Building the Road to Reconstruction* (2003) 144-145.

<sup>10</sup> Special Court for Sierra Leone (n 1 above) 5.

<sup>11</sup> A Smith 'Child Recruitment and the Special Court for Sierra Leone' ( 2004) 2 *Journal of International Criminal Justice* 1141.

<sup>12</sup> Forced Marriage Pursued as Crime in Sierra Leone Tribunal Cases

<<http://www.globalpolicy.org/intljustice/tribunals/sierra/2004/0416marriage.htm>> (accessed 20 August 2006).

<sup>13</sup> Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone<<http://www.asil.org/insights/insigh145.htm>> (accessed 28 October 2006). Also Prosecutor v Charles Chankay Taylor < <http://www.sc-sl.org/Documents/SCSL-03-01-I-059.pdf>> (accessed 28 October 2006).

<sup>14</sup> Special Court for Sierra Leone a historic decision to reject amnesty for crimes under international law

The Court does, however, have a number of shortcomings, which partly impedes its capacity to effect durable peace and social reconstruction. Financial constraints<sup>15</sup>, delay of trials, witness protection problems, inefficiency of defence counsel in certain instances, and limited impact on the domestic legal system are some of the realities that have affected the efficacy of the court<sup>16</sup>. These are discussed in Chapter Four.

Therefore, the main questions which this mini-thesis seeks to answer are these: What has the court accomplished? What are its drawbacks, where has it failed? and what needs to be done to make it effective?

#### 1.4 Objectives of the of the study

The thesis assesses the effectiveness of the Court in relation to the impact it has made in cultivating the rudiments of a human rights culture, dispensing justice; ending a culture of impunity, effecting unity and national reconciliation in post war Sierra Leone. This evaluation will pinpoint aspects of the Court's work in need of improvement. This, I submit, might help to avert shortcomings in the establishment or functioning of similar future criminal tribunals in countries where crimes of similar character have been committed. For instance United Nations ( hereafter the UN) through its Resolution 1606 (2005) has alluded the need to establish a mixed Truth Commission and a Special Chamber within the court system of Burundi to investigate the truth and try offenders bearing the greatest responsibility for crimes of genocide, crimes against humanity, and war crimes committed in Burundi since independence<sup>17</sup>.

#### 1.5 Literature survey

Authors such as Samba Miatta<sup>18</sup>, Abdul Tejan- cole<sup>19</sup>, John Ceron<sup>20</sup>, Nancy Kaymar Stafford<sup>21</sup>, Alison Smith<sup>22</sup>, Marissa Miraldi<sup>23</sup> and Celina Schocken<sup>24</sup>, have written about the

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<sup>15</sup> <<http://web.amnesty.org/library/Index/ENGAFR510062004?open&of=ENG-SLE> > (accessed 28 October 2006).

<sup>16</sup> Human Rights Watch, 'Justice in motion: The Trial Phase of the Special Court for Sierra Leone' 17 (2005) 5. As above 5-6.

<sup>17</sup> Security Council Resolution 1606 (2005)

<<http://daccessdds.un.org/doc/UNDOC/GEN/N05/391/59/PDF/N0539159.pdf?OpenElement>> (accessed 14 September 2006).

<sup>18</sup> Samba Miatta 'The Proposed Special Court for Sierra Leone and Human Rights: A Comparison with other ad hoc Tribunals' (2001) unpublished LLM thesis, Centre for Human Rights, University of Pretoria.

<sup>19</sup> Tejan-Cole (n 6 above) 107-126.

<sup>20</sup> J Cerone, The Special Court for Sierra Leone: Establishing a new Approach to International Criminal Justice (2002) 8 *ILSA Journal of International and Comparative Law* 379-384.

<sup>21</sup> Nk Stafford 'A Model War Crimes Court: Sierra Leone (2003) 10 *ILSA Journal of International and Comparative Law* 117-127.

<sup>22</sup> A Smith (n 11 above) 1141-1153.

<sup>23</sup> M Miraldi 'Overcoming the obstacles of justice: The Special Court for Sierra Leone (2003) 19 *New York Law*

proposed SCSL before it even existed. Miatta, Ceron, Tejan–Cole, and Fritz analysed and compared the legal basis of the SCSL with the legal bases of the other *ad hoc* international criminal tribunals. Tejan-Cole, Fritz and Alison further discussed the reservations cherished against the Court, as well as the counter-arguments for having it. Schocken described and analysed the Statute of the SCSL and outlined how the Court will operate. She raised some of the problems that the Court might face in practice. Stafford has analysed the Statute of the SCSL in terms of its temporal and personal jurisdiction, the crimes covered and the issue of amnesty established under Lomé Peace Agreement. Her focus differs from that of other authors in that it analysed the benefits and detriments of the hybrid tribunals. However As all these literatures were published before the SCSL came to force; none of the above-mentioned authors has evaluated the Court's performance since it started operating in March 2003, which is what this thesis does.

## 1.6 Methodology

The research is based on the study and analysis of both primary and secondary sources. The primary sources are mainly the Statute of the Court<sup>25</sup>, the agreement between the UN and the government of Sierra Leone establishing the Court<sup>26</sup>, the Lomé Peace Agreement (hereafter the Lomé Agreement) that was signed between the government of Sierra Leone and the rebels<sup>27</sup>, the preliminary judgement(s) of the Court, interviews with the SCSL staff, members of civil society, Sierra Leoneans living in Freetown, and limited observation of proceedings of the SCSL's trial chamber I. The secondary sources are textbooks; law journal articles, the writings of experts on this topic, electronic sources on the Internet, media reports and conference papers.

## 1.7 Scope of the study

This thesis evaluates the Court against a series of benchmarks crucial to its ability to dispensing justice fairly and effectively since it inception in March 2003. The thesis does not discuss each of the various components of the Court's operations in depth. Instead, it looks at those areas that represent particularly significant accomplishments, as well as its patent

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*School Journal of Human Rights* 849-859.

<sup>24</sup> C Schocken 'The Special for Sierra Leone: Overview and Recommendations' (2002)

20 *Berkeley Journal of International and Comparative Law* 436-461.

<sup>25</sup> Statute of the Special Court for Sierra Leone annexed to the Agreement (16 January 2002), January 2002) hereafter 'Statute of the SCSL' <<http://www.sc-sl.org/documents.html>> (accessed 21 August 29).

<sup>26</sup> Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone signed on 16 January 2002).<<http://www.sc-sl.org/documents.html>> (accessed 21 August 29).

<sup>27</sup> Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, "Lomé Peace Agreement", 7 July 1999 <<http://www.sc-sl.org/documents.html>> (accessed 21 August 29).

shortcomings. The study concludes with a set of recommendations aimed at improving the work of the Court and that of similar criminal trials that might potentially come into being in the future.

## **1.8 Summary of chapters**

This study is divided into five chapters. Chapter One provides the context in which the study is set, the focus and objectives of the study, its significance and other preliminary issues, including a statement of the problem and the literature review. Analyses of the conflict in Sierra Leone are necessary to grasp the graveness and the nature of the human rights violations and to understand the nature and extent of justice already meted out. Chapter Two focuses particularly on the historical background of the conflict and the reasons that necessitate the establishment of the SCSL. The SCSL was established specifically to respond to human rights abuses committed during the civil war in Sierra Leone. Chapter Three examines the major achievements of the Court in dispensing justice, and Chapter Four identifies the shortcomings and the challenges that confront the Court in its aim to fulfil its mandate.



## CHAPTER TWO

### BACKGROUND INFORMATION OF THE CIVIL WAR AND THE ESTABLISHMENT OF THE SCSL

#### 2.1 History of Sierra Leone

Sierra Leone won its independence from Britain in April 1961 under the leadership of Sir Milton Margais<sup>28</sup>. The country adopted a parliamentary system of government and conducted its first general election under universal adult franchise in May 1962<sup>29</sup>. This new freedom and promising political atmosphere had given Sierra Leoneans big hopes of peace and development. They were promised the basic rights denied to them during the period of colonisation<sup>30</sup>.

However, these prospects were short lived. Corruption and mismanagement set in very quickly, making the country one of the poorest in the world<sup>31</sup>. Maladministration not only had adverse effects on the population, but it also led to the collapse of government<sup>32</sup>. In consequence, the state experienced recurrent coups and states of emergency before it exploded into civil war<sup>33</sup>. Absence of strong and effective government also opened wide opportunities for the smuggling of arms, ammunitions and drugs, all of which fanned the civil war.

#### 2.2 Overview of Sierra Leone civil war

The civil war in Sierra Leone erupted in March 1991 and lasted more than a decade<sup>34</sup>. It was among the most brutal and destructive of internal strifes<sup>35</sup>. It displaced more than half of the people of Sierra Leone. Between 100,000 and 200,000 people were killed with more than 40,000 maimed during the conflict<sup>36</sup>.

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<sup>28</sup> Schocken (n 24 above) 437. See also M C Nicol-Wilson 'Sierra Leone' in CH Heyns (ed) *Human rights law in Africa* (2004) 1475.

<sup>29</sup> Sierra Leone, Wikipedia, The free Encyclopaedia <[http://en.wikipedia.org/wiki/Sierra\\_Leone](http://en.wikipedia.org/wiki/Sierra_Leone)> (accessed 21 August 2006).

<sup>30</sup> D Pratt, Sierra Leone: The Forgotten Crisis <<http://www.Sierra-Leone.org/pratt042399.html>> (accessed on 18 August 2006).

<sup>31</sup> The Civil War in Sierra Leone <[http://www.afrol.com/News/sil007\\_civil\\_war.htm](http://www.afrol.com/News/sil007_civil_war.htm)> (accessed 5 August 2006).

<sup>32</sup> As above.

<sup>33</sup> Schocken (n 24 above) 437.

<sup>34</sup> K Peters, *Re-Examining Voluntarism: Youth Combatants in Sierra Leone* (2004) 9-12.

<sup>35</sup> The Special Court for Sierra Leone (n above) 1.

<sup>36</sup> Schocken (n 24 above) 436. Also Stafford (n 21 above) 117-119.

The civil war was characterised by heinous crimes. These included, but were not limited to summary executions, rapes, sexual slavery, enforced prostitution, forced pregnancies, hacking of people's limbs, child abduction, mass population displacements, looting, burning of villages, use of child soldiers, use of drugs, trafficking in guns and diamonds<sup>37</sup>.

Though many reasons have been put forward for the turmoil that befell the country, a fight for control of natural resources, especially diamonds, rather than an ideological contest was alleged to be the main reason for the civil war in Sierra Leone<sup>38</sup>. Rebels who controlled the mines were devoting financial resources to fund their movement, including arms and logistics<sup>39</sup>. Therefore, the desire to maintain control over rich diamond fields could be identified as the chief cause of the Sierra Leonean civil war<sup>40</sup>.

The conflict lasted more than a decade. It started in March 1991, when the Revolutionary United Front (hereafter RUF), under the leadership of Foday Sanku, a former army corporal, launched an attack against the government in the eastern part of the country<sup>41</sup>. Initially the rebels had their bases in Liberia and were believed to be supported by former Liberian president, Charles Taylor, who is now being prosecuted by the SCSL, for the alleged commission of international crimes in the civil war<sup>42</sup>. Taylor, who at the beginning of the Sierra Leonean civil war was a faction leader in Liberia reportedly, supported the RUF in order to destabilise Sierra Leone because at that time Sierra Leone was supporting the Economic Community of West African States Monitoring Group, ECOMOG, which was preventing Taylor from seizing the Liberian capital, Monrovia<sup>43</sup>.

There were also two other factions excepting the RUF that participated in the Sierra Leone civil war. These were the Civil Defence Forces (hereafter CDF), and Armed Forces Revolutionary Council (hereafter AFRC)<sup>44</sup>.

Sierra Leone also experienced a number of military coups during the civil war period. Captain Valentine Strasser, who ruled Sierra Leone until 1996, launched a successful coup in November 1992. In 1996 another coup toppled Valentine from power. However in the

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<sup>37</sup> Peters (n 34 above) 1-3.

<sup>38</sup> E Evenson, 'Truth and Justice in Sierra Leone: Coordination between Commission and Court' (2004) 104 *Columbia Law Review* 730-735.

<sup>39</sup> As above. Also E J.A. Rodgers 'Conflict Diamonds: Certification and Corruption, A Case study of Sierra Leone' (2006) 13 *Journal of Financial Crime* 268.

<sup>40</sup> Sierra Leone, Wikipedia, The free Encyclopaedia (n 29 above).

<sup>41</sup> LR Hall and N Kazemi 'Prospects for Justice and Reconciliation in Sierra Leone' (2003) 44 *Harvard Law Journal* 287-288.

<sup>42</sup> Rodgers (n 39 above) 268.

<sup>43</sup> As above.

<sup>44</sup> The Special Court for Sierra Leone (n 1 above) 2-3.

same year democratic elections were held shortly after the coup, resulting in power being transferred to a government led by Ahmed Tajan Kabbah<sup>45</sup>.

The newly elected government signed the Abidjan Peace Accord in Abidjan, Cote d' Ivore in November 1996<sup>46</sup>. The agreement did not last long partly due to the distrust that existed between the contracting parties as well as the poor implementation provisions of the Accord<sup>47</sup>. As a result, human rights violations continued, worsening the situation in the country.

The grave violation of human rights heightened the national and international pressure on the government of Sierra Leone to negotiate with the RUF<sup>48</sup>. Consequently in July 1999 the government of Sierra Leone and the RUF signed the Lomé Agreement<sup>49</sup>. The Agreement provided for the establishment of the a truth and reconciliation commission<sup>50</sup> (hereafter the TRC) and granted amnesty to rebels who were members of the three factions, the RUF, AFRC, and the CDF, in respect of anything done by them in pursuit of their objectives as members of these organisations, up to the time of the signing of the agreement itself<sup>51</sup>.

The amnesty attracted both national and international criticism for it fully exempted the perpetrators of heinous crimes from any criminal prosecutions<sup>52</sup>.

The Lomé Agreement also called for the intervention of the United Nations Peacekeeping Mission in Sierra Leone (hereafter UNAMSIL) to guard the fragile peace in the country<sup>53</sup>.

Accordingly, the United Nations Security Council established the United Nations Mission in Sierra Leone in 1999<sup>54</sup>. However, the Lomé Agreement again was not able to secure enduring peace as the RUF started to violate the agreement by launching attacks against state institutions<sup>55</sup>. Human rights violations and war terror continued until President Ahmed

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<sup>45</sup> Schocken (n 24 above) 438.

<sup>46</sup> A Tejan-Cole 'Painful peace: Amnesty under the Lomé Peace Agreement in Sierra Leone' (1999) 3 *Law, Democracy and Development* 239.

<sup>47</sup> As above 240. See also Pratt (n 30 above).

<sup>48</sup> Tejan-cole (n 46 above).

<sup>49</sup> Lomé Peace Agreement (n 27 above).

<sup>50</sup> As above, art XXVI.

<sup>51</sup> As above, art IX.

<sup>52</sup> C Schuler, A wrenching Peace: Sierra Leone's 'See no Evil' pact, *Christian Science Monitor*, Sept 15, 1999.

<sup>53</sup> The Lomé Peace Agreement art XIV.

<sup>54</sup> Miraldi (n 23 above) 852.

<sup>55</sup> A Stewart and N Thomas, Peace Process Deteriorates in Sierra Leone as Rebels Continue to Hold UN Peace Keepers Hostage, *ABC NEWS: World News*, 9 May 2000.

Tajan Kabbah officially declared an end to the long civil war and the establishment of a fragile peace in 2002<sup>56</sup>.

Grave crimes, massive in scale, had been committed in the civil war. The need to prosecute the ringleaders responsible for these crimes prompted the push to establish the SCSL only few months after the civil war was over<sup>57</sup>. The SCSL is similar to the ICTY and the ICTR. But it differs from the latter in some respects<sup>58</sup>.

### 2.3 The establishment of the SCSL

After considering the request of the government of Sierra Leone, calling for the international community to try those responsible for crimes committed during the country's violent conflict, the United Nations Security Council adopted Resolution 1315. This resolution mandated the Secretary General to negotiate an agreement with the government of Sierra Leone to create the SCSL<sup>59</sup>. An agreement establishing the Court to try 'those people who bear the greatest responsibility' for crimes committed during the civil war was signed on 16 January 2002, between the government of Sierra Leone and the United Nations<sup>60</sup>.

The SCSL started its work in March 2003. The following chapter deals with what this Court has accomplished until now and with the legacy it envisions to establish in its wake.

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<sup>56</sup> Sierra Leone Civil War < <http://www.answers.com/topic/sierra-leone-civil-war> > (accessed August 2006).

<sup>57</sup> Special Court for Sierra Leone (n 1 above) 2.

<sup>58</sup> C Anthony, Historical and Political Background to the Conflict in Sierra Leone, in: Kai Ambos/ Mohamed Othman (eds.) *New Approaches in International Criminal Justice: Kosovo, East Timor, Sierra Leone, and Cambodia* (2003) 149-151.

<sup>59</sup> The Special Court for Sierra Leone (n 1 above) 2-3. See also N. Udombana 'Globalization of Justice and the Special Court for Sierra Leone's War Crimes' (2003) 17 *Emory International Law Review* 55.

<sup>60</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone signed on 16 January 2002 (n 26 above).



## CHAPTER THREE

### INNOVATIONS AND LEGACIES OF THE SCSL

#### 3.1 Introduction

Given the obstacles that the Court faces, as well as its limitations, both set out more comprehensively in Chapter Four – the Court has achieved much in developing new structures in international tribunals, and in embroidering on the substantive international criminal jurisprudence and, thus leaving some legacies to the people of Sierra Leone in particular, and to Africa in general. The most notable achievements and legacies are the establishment of the Principal Defender's Office, the development of a new jurisprudence with respect to child recruitment, forced marriage, amnesty, and sovereign immunity (head of-state- doctrine). It has also pioneered methods of making victims gain access to the Court, ending impunity, establishing a strong and innovative outreach section, and enhancing the image of judicial system of Sierra Leone. Apart from this, its very being will ensure that, at the close of its work, Sierra Leone will have a properly resourced physical court building. But these achievements are qualified. This Chapter discusses these achievements and legacies in detail below.

#### 3.2 Innovations and jurisprudence of the SCSL

##### 3.2.1 Establishing independent Defence Office

The SCSL's Independent Defence Office is a unique feature of international tribunals. The Nuremberg Tribunal did not have one, nor do both the ICTY and ICTR. This Office deals with the needs and interests of the accused. The other international tribunals have had only administrative bodies' co-ordinating the work of defence counsels, but not a permanent organ within the court entrusted with ensuring that the procedural rights of the accused are respected<sup>61</sup>. The SCSL has filled this gap with the creation of the Defence Office in 2003. This happened when the appointed judges of the Court ratified the creation of the new Office at their first plenary meeting in December 2002<sup>62</sup>. The establishment of the Office of Defence has accordingly been described as one of the most significant innovations in international

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<sup>61</sup> S Scratch et al 'The Special Court for Sierra Leone: A Defence Prospective' ( 2004) 2 *Journal of International Criminal Justice* 213. See also Special Court for Sierra Leone (n 1 above) 5.

<sup>62</sup> International Crisis Group (2003) 'The Special Court for Sierra Leone : Promises and Pitfalls of a " New Model" 4.

justice<sup>63</sup>. Indeed, the Defence Office has been described in the Court's Second Annual Report as adding a "fourth pillar" to the structure of international courts and serves as a counterbalance to the Office of the Prosecutor<sup>64</sup>. In this regard the SCSL complies with the principle that adversarial trials should manifest a procedural "equality of arms ". To meet this standard, each of the ten accused persons in the SCSL, has been assigned an individual defence team, which includes experts in international humanitarian law, criminal law and Sierra Leonean law.<sup>65</sup>

In addition to assuming the legal representation and legal advisory in respect of the accused, the Office of the Principal Defender deals with issues affecting the rights and conditions of detention of the accused. The Office also deals with matters that could affect fair trial rights of the accused, including the development of the Code of Conduct for counsel<sup>66</sup>. "The Code of Conduct covers both the Defence and Prosecution counsel and it will be the first unified code in an international criminal tribunal that covers both Prosecution and Defence, a further testament to the emphasis placed on equal consideration to both sides appearing before the Court"<sup>67</sup>.

Moreover, the Office of the Principal Defender also plays an important role in reaching the Sierra Leonean people through outreach programmes and the media. In this regard, the Office has a public educative function for the people of Sierra Leone, informing them about the duty of the defence, the principle of presumption of innocence, the burden and standards of proof, and the rights of the accused<sup>68</sup>.

### **3.2.2 Recognition of child recruitment as a crime under international criminal law**

The SCSL is not only the first international Court or tribunal to try the crime of child recruitment, but also the first to have developed a new international criminal law with regard to the recruitment of child soldiers<sup>69</sup>.

Samuel Hinga Norman of the 'CDF' stood trial before the SCSL for recruiting child soldiers during the Sierra Leone civil war<sup>70</sup>. A preliminary motion was filed before the Court on his

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<sup>63</sup> Second Annual Report of the President of the Special Court for Sierra Leone ( n 3 above) 19.

<sup>64</sup> As above.

<sup>65</sup> As above.

<sup>66</sup> As above.

<sup>67</sup> As above.

<sup>68</sup> As above.

<sup>69</sup> A Smith (n 11 above).

behalf objecting to the charge against the use of child soldiers. The objection was based on the argument that child recruitment was not a crime under customary international law in 1996, when the SCSL's temporary jurisdiction started. It was argued that child recruitment has become a crime only since the adoption of the 1998 Rome Statute for the International Criminal Court (hereafter the Rome Statute). Thus, the argument went on, this indictment would breach the principle of the non-retroactivity.

But the Appeals Chamber of the SCSL held that the recruitment of children under the age of 15 was a crime under international law in 1996<sup>71</sup>. In reaching its decisions the Court noted that various international instruments to which Sierra Leone is party such as the 1949 Geneva Conventions and their two Additional Protocols of 1977, and the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child, have prohibited the recruitment of child soldiers long before 1996<sup>72</sup>. The widespread recognition and acceptance of the prohibition of child soldiers in the aforementioned international instruments indicate that child recruitment had already been crystallised as a crime under customary international law<sup>73</sup>. Therefore, the Court held, the recruitment of children was already a crime by the time of the adoption of the Rome Statute<sup>74</sup>. As a result, the 1998 Rome Statute only codified and ensured that the customary law norm be implemented at national level.

For these reasons the preliminary motion was dismissed and the Court added a new dimension to the body of international criminal law<sup>75</sup>. Given the prevalence of the use of children in armed conflict in African states, this charge is likely to be brought again in future cases before the International Criminal Court or similar international criminal forums in Africa.

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<sup>70</sup> Appeals Chamber, *Prosecutor v Norman*, "Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)" 31 May 2004.

<sup>71</sup> Summary of decision on Preliminary Motion (Child Recruitment), *Prosecutor V. Sam Hinga Norman, Case Number SCSL-2003-14-AR72* (E) < <http://www.sc-sl.org/summary-childsoldiers.html> > (accessed 6 September 2006).

<sup>72</sup> Additional Protocol I, Art. 77.2, Additional Protocol II, Art. 4, and CRC, Art 38 and ACRWC, Art. 22.

<sup>73</sup> Summary of decision on Preliminary Motion (Child Recruitment), *Prosecutor V. Sam Hinga Norman, Case Number SCSL-2003-14-AR72* (E) (n 72 above) para 3.

<sup>74</sup> As above, para 4.

<sup>75</sup> As above.

### 3.2.3 Recognition of forced marriage as a crime in international criminal law

It is estimated that thousands of girls and women have been subjected to sexual violence as a result of the civil war in Sierra Leone<sup>76</sup>. These sexual crimes were commonly committed by RUF and AFRC forces, and to some extent, by the CDF, government forces and employees of UNAMSIL<sup>77</sup>.

It is a trite fact that in armed conflicts, women are the victims of all kinds of sexual crimes. Mass rape of women and girls was documented during the Second World War as well as in more recent conflicts such as in the wars that raged in the countries constituting the Former Yugoslavia. Rape was rampant too, in the Rwanda genocide. The ongoing turmoil in the Democratic Republic of Congo has also been marked by persuasive criminal abuses of women.<sup>78</sup>

Despite the widespread practice of sexual violence during the Second World War, rape was not at all prosecuted at the Nuremberg trials notwithstanding evidence pointing to its occurring<sup>79</sup>. Rape charges were brought in a few cases before the Tokyo Tribunal. But the tribunal did not try any members of the Japanese government and military forces for violating more than 200,000 'comfort women' who were forced into sexual slavery during the war<sup>80</sup>.

The widespread reports of sexual violence in the conflicts in the Former Yugoslavia, Rwanda and Sierra Leone prompted the UN Security Council to establish the ICTY, the ICTR and the SCSL. The statutes of these three tribunals mention sexual offences such as rape explicitly<sup>81</sup>. However in none of the three tribunals, except the SCSL, has forced marriage been prosecuted as a crime in international law. This was the first time in international legal history that 'forced marriage' was prosecuted as a 'crime against humanity' in SCSL<sup>82</sup>. The

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<sup>76</sup> Human Rights Watch, (2003) 15 'Sierra Leone: We will Kill you if you Cry': Sexual Violence in Sierra Leone Conflict 25. Also, The Prevalence of War- Related Sexual Violence and Other Human Rights Abuses <[http://www.phrusa.org/research/sierra\\_leone/pdf\\_files/03](http://www.phrusa.org/research/sierra_leone/pdf_files/03)> (accessed 9 September 2006). Also interview with Ms Hancils, Director for Forum for African Women Educationalist (FAWE), Freetown, 11 April 2006.

<sup>77</sup> As above.

<sup>78</sup> Spotlight: Rape During War: Holding Perpetrator Accountable <<http://www.feminist.com/violence/spot/rdw.html>> (accessed 9 September 2006).

<sup>79</sup> Human Rights Watch (n 76 above) 58.

<sup>80</sup> As above 59.

<sup>81</sup> Article 5 of the ICTY Statute names rape as crime against humanity < <http://www.un.org/icty/legaldoc-e/basic/statut/stat02-2006.htm> > (accessed 9 September 2006), Article 3 of the ICTR Statute names rape as crime against humanity <[http://www.icls.de/dokumente/ict\\_r\\_statute.pdf](http://www.icls.de/dokumente/ict_r_statute.pdf) > (accessed 9 September 2006). Also Article 4 of the SCSL's Statute.

<sup>82</sup> Trial Chamber Approves New Count of Forced Marriage < <http://www.sc->

prosecution has indicted Issa Sesay, Morris Kallon and Augustine Gbao of the RUF, and Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu of the AFRC for crime of forced marriage<sup>83</sup>. The prosecution has collected evidence to support its indictments against the accused<sup>84</sup> but the decision of the Court is still pending. However the fact that forced marriage is recognised as a crime before the SCSL for the first time in history represents an important step in advancing the human rights of women and girl children, and follows a growing trend in international criminal prosecution of gender offences.

### 3.2.4 Piercing immunity of head of a state and establishing accountability for human rights abuses

The SCSL indicted Charles Taylor, the former President of Liberia with 17 counts on 7 March 2003 for supporting the 'RUF' and AFRC rebels during the Sierra Leone civil war, which resulted in grave atrocities being perpetrated in the country<sup>85</sup>. The "acts" the indictment referred to include intimidatory and terrorizing armed attacks on civilian populations, punishing them for failing to support the RUF rebel forces and for supporting the government and its forces instead. These attacks included 'unlawful killings, physical and sexual violence against civilian men, women, and children, abduction, looting and destruction of civilian property'. Other violations in the indictment include sexual slavery, forced labour, years of captivity, forced combat training for boys and girls, physical bodily mutilations and widespread attacks upon the UNAMSIL<sup>86</sup>.

An application was filed by Taylor to quash his indictment and to have his arrest set aside on the ground that he is immune from any exercise of the jurisdiction of the SCSL by the virtue of the fact that he was, at the time of issuing of the indictment and warrant of arrest, the head of state of Liberia<sup>87</sup>. Taylor's lawyer argued in particular that high-ranking officers in a State - such as the head of state, head of government and the minister of foreign affairs are immune from criminal jurisdiction of domestic courts under international law. Charles Taylor was a Head of State of Liberia at the time of the issuance of the warrant of Arrest and the

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SI.org/Press/pressrelease-050704.html> (accessed 8 September 2006).

<sup>83</sup> The Special Court for Sierra Leone : Office of the Prosecutor < <http://www.sc-sl.org/prosecutor-051704.html>> (accessed 1 October 2006).

<sup>84</sup> K Sanin, 'Summary Witness Profiles at a Glance Expert Testimony on the "Bush Wife Phenomenon" Testimony by Alleged Expert on Child Soldiers Testimony Identifying the First and Third Accused Testimony from Alleged Former Child Combatant' <<http://socrates.berkeley.edu/~warcrime/SL-Reports/057.pdf>> (accessed 1 October 2006).

<sup>85</sup> The Special Court for Sierra Leone, Case No. SCSL – 03 – I *Prosecutor v Charles Chankay Taylor* <<http://www.theiberiandialogue.org/articles/c040306tws.htm>> (accessed 25 October 2006).

<sup>86</sup> The Special Court for Sierra Leone (n 1 above) 3.

<sup>87</sup> M Frulli ' The question of Charles Taylor's Immunity : Still in Search of Balance Application of Personal Immunities' (2004) 2 *Journal of International Criminal Justice* 1120-1122.

SCSL is a domestic Court. Therefore following the logic of the argument, the SCSL has no jurisdiction to prosecute him<sup>88</sup>.

This argument submitted by Taylor's defence counsel accords with the recent finding of the International Court of Justice (hereafter ICJ) In the *Arrest Warrant of 11 April 2000* case (*Congo v. Belgium, 2002*), in which the Court found that the issue and circulation, by a Belgian magistrate, of an arrest warrant against the incumbent Minister of Foreign Affairs of the Democratic Republic of Congo failed "to respect the immunity from criminal jurisdiction and the inviolability of the incumbent Minister under international law<sup>89</sup>."

However in the same case, the ICJ found that there are certain exceptions to the principle of immunity of incumbent holders of high-ranking State officers. One of these exceptions is that an incumbent may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Military Tribunal, the ICTY, ICTR and ICC<sup>90</sup>. The statute of each of these courts indeed provides that the official position of any accused person as Head of State or Government shall not relieve such person of criminal responsibility nor mitigate punishment<sup>91</sup>.

What should be asked with regard to the SCSL is whether the SCSL is such a certain international criminal court and has jurisdiction to prosecute persons who have immunity?

Taylor's Defence counsel argued that the SCSL was not established by the Security Council, acting under Chapter VII of UN Charter, unlike the ICTY and the ICTR. Having a Chapter VII as a legal base, all United Nations member states are obliged to co-operate with these tribunals. For instance, Chapter VII enables the ICTY and the ICTR to request the extradition of an accused from a third state. Therefore, they are international courts since their judicial orders have effect on a third state.

However, the SCSL is established by a treaty between the United Nations and Sierra Leone. Thus, obligations arising under that treaty will bind only the United Nations and Sierra Leone. Therefore the SCSL cannot force third states to extradite an alleged perpetrator should he find himself outside Sierra Leone. Therefore the judicial orders from the SCSL have the

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<sup>88</sup> *Prosecutor v Charles Chankay Taylor* (n 13 above), para 6.

<sup>89</sup> *Arrest Warrant of April 11th 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, Merits, para. 78.D.2, 41 ILM 536 (2002).

<sup>90</sup> *Arrest Warrant of 11 April 2000* (n 89 above) para 61.

<sup>91</sup> Art. 6(2) of the ICTY and ICTR Statutes; art. 27 of the ICC Statute and art. 7 of the Nuremberg Charter.

quality of orders from a national court. Accordingly, the SCSL is a domestic court, meaning that it lacks jurisdiction to try Taylor<sup>92</sup>.

The Appeals Chamber nevertheless ruled that the SCSL is not a national court of Sierra Leone and is not part of the judicial system of Sierra Leone<sup>93</sup>. It further held that the SCSL is an international court. In its findings the SCSL reasoned that the absence of explicit mention of Chapter VII of the UN Charter does not disqualify the international nature of the SCSL. The SCSL was established under a Security Council Resolution. The Security Council acts on behalf of the UN member states. The agreement between the UN and Sierra Leone is thus an agreement between all members of the UN and Sierra Leone. This fact makes the agreement an expression of will of the international community. A SCSL established under such circumstances is truly therefore international<sup>94</sup>.

What is more, the SCSL has found that it has jurisdiction over Taylor by virtue of article 6 of its Statute which provides that 'the official neither position of any persons whether as Head of State or as a responsible Government official shall not relieve such a person of criminal responsibility nor mitigate punishment'<sup>95</sup>. In this regard the Court fulfilled the requirements established by the ICJ in *Arrest Warrant of 11 April 2000 case (Congo v. Belgium, 2002)*, which stipulates that a court can exercise jurisdiction over immune persons where the court is an international Court and has jurisdiction over such persons<sup>96</sup>.

Accordingly, the SCSL held that Taylor cannot, under customary international law, claim immunity from prosecution for international crimes under the head of state immunity doctrine before the SCSL as the Court is an international court and has jurisdiction over him pursuant to its Statute<sup>97</sup>.

This preliminary decision of the SCSL resulted in the arrest of Charles Taylor in April 2006. He is currently in The Hague, The Netherlands, awaiting trial by the Special Chamber of the SCSL<sup>98</sup>.

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<sup>92</sup> *Prosecutor v Charles Chankay Taylor* (n 13 above) para 6.

<sup>93</sup> *Prosecutor v Charles Chankay Taylor* (n 13 above) para 54.

<sup>94</sup> As above, para 38. See also Z Deen – Racsmany ' *Prosecutor v. Taylor: The Status of the Special Court for Sierra Leone and Its Implication for Immunity*' (2005) 18 *Leiden Journal of International Law* 301.

<sup>95</sup> *Prosecutor v Charles Chankay Taylor* (n 13 above) para 44 and 53.

<sup>96</sup> *Arrest Warrant of 11 April 2000* (n 89 above).

<sup>97</sup> *Prosecutor v Charles Chankay Taylor* (n 13 above), para 41 and 53.

<sup>98</sup> Charles Taylor is not the first Head of State to be indicted for war crimes. Former Head of states like Slobodan Milosevic in Yugoslavia, Augusto Pinochet in Chile, and Fujimori in Peru faced trials for the gross human rights abuses they committed during their reign.

The indictment of Taylor breaches a new ground in international criminal justice as it warns other leaders in Africa, in particular, and in other parts of the world that immunity can no longer save them from prosecution for any abuses they might commit during their reign.

### **3.2.5 Invalidity of amnesty in respect of international crimes**

One of the shortcomings of the Lome Peace Accord is its provision for amnesty. Its Article IX(1)(2)(3) provides for the granting of amnesty to members of the three rebels groups in respect of whatever they did to pursue their respective objectives<sup>99</sup>.

This amnesty raised serious concerns within the international community because, if implemented, it can be argued that it makes the SCSL redundant as all the people indicted before it are covered by the Amnesty. It is therefore not surprising that the international response to the proposed amnesty process attracted criticisms from human rights organisations, civil society and the United Nations<sup>100</sup>. The UN Secretary-General, Kofi Annan, rejected in his report to the UN Security Council the proposed amnesty law out of hand. In his report he said<sup>101</sup>:

'As in other peace accords, many compromises were necessary in the Lome Peace Agreement. As a result, some of the terms, which this peace has been obtained, in particular the provisions on amnesty, are difficult to reconcile with the goal of ending the culture of impunity, which inspired the creation of the United Nations Tribunals for Rwanda and the Former Yugoslavia, and the future International Criminal Court. Hence the instruction to my Special Representative to enter a reservation when he signed the peace agreement stating that, for the United Nations, the amnesty cannot cover international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law [...]'.

Overall the amnesty granted draws no distinction between national and international crimes. This was the first problem the Court encountered after it started its operation in March 2003. The Court could not proceed to the substantive hearings relating to the indictments since it faced several challenges to its jurisdiction. A key issue to be determined by the Court was whether its jurisdiction was restricted by the amnesty accorded to combatants by the Lomé Agreement. Several defendants argued separately before the Court that the amnesty precludes the Court from exercising its jurisdiction in respect of any of the crimes that are alleged to have been committed where those acts fall within the terms of the amnesty

<sup>99</sup>

As above.

<sup>100</sup>

Tejan-cole' (n 46 above).

<sup>101</sup>

Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone S/1999/836, 30 July 1999, Para 5  
<<http://daccessdds.un.org/doc/UNDOC/GEN/N99/221/28/IMG/N9922128.pdf?OpenElement>> (accessed 1 October 2006).



provision. This was argued in the case of *Prosecutor v Morris Kallon and Brima Bazzy Kamara*, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty ('Lomé Amnesty Decision'),<sup>102</sup> *Prosecutor v Allieu Kondewa*, Decision on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lomé Accord ('Kondewa Amnesty Decision'),<sup>103</sup> *Prosecutor v Augustine Gbao*, Decision on Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court ('Gbao Amnesty Decision'),<sup>104</sup> and in *Prosecutor v Moinina Fofana*, Decision on Preliminary Motion on Lack of Jurisdiction: Illegal Delegation of Jurisdiction by Sierra Leone ('Fofana Amnesty Decision')<sup>105</sup>. In all these decisions, the Court consistently rejected all challenges to its jurisdiction based on the amnesty provision.

The Court held alike in all four cases that amnesty applies only to national criminal jurisdiction and cannot cover international crimes over which states may exercise universal jurisdiction<sup>106</sup>. The Court ruled that the Lomé Peace Agreement is not an international agreement because it created rights and obligations that are to be regulated by the domestic laws but not international law. It also noted that the RUF does not have treaty-making capacity. Therefore, the Court concluded that the Lomé Agreement does not affect the liability of the accused to be prosecuted in an international tribunal for international crimes and crimes against humanity<sup>107</sup>.

The precedent set by the SCSL establishes accountability and ends the culture of impunity. This is particularly important for Africa where the indiscriminate granting of amnesty occurs commonly without accountability being required for human rights abuses. This has happened, for example in Ghana, Angola, Uganda, Zimbabwe, and Moçambique. In all these countries wide amnesties was granted, exempting the beneficiaries from both criminal and civil responsibility<sup>108</sup>.

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<sup>102</sup> Decision of the Appeals Chamber, SCSL-04-15-PT-060.

<sup>103</sup> Decision of the Appeals Chamber, SCSL-04-14-T-128-7347.

<sup>104</sup> Decision of the Appeals Chamber, SCSL-04-15-PT-141.

<sup>105</sup> Decision of the Appeals Chamber, SCSL-04-15-PT-141.

<sup>106</sup> A Cassese 'The Special Court for Sierra Leone and International Law: The Decision Concerning the Lomé Agreement Amnesty' (2004) 2 *Journal of international criminal justice* 1133.

<sup>107</sup> The Special Court for Sierra Leone under Scrutiny  
<<http://www.ictj.org/static/Prosecutions/Sierra.study.pdf>> (accessed 7 September 2006).

<sup>108</sup> Musila Godfrey 'Whistling past the grave yard', Amnesty and the right to an effective remedy under the African Charter: The Case of South Africa and Mocambique' (2004) Unpublished LLM thesis, Centre for Human Rights, University of Pretoria.

### 3.3 Meaningful impact and legacies of the Special Court for Sierra Leone

#### 3.3.1 Accessibility

Creating possible access for victims to courts or institutions which are established to redress past atrocities, is one of the essential elements for effectively healing the wounds and attending to the needs of the victims. When victims do not understand the purpose, operations and results of the institutions of justice process meant for their benefit, such procedures, and the institutions of state which administers them, lose their meaning and impact. For example the ICTY proceedings in The Hague and ICTR proceeding in Arusha have made it hard for ordinary citizens to follow the Tribunals' proceedings. As a result, the Tribunals' rulings have limited utility for the war victims whom the Courts are allegedly supposedly to serve<sup>109</sup>. However, the SCSL is located in the place where the crimes were committed. This has made it much easier for victims to follow the Court's proceedings<sup>110</sup>.

The SCSL has, a real meaning for the victims, not only because it is located in the country where the crimes were committed, but also because it has embarked on diverse outreach actions. Other tribunals<sup>111</sup> have been criticised for being too limited and designed to too little imagination to serve the interests of reach the targeted population both access-wise and psychologically. Location and funding are therefore crucial functions of a justice being seen to be done effectively because of their location and inadequate funding<sup>112</sup>. Take for example, the outreach materials provided by the Kigali office for the ICTR: They are useless to most Rwandans as they are in French. Also, whatever visual material has been produced is of minimum use to the intended beneficiaries because they need to have visual equipment to see it<sup>113</sup>. In contrast, the outreach section of the SCSL reaches the public through meetings and national radio stations. It produces materials in easy-to-read booklets, written in the vernacular. In addition, the outreach arm of the Court runs 'train-the-trainer' workshops for the public<sup>114</sup>. The Court's outreach activities are also found to be more so successful because they engage and mobilise civil society, far more than either ICTY or the ICTR, again this is because their geographical distance from the country where the crimes were committed militates against their interacting with the affected victim communities.

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<sup>109</sup> Brining Justice: The Special Court for Sierra Leone <<http://hrw.org/reports/2004/sierraleone0904/8.htm>> (accessed 10 September 2006).

<sup>110</sup> As above.

<sup>111</sup> The Special Court for Sierra Leone under Scrutiny (n 107 above).

<sup>112</sup> Brining Justice: The Special Court for Sierra Leone (n 109 above).

<sup>113</sup> As above.

<sup>114</sup> As above.

The location of the Court has thus played a significant role in the outreach thrust of the Court. This has made it easier for the organs of the court themselves, namely the Office of the Defender, the Prosecutorial Unit, and the Registrar, to hold scheduled question-and-answer meetings with the public throughout the country, something - the ICTY and ICTR do not and cannot do because of their geographic alienation from the victim communities. The outreach programme of the SCSL also has a wider coverage as it reaches a third state, Liberia, unlike the ICTY and the ICTR, which are limited to former Yugoslavia and Rwanda, respectively- if at all<sup>115</sup>.

In addition, the Court's outreach section also envisages having its own independent radio station to broadcast its activities and initiatives. The funding for this is still in the pipeline. The idea is to broadcast the SCSL's proceedings in English and Kirio. The Station would also broadcast other related programmes, such as those focusing on the national justice system, the workings of the TRC, and human rights generally. This will be an innovative achievement in the area of international criminal justice<sup>116</sup>.

### 3.3.2 Ending impunity

The culture of impunity, which has permitted national and international actors to flout fundamental norms of international law without fear of punishment, is arguably humanity's greatest challenge in the 21st Century<sup>117</sup>. Atrocities committed in Sierra Leone and other parts of the world are a reminder of the extent to which this culture persists<sup>118</sup>.

The Sierra Leonean army and police have, over the years, been the source of considerable instability and human rights violations<sup>119</sup>. Soldiers and police enjoyed near virtual immunity from prosecution for all sorts of violations<sup>120</sup>. Rebel leaders enjoyed absolute immunity. However the SCSL's investigation, indictment and trials of persons allegedly bearing the greatest responsibility for serious crimes committed in Sierra Leone has sent powerful and

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<sup>115</sup> As above.

<sup>116</sup> As above.

<sup>117</sup> Occasional Paper on the Institute for Security Studies website, "Towards Global Justice in the 21<sup>st</sup> Century", May 2001.  
<[http://www.iss.co.za/index.php?link\\_id=3&slink\\_id=627&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.iss.co.za/index.php?link_id=3&slink_id=627&link_type=12&slink_type=12&tmpl_id=3)> (accessed August 24, 2006).

<sup>118</sup> See Vienna declaration and programme of action, World Conference on Human Rights, UN Doc. A/CONF./57/24, 1993, paragraph 60: "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations thereby providing a firm basis for the rule of law."

<sup>119</sup> Human Rights Watch Briefing Paper on Sierra Leone, "The Jury Is Still Out" July 11, 2002  
<<http://hrw.org/backgrounder/africa/sl-bck0711.htm>> accessed 14 September 2006).

<sup>120</sup> As above.

tangible messages, both to the victims and abusers, that serious crimes are not tolerated anymore. As such, the Court has become an indispensable instrument for combating the destructive culture of impunity in the country. This achievement of the court has also served to revitalise the belief in the rule of law in a society that has largely lost confidence in it.

The culture of impunity has been one of the unresolved issues in Africa. African leaders have, and still do commit grave violations. An African dictator who has committed grave human rights offences or downright war crimes has yet to be prosecuted for this<sup>121</sup>. There are a number of such ex-potentates still around. They include, naming only two who spring to mind the former Ethiopian dictator, Mengistu Hailemariam who has been granted refuge in Zimbabwe; former Chadian dictator, Hussein Habre, who is currently living in Senegal. Former Ugandan head of state Idi Amin, and Zairean despot Mobutu Sese Seko<sup>122</sup> died before they could be held legally accountable for the atrocities they perpetrated.

The SCSL has set thus a historic precedent in Africa by bringing Charles Taylor<sup>123</sup>, the international role model of all ruthless dictators to book. This has sent an early warning and timely message to some outlawed African dictators, reminding them that they are live docketed wherever they are. The Court thus affirms the principle that the commission of international crimes can no longer be tolerated. It also demonstrates that international law, which is fraught with problems of pertaining to the execution of judgements, does have a degree of enforceability. On this point, the SCSL treads in the footsteps of the Nuremberg Tribunal, the ICTY and the ICTR, combats impunity by enforcing relevant international law norms<sup>124</sup>.

According to its statute, the SCSL also has powers to try crimes against humanity<sup>125</sup>, violations of the Common article 3 of the 1949 Geneva Convention and its two Additional Protocols<sup>126</sup> and other international humanitarian law crimes, such as intentionally directing attacks against the civilian population and forcing children under the age of 15 to be part of the armed forces<sup>127</sup>, all of these instruments establish a legal framework designed to combat impunity, as they impose obligations *erga omnes* to investigate and

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<sup>121</sup> Comments on the Scribbles website, " Charles Taylor: The end of the road", 31 March 2006, available <[http://www.dibussi.com/2006/04/charles\\_taylor\\_.html](http://www.dibussi.com/2006/04/charles_taylor_.html)> (accessed 24 August 2006).

<sup>122</sup> As above.

<sup>123</sup> Charles Taylor Faces Trial Court in Sierra Leone <<http://www.worldpress.org/Africa/2305.cfm>> (accessed 14 September 2006).

<sup>124</sup> CC. Joyner 'Redressing Impunity for Human Rights Violations: The Universal Declaration and the Search for Accountability' (1998) 26 *Denver Journal of International Law and Policy* 597.

<sup>125</sup> Statute of SCSL (n 25 above) Art 2.

<sup>126</sup> As above, Art 3.

<sup>127</sup> As above, Art 4.

prosecute suspected violations of international humanitarian law. The SCSL has therefore become an indispensable instrument for realising the aims of such instruments.

### 3.3.3 Enhancing the Sierra Leone judicial system

One of the main reasons for the failure of the Sierra Leonean government to prosecute perpetrators of gross human rights abuses was because the national judicial system imploded long before the civil war even started<sup>128</sup>. The decade-long civil war and recurrent military overthrows just made matters worse. The Sierra Leonean judiciary lacked both the personnel and physical infrastructure to try these kinds of cases, for the war had wreaked havoc on them<sup>129</sup>. As it is, the country's judiciary is stretched and strained to the limits. Most outlying districts in the country are not even served by ordinary lower courts<sup>130</sup>. The country is still in the process trying to rehabilitate its judicial system. The SCSL is therefore a valuable asset, for it is helping to build professional human capital.

Indeed, a significant number of Sierra Leoneans are already working in all most all sections and organs of the Court<sup>131</sup>. This facilitates the diffusion of legal knowledge and expertise from international to local judicial officials, something which will assist in rebuilding the country's courts. In fact, the Security Council's resolution explicitly notes the pressing need for international co-operation to assist in strengthening the judicial system of Sierra Leone<sup>132</sup>.

Secondly, the SCSL has played a very constructive role in enhancing and equipping the national police. The Court sometimes arranges for the police to be trained in investigative methods. Some police officers have finished their assignments and are back at their posts, while others have been working with the Court since its inception. This, it seems, is one of the court's most treasured legacies - resurrecting the national criminal justice machinery<sup>133</sup>.

More than this, after the court completes its mission, it will leave a tangible physical legacy, which is the Court building in itself with a full infrastructure to boot. This will also include a modern detention facility fitted out in full compliance with the UN minimum standards on prison accommodation. It will also bequeath as a national asset, a library with special

<sup>128</sup> The Jury is still out < <http://hrw.org/backgrounders/africa/sl-bck0711.pdf> > (accessed 14 September 2006).

<sup>129</sup> Sierra Leone: Ordinary Courts and Special Court  
< [http://www.justiceinitiative.org/db/resource2/fs/?file\\_id=15283](http://www.justiceinitiative.org/db/resource2/fs/?file_id=15283) > (accessed 14 September 2006).

<sup>130</sup> As above.

<sup>131</sup> Justice in motion: The Trial Phase of the Special Court for Sierra Leone  
< [http://www.hrw.org/reports/2005/sierraleone1105/6.htm#\\_Toc117930004](http://www.hrw.org/reports/2005/sierraleone1105/6.htm#_Toc117930004) > (accessed 14 September 2006).

<sup>132</sup> Sierra Leone: Ordinary Courts and Special Court (n 129 above).

<sup>133</sup> The Special Court for Sierra Leone under Scrutiny (n 107 above).

collections on international human rights law and international criminal law. This will be of major benefit in the light of the prevailing inadequacy of law books, court decisions, and law library facilities.

### 3.3.4 Establishing domestic witness protection unit

The successful prosecution of war crimes cases depends on the availability of credible witnesses, which in turn requires that witnesses are confident that they can testify truthfully without fear of retribution. To Achieve accountability through national war crimes trials, therefore, it is of utmost importance to protect witnesses prior to, during, and after trials. In some cases, effective witness protection requires a long-term witness protection program or resettlement in another country<sup>134</sup>. Locating the SCSL in Sierra Leone presents the Court with steep challenges when it comes to solving this problem. This is perhaps more so than in the case of both the ICTY and ICTR,<sup>135</sup> which have encountered no problems relating to the need to protect witnesses. The threat of being identified and/or located is obviously much greater and forever present in the case of persons giving testimonies before the SCSL in Sierra Leone. For instance, there have been incidents where a witness was verbally threatened within the physical precincts of the SCSL complex itself. This was because relatives of the accused were able to identify the witness while he was being transported by the Court's vehicle<sup>136</sup>. Also, on one case, a witness, who had been relocated out of the country for protection, was telephoned directly by the accused persons<sup>137</sup>.

According to the SCSL personnel, witnesses have also expressed serious concerns that family and dependants have been at risk due to their testimony, something that witnesses at the ICTR have not experienced. For instance, an incident in the early half of 2004, in which a key "insider" witness in the case against the AFRC was nearly beaten to death, illustrates the risks these individuals face after trial<sup>138</sup>.

These risks to witnesses are of particular concern given Sierra Leone's history of political instability and the current deficiencies of both the Sierra Leonean police and Republic of

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<sup>134</sup> There was instance when the SCSL resettled a witness to another country after the witness was being telephoned directly by inductees.

<sup>135</sup> Interview with Saleem Vahidy, Chief of Witness and Victims Section, Special Court for Sierra Leone, Freetown, 5 April 2006.

<sup>136</sup> Justice in motion: The Trial Phase of the Special Court for Sierra Leone (n 131 above).

<sup>137</sup> Interview with Saleem Vahidy, Chief of Witness and Victims Section, Special Court for Sierra Leone, Freetown, 5 April 2006.

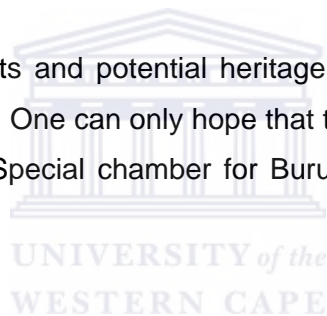
<sup>138</sup> Justice in motion: The Trial Phase of the Special Court for Sierra Leone (n 131 above).

Sierra Leone Armed Forces, a state of affairs noted in the March 2004 assessment report by the U.N. Security Council<sup>139</sup>.

In this regard the SCSL is leaving a major legacy by supporting the creation of a domestic witness protection unit to operate even after the Court finishes its work. The national witness protection unit is to be run by the Sierra Leonean police, who currently work in the Witness Management Unit. The SCSL has already trained 50 Sierra Leonean police drawn from districts where a number of witnesses are concentrated. A number of Sierra Leonean police presently working in the Witness Management Unit are also receiving ongoing informal training. The project is awaiting funds allocation in order to become operational<sup>140</sup>.

This domestic witness protection unit, should it be set up, could contribute towards protecting and supporting witnesses who testify at the SCSL. More than this, it would also benefit the criminal justice system by extending protection to witnesses in other serious criminal cases before the national courts.

The SCSL's accomplishments and potential heritage to the country is a reflection of the Court's strength and efficacy. One can only hope that the SCSL's positive hallmarks will rub off on the proposed mixed Special chamber for Burundi<sup>141</sup> or on any other similar future criminal tribunals.



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<sup>139</sup> United Nations Security Council, Twenty-first report of the Secretary-General on the United Nations Mission in Sierra Leone (2004), S/2004/228.

<sup>140</sup> Justice in motion: The Trial Phase of the Special Court for Sierra Leone (n 131 above).  
<sup>141</sup> Security Council Resolution 1606 (2005)

<<http://daccessdds.un.org/doc/UNDOC/GEN/N05/391/59/PDF/N0539159.pdf?OpenElement>> (accessed 14 September 2006).

## CHAPTER 4

### PRACTICAL SHORTCOMINGS AND CHALLENGES OF THE SCSL

#### 4.1. Introduction

As is discussed against certain benchmarks in Chapter Three of this thesis, the SCSL has accomplished much in several areas. But improvements are nevertheless necessary in order to avoid repeating past mistakes in future trials. This chapter discusses these areas of concern. However, before addressing the drawbacks of the Court or the areas where it failed, the study will briefly discuss the conceptual drawbacks of SCSL's Statute.

#### 4.2 Conceptual concerns relating to the statute of the SCSL

##### 4.2.1 Temporal jurisdiction

The temporal jurisdiction of the Court is limited to violations that were committed after 30 November 1996<sup>142</sup>. This was believed to have been done to avoid overburdening the prosecutor and to ensure efficient prosecution<sup>143</sup>. In practice, it means that none of the crimes committed between the beginning of the conflict in 1991 and November 1996 will be prosecuted<sup>144</sup>.

##### 4.2.2 Personal jurisdiction

According to the SCSL Statute, only individuals who bear the greatest responsibility<sup>145</sup> shall be tried by the court, with others appearing before TRC<sup>146</sup>. This seems a sound option for two reasons. First, given the scarcity of resources, it is difficult to try all perpetrators before the Court<sup>147</sup>. Second, bringing perpetrators before the TRC is also another way of dispensing justice to victims by providing a forum for them and for perpetrators of human rights violations in order that the public gains a clear picture of the past. This is necessary to facilitate genuine healing and reconciliation<sup>148</sup>. But the TRC alone does not adequately address impunity for those crimes which do not fall within the jurisdiction of the SCSL. It

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<sup>142</sup> Statute of the SCSL (n 25 above) art 1.

<sup>143</sup> Nk Stafford (n 21 above).

<sup>144</sup> D Gassama, 'Accountability and Prosecution in the Liberian Transitional Society: Lessons from Rwanda and Sierra Leone (2005) unpublished LLM thesis, University of Western Cape.

<sup>145</sup> Statute of the SCSL (n 25 above) art 1.

<sup>146</sup> A Tejan-Cole, 'The complementary and conflicting relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission (2003) 6 *Yale Human Rights and Development Law Journal* 139.

<sup>147</sup> J Geigenmuller, 'From Yugoslavia to Sierra Leone: Advantages and shortcomings of the ad-hoc tribunals and hybrid courts unpublished LLM thesis, University of Cape Town, 2004 22.

<sup>148</sup> Tejan-Cole (n 4 above).



cannot be a substitute for a court of law to try alleged perpetrators of serious violations of international humanitarian law.

#### **4.2.3 Territorial jurisdiction**

The territorial jurisdiction of the Court is limited to the territory of Sierra Leone<sup>149</sup>. This poses a problem since, as discussed in the introductory part of this study, the first attacks of the RUF were started from neighbouring Liberia. Therefore Sierra Leonean perpetrators who violated international or national law outside Sierra Leone cannot be tried by the SCSL. For example, rape and killing widely occurred in the refugee camp in Liberia by Sierra Leone rebels. This is evidenced by testimony collected by Human Rights Watch from a Sierra Leonean witness who was a refugee in Liberia during the civil war. According to her summarized words<sup>150</sup>:

‘About a week after arriving in the refugee camp in Liberia, the rebels came into our house in the evening and took my fifteen –year –old sister away. The next morning my uncle found her abandoned inside a hut and she brought her home. Since then my sister was crying all the time and couldn’t walk. She told me they had tied her mouth and raped her many times, but I didn’t know what rape was because I was only ten and didn’t know man’s business. After that my uncle shaved me and made me look like a boy. When I was walking around the Camp, I saw eight girls under age lying on the ground with their legs spread open and blood coming out between their legs. Some had their dresses pulled up and others had clothes in their mouth. Sometimes their family would come and wrap them in white so I know they had died. Other times no one picked them up and they stayed there for days until some one buried them’.

Perpetrators who committed such kind of abuses outside Sierra Leone therefore are not subject to prosecution before the SCSL as its territorial jurisdiction covers only crimes committed within the territory of Sierra Leone. This is similar to the ICTY Statute, but different from the ICTR Statute, which allows the ICTR to prosecute Rwandan nationals who committed genocide-related crimes in 1994 in neighbouring countries<sup>151</sup>.

#### **4.2.4 Non statutory provision for reparation of victims**

Reparations are an essential element of providing justice to the victims of human rights abuses. The SCSL Statute did not follow the example of the ICC Statute, authorizing the SCSL to award reparations (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to the victims of crimes within its jurisdiction. Such

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<sup>149</sup> Statute of the SCSL (n 25 above) art 1.  
<sup>150</sup> Human Rights Watch (n 76 above) 29.  
<sup>151</sup> Geigenmuller (n 147 above).

reparations are integral to achieving justice for the victims and also for assisting them to rebuild their lives. It is unfortunate, however, that the SCSL Statute is silent on this matter.

However, the TRC's report made detailed recommendations for the provision of reparations to those who had suffered throughout the conflict<sup>152</sup>. It proposed responding to the specific needs of victims rather than providing financial compensation. It therefore recommended measures in the areas of health, pensions, education, skills training and micro-credit transactions, community reparations and "symbolic" reparations. For certain categories of victims, including those whose limbs had been deliberately amputated, other war wounded and survivors of rape and other forms of sexual violence, the TRC recommended that they be given free physical and, as appropriate, psychological care throughout their lives or for as long as necessary<sup>153</sup>.

It is envisaged that some of the costs of the reparations programme will be met from the Special Fund for War Victims provided by the Lomé Agreement<sup>154</sup>, which is to be administered by the National Commission for Social Action. The TRC recommended that the Special Fund for War Victims be established within three months of the publication of its report, and also that the National Commission for Social Action complete implementation of the reparations programme within six years<sup>155</sup>.

It is regrettable that more has not been done thus far to ensure that the conclusions and recommendations of the TRC are implemented<sup>156</sup>. Had reparations been included in the SCSL Statute, it would have been much easier to implement them since all decisions of the Court have immediate effect.

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<sup>152</sup> Final Report of the Truth and Reconciliation Commission of Sierra Leone, Volume II, Chapter 3 Para 442- 507 <<http://trcsierraleone.org/drwebsite/publish/v2c3.shtml?page=4> > (accessed 7 October 2006).

<sup>153</sup> As above.

<sup>154</sup> Lomé Peace Agreement (n 23 above). Article XXIX of the Lomé peace agreement required the government, with the support of the international community, to "design and implement a programme for the rehabilitation of war victims. For this purpose, a special fund shall be set up".

<sup>155</sup> Final Report of the Truth and Reconciliation Commission of Sierra Leone, Volume II, Chapter 3 (n 152 above).

<sup>156</sup> SIERRA LEONE: Civilian war casualties urge government to provide reparations <[http://www.irinnews.org/report.asp?ReportID=49090&SelectRegion=West\\_Africa&SelectCountry=SIERRA\\_LEONE](http://www.irinnews.org/report.asp?ReportID=49090&SelectRegion=West_Africa&SelectCountry=SIERRA_LEONE)> (accessed 15 October 2006).

#### 4.2.5 Other flaws

The fact that slavery and genocide are not listed in the crimes over which the SCSL has jurisdiction, has also been criticized<sup>157</sup>. This criticism which is directed at the absence of a statutory provision dealing with slavery is valid as sexual slavery and forced labour were prevalent during the civil-war<sup>158</sup>. However, the concern raised with regard to genocide is not well founded as the attacks on civilians in Sierra Leone do not appear to have had an ethnic element<sup>159</sup>. The fact that the death penalty will not be imposed will also have an effect on the Court's public credibility as it will be seen as imposing milder punishments than domestic courts, which can impose capital punishment<sup>160</sup>.

These are the SCSL's limitations relating to its statute in addressing the culture of impunity. Notwithstanding the Court's contribution towards ending impunity in Sierra Leone, one should not overlook the fact that it is only a partial response.

### 4.3 Practical challenges and shortcomings of the SCSL

#### 4.3.1 Funding problems

According to Security Council Resolution 315, the SCSL is funded by voluntary funding<sup>161</sup>. As the ICTY and ICTR are funded by the regular<sup>162</sup> budget of the UN, they have a stable funding source<sup>163</sup>. But with an annual budget of US\$ 25 million, the budget of the SCSL is far lower than the US \$94 million and US \$80 million which the ICTY and the ICTR, respectively, receive from the UN at present<sup>164</sup>. A possible reason for this is that the SCSL carries a comparatively lighter case load than the *ad hoc* tribunals. Also, the SCSL tries fewer accused than the other two tribunals. With less accused persons standing trial, the SCSL is expected to work less expensively and more efficiently<sup>165</sup>.

The original cost projections predictions did not seem to have taken account of the vagaries of the judicial process. In practice, the actual budget is insufficient for achieving the

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<sup>157</sup> A McDonald, 'Sierra Leone's shoestring Special Court' (2002) 84 *International Review of the Red Cross* 178.

<sup>158</sup> Special Court for Sierra Leone (n 1 above).

<sup>159</sup> Schocken (n 24 above) 448.

<sup>160</sup> A McDonald (n 157 above) 153.

<sup>161</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone (n 22 above).

<sup>162</sup> HB, Jallow 'The legal framework of the Special Court for Sierra Leone in: Kai Ambos/ Mohamed Othman (eds.) *New Approach in International Criminal Justice: Kosovo, East Timor, Sierra Leone, and Cambodia* (2003) 131.

<sup>163</sup> Schocken (n 24 above) 453.

<sup>164</sup> As above.

<sup>165</sup> The Special Court for Sierra Leone under Scrutiny (n 107 above).

tribunal's objectives<sup>166</sup>. Overall, the SCSL has experienced practical hardships in attaining its objectives. The fact of the matter is that it operates on a shoestring budget<sup>167</sup>. The problems which the SCSL has been facing because of the shoestring budget and voluntary funding are discussed below, with some examples.

#### 4.3.1.1 Establishing limited accountability

The atrocities in Sierra Leone were committed by the three rebel forces, which had approximately 45,000 combatants. However the SCSL was mandated only to “try people who bear the greatest responsibility”, while others must appear in front of the Truth and Reconciliation Commission of Sierra Leone<sup>168</sup>. The accused persons before the SCSL are 13 in number<sup>169</sup>. One of the main factors that limited the jurisdiction of the Court to try few individuals is because international justice is always expensive<sup>170</sup>. Establishing and maintaining international tribunals like the SCSL is expensive. Therefore, it can be argued that, the SCSL's mandate to delivery the needed justice has been already restricted because of funding since its inception for establishes only limited accountability by trying few individuals

#### 4.3.1.2 Lack of infrastructure

To fulfil its tasks the SCSL needs personnel and an adequate infrastructure. Given the number of accused, it was expected that the SCSL would finish its proceedings faster than the other international tribunals; that is to say, within three years of its originally projected life span<sup>171</sup>. But this has turned out to be too optimistic. The trials are now expected to be completed only in 2007, which is one year more than anticipated<sup>172</sup>. One of the main reasons for the sluggish judicial proceedings has been the budgetary constraints. For instance, when the office of the prosecutor came with indictments in March 2003, the Registry had not filled the key posts in the court management and detention sections which are meant to process the cases. The budget anticipated that the incumbents for these positions were to be recruited only in the following fiscal year<sup>173</sup>.

<sup>166</sup> A McDonald (n 157 above) 140.

<sup>167</sup> As above.

<sup>168</sup> Tejan-Cole (n 146 above).

<sup>169</sup> At this moment the Court has only 10 individuals in custody. The prosecutor withdrew the indictment of Foday Sankoh and Sam Bockarie on the 5 December, 2003 both of whom are dead. The whereabouts of Johnny Paul Koroma is still unknown.

<sup>170</sup> No Peace without justice < <http://www.npwj.org/?q=node/549>> (accessed 28 October 2006).

<sup>171</sup> The Special Court for Sierra Leone under Scrutiny (n 107 above).

<sup>172</sup> As above.

<sup>173</sup> The Special Court for Sierra Leone: the first eighteen months.  
< [http://www.ictj.net/downloads/SC\\_SL\\_Case\\_Study\\_designed.pdf](http://www.ictj.net/downloads/SC_SL_Case_Study_designed.pdf)> ( accessed 3

#### 4.3.1.3 Under funding of the Defence Office

The Defence Office of the SCSL is a considerable improvement on other criminal courts where the defence has typically lacked institutional support<sup>174</sup>. Current international observers agree that, in general terms, the trials before the SCSL comply with fair trial standards. This is largely due to the role of the Defence Office, despite its lack of adequate infrastructure. Given the complex nature of the cases before the SCSL, the need to maintain high quality counsel, expert-witnesses and international investigators are necessary to ensure fair trial rights of the accused. But these concerns don't seem to have been taken in to account in the allocation of funding<sup>175</sup>. For example, the Defence Office requested approximately three times what was ultimately allotted in the 2005-2006 budgets for paying defence counsel<sup>176</sup>. The office also lacks logistical support to facilitate its daily activities. It is short of access to facsimile machines, photocopiers, computers and Internet services<sup>177</sup>. The quality of defence suffers, for there are no resources for proper investigation and prosecution of cases.

The Office for the Defence depends a lot on voluntary donations, which are unpredictable. The ICTY experience shows that the regular and secure funding from the UN is the best guarantee against procedural disruptions due to lack of funds<sup>178</sup>.

#### 4.3.1.4 Other problems related to the nature of funding of the SCSL

The voluntary and tight budget of the SCSL has also affected the legacies, operations and public perception of the Court in many ways. As discussed in Chapter Three above, the SCSL has done the spadework for the establishment of a domestic witness protection unit and an independent radio station. But because of financial constraints, the programmes have yet to be realised<sup>179</sup>.

Voluntary contributions are also unregulated and unpredictable. For instance, in 2004, the contributions made to the SCSL were less than the annual budget of the Court. The SCSL

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October 2006).

<sup>174</sup> The Special Court for Sierra Leone under Scrutiny (n 107 above).

<sup>175</sup> Human Rights Watch, 'Justice in motion: The Trial Phase of the Special Court for Sierra Leone' 17 (2005) 5.

<sup>176</sup> Human Rights Watch (n 15 above).

<sup>177</sup> Brining Justice: The Special Court for Sierra Leone (n 109 above).

<sup>178</sup> S De Bartodano, 'What Price Defence: Resourcing the Defence at the ICTY (2004) 2 *Journal of International Criminal Justice* 503-508.

<sup>179</sup> Human Rights Watch (n 15 above) 36.

was thus severely hampered in its work, to the extent that the Registrar of the Court warned about the grave financial situation. To ameliorate the Court's chronic funding problem, the U.N. General Assembly appropriated a grant of U.S. \$ 33 million to help fund operations to the end of 2005<sup>180</sup>. However, this assistance does not cover the expenses incurred by the SCSL during its duration and to wind up its work at the end<sup>181</sup>. Charitable contributions cannot be counted on to perform such an important function. For example, as of September 2005, the Court did not have secure funding above US \$ 9.8 million for the year 2006. This is less than half of its anticipated budget<sup>182</sup>.

Dependency on donations by other countries also renders the Court vulnerable to external influences in its judgments<sup>183</sup>. This, in turn undermines national and international public perception as to the objectivity of the Court as an organ capable of dispensing justice independently. This experience also teaches that, in future, dealing with injustices perpetrated by predecessor regimes should not be made contingent, at least in a very large measure, upon the vagaries of voluntary contributors. The issues are far too serious, and have such great implications for emergent democracies, that they cannot be dealt with effectively by sporadic funding.



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<sup>180</sup> The Special Court for Sierra Leone under Scrutiny (n 107 above).

<sup>181</sup> Human Rights Watch (n 15 above) 6.

<sup>182</sup> Second Interim Report on the Special Court for Sierra Leone, "Bringing Justice and Ensuring Lasting Peace": Some Reflections on the Trial Phase at the Special Court for Sierra Leone, < [http://socrates.berkeley.edu/~warcrime/documents/SecondInterimReport\\_001.pdf](http://socrates.berkeley.edu/~warcrime/documents/SecondInterimReport_001.pdf).> (accessed on 3 October 2006).

<sup>183</sup> Prosecutor against Hinga Norman (Case No. SCSL- 2004-14- AR72 (E)) . In this case the Appeals Chamber of the Special Court for Sierra Leone dismissed a preliminary motion brought by Defence Counsel for the accused, Sam Hinga Norman, arguing that his right to a fair hearing was breached as there were legitimate grounds to fear that the tribunal was not independent because of its funding arrangements. Defence Counsel had submitted that the funding arrangements made for the Court and the function of the Management Committee (consisting of representatives of donor States) create a legitimate fear of interference in justice delivery by the Court through economic manipulation. It was argued that donor States could indicate their displeasure with a decision of the Court by withholding their contribution to the funds of the Court.

### **4.3.2. Powers and relations of the SCSL with other institutions or countries**

#### **4.3.2.1 Lack of enforcement powers outside the state of Sierra Leone**

The jurisdiction of the SCSL is limited only to the geographic territory of Sierra Leone<sup>184</sup>. Accordingly the SCSL does not have the power to demand extradition from a third country. This is in contrast to the ICTY and the ICTR<sup>185</sup>, or the ICC<sup>186</sup>, which have the power to demand extradition from third states. This has proved to be a major weakness of the Court where the defendant or evidence is outside of Sierra Leone. For example, the Liberian ex-president Charles Taylor, who has been indicted by the SCSL for backing the rebels, had remained in Nigeria in relative peace for almost three years after his indictment by the SCSL in 2003<sup>187</sup>. He was only brought before the SCSL after the international community pressurized Nigeria to extradite him.

#### **4.3.2.2 Conflict between the SCSL and Truth and Reconciliation Commission**

The Truth and Reconciliation Commission in Sierra Leone was established pursuant to Lomé Agreement of July 7, 1999 to "address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story and get a clear picture of the past in order to facilitate genuine healing and reconciliation" by addressing human rights violations committed from the start of the conflict, 1991<sup>188</sup>. The law establishing to create the TRC was enacted and signed into effect in February 2000<sup>189</sup>. The TRC started its operations in July 2002<sup>190</sup>.

Only months after the TRC legislation was signed into law, a hybrid tribunal, was proposed to "prosecute those bearing the greatest responsibility". The Court, which was established in

<sup>184</sup> Article 1 (1) of the SCSL Statute states, " The Special Court shall, ... have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996...".

<sup>185</sup> ICTR Statute (n above), art. 8; ICTY Statute (n above), art. 9. Art. 8 ( 2 ) of the ICTR states "The International Tribunal for Rwanda shall have the primacy over the national courts of all states. At any stage of the procedure , the International tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda". The ICTY Statute contains similar language.

<sup>186</sup> Rome Statute of the International Criminal Court, Art. 13.

<sup>187</sup> Nigeria: Detain Taylor Immediately <<http://hrw.org/english/docs/2006/03/28/liberi13088.htm>>(accessed 5 October 2006).

<sup>188</sup> Lomé Peace Agreement (n 23 above) Art XXVI.

<sup>189</sup> Final Report of the Truth and Reconciliation Commission of Sierra Leone, ( n 152 above ), Volume 1: Chapter 2: Setting up the Commission, para 7.

<sup>190</sup> As above, para 48.

2002 through an agreement between the UN and the Sierra Leonean government<sup>191</sup>, covers crimes dating back to 1996<sup>192</sup>, thus covering the temporal jurisdiction of the TRC by close to three years.

This means that the TRC was already in place before the SCSL came into existence. Therefore, there was a need to reconcile and co-ordinate the relationship between the two institutions, because there were instances when their period of operation and mandate overlapped and during which some events, witnesses, victims, perpetrators, and evidence were relevant to both bodies<sup>193</sup>. For this reason NGOs and the UN expressed their concern about the issue of the need to co-ordinate the two institutions. The expectation of the United Nations in this respect is set out in the report of the Secretary General at Paragraph 8:

'The present report...does not address in detail specifics of the relationship between the Special Court and the national courts in Sierra Leone or between the Court and the National Truth and Reconciliation Commission. It is envisaged, however, that upon the establishment of the Special Court by the appointment of its Prosecutor, arrangements regarding co-operation, assistance and sharing of information between the respective courts would be concluded and the status of detainees awaiting trial would be urgently reviewed. In a similar vein, relationship and co-operation arrangements would be required between the Prosecutor and the National Truth and Reconciliation Commission, including the use of the Commission as an alternative to prosecution, and the prosecution of juveniles, in particular'<sup>194</sup>.

What is more, a special group of experts was convened to address the issue. But specific important issues, such as 'information sharing, their respective powers to compel the appearance of witnesses and accused, and the submission of evidentiary material', were not addressed explicitly<sup>195</sup>. These issues are important because, unless they are regulated, they might have adverse effects on the functions and mandate of the two institutions, as well as on the rights of the accused. For instance, the SCSL might force the TRC to share information, thus making vulnerable any protection of confidentiality the TRC extends. This possibly could lead to a violation of the right to a fair trial of the accused. Or, as we shall see from what follows, the SCSL might deny the TRC an opportunity to hear the person charged before the SCSL publicly. This means that the TRC could end up not discovering or uncovering the full causes of the deep-rooted conflict in Sierra Leone.

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<sup>191</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (n 26 above).

<sup>192</sup> Statute of the SCSL (n 25 above) art 1.

<sup>193</sup> EM Evenson (n 38 above) 744.

<sup>194</sup> Report of the Secretary General on the Establishment of a Special Court for Sierra Leone, 4 October 2000, UN Doc. S/2000/915; Archbold (International Criminal Courts), Appendix E2 <[http://www.afrol.com/Countries/Sierra\\_Leone/documents/un\\_sil\\_court\\_041000.htm](http://www.afrol.com/Countries/Sierra_Leone/documents/un_sil_court_041000.htm)> (accessed 8 October 2006). See also *Prosecutor v Norman*, Case No SCSL-2003-08-PT para 8 <<http://www.scs-sl.org/Documents/SCSL-03-08-PT-122.html>> (accessed 8 October 2006).

<sup>195</sup> Sierra Leone : Humanitarian Situation Report 01 -31 Jan 2002 <<p://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/1aafc56858311d32c1256b5300527412>> (accessed 8 October 2006). See also Evenson (n 38 above) 744.



However, in the absence of an agreement establishing the SCSL that reflected more careful consideration of these issues of co-ordination, the Court held in *Case Prosecutor v Hinga Norman* that the SCSL has primacy over all national courts and national institutions, including the TRC, by virtue of Article 8 of the Court's Statute. In part, the SCSL stated the following:

'The Special Court was given, by Article 8 of its Statute, a primacy over the national courts of Sierra Leone (and, by implication, over national bodies like the TRC). It has an overriding duty to prosecute those alleged to bear the greatest responsibility for the war, with which duty the Government bound itself to co-operate. There was nothing in the Court's Agreement or Statute which required the Court to compromise its justice mission by deferring to local courts or national institutions'<sup>196</sup>.

Accordingly the TRC must comply with the orders and instructions given by the SCSL.

The consequences of this decision were so devastating that the TRC was prevented from conducting public hearings involving some of the ring leaders of the conflict. Amongst them was Sam Hinga Norman<sup>197</sup>. Their confession would have been critical to the full understanding of the nature and course of the conflict and thus important to the completion of the TRC's mandate<sup>198</sup>.

Overall, this also implies that the SCSL can use coercive measures to force the TRC to share information, thus making self-incriminating evidence admissible in its proceedings<sup>199</sup>. The primacy of the SCSL over the TRC has the effect of making vulnerable any protection of confidentiality the TRC extends. In consequence of the SCSL's ruling on the functional relationship between itself and the TRC, the latter has to comply with the SCSL's directives.

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<sup>196</sup> *Prosecutor v Norman*, Case No SCSL-2003-08-PT (n 194 above) para 4.

<sup>197</sup> WA Schabas, 'Conjoined Twince of Transitional Justice' (2004) 2 *Journal of International Criminal Law* 1092-1098. See also N Boister, 'Failing to get to the heart of the matter in Sierra Leone: The Truth Commission is Denied Un restricted Access to Chief Hinga Norman' (2004) 2 *Journal of International Criminal Justice* 1102.

<sup>198</sup> *Prosecutor v Norman*, Case No SCSL-2003-08-PT (n 188 above), para 20-25. See also B Nowrojee, 'Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims (2005) 18 *Harvard Human Rights Journal* 103.

<sup>199</sup> *Prosecutor v Norman*, Case No SCSL-2003-08-PT (n 194 above) para 20.

### 4.3.3 Trial inefficiency

#### 4.3.3.1 Delay of trials

The SCSL has decided numerous written motions in an efficient manner. However, in certain cases it delayed in arriving at a decision, thereby compromising the fair trial rights of the accused. For example, numerous motions submitted by the accused from the CDF, AFRC and RUF on a number of issues were decided by the Court after considerable delays. The Court took from four to eleven months to decide many different motions. This undoubtedly impinges negatively on the right of the accused to a fair trial<sup>200</sup>.

There are several reasons given for the delay, including the numerous *amicus curiae* submissions and the change in SCSL Rule 72 in August 2003<sup>201</sup>. However these rationalizations could not justify the sluggish procedures of the Court, because even after the last submissions of the *amicus curiae*, the Appeals Chamber took between three and five months to resolve these claims<sup>202</sup>. Besides, the change effected to Rule 72 was indeed meant to avoid delays that would undermine the detainees' rights to be tried fairly, and expeditiously<sup>203</sup>. The SCSL has therefore to redouble its work output to avoid such delays and to uphold the procedural rights of the accused.

#### 4.3.3.2 Witnesses exposure to risk

At the risk of repetition, I need to emphasise that the successful prosecution of cases involving war crimes depends on the availability of credible witnesses, which in turn requires that witnesses are confident that they can testify truthfully and without fear of retribution. This

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<sup>200</sup> Brining Justice: The Special Court for Sierra Leone (n 109 above). See also Human Rights Watch (n 15 above) 10-11.

<sup>201</sup> Brining Justice: The Special Court for Sierra Leone (n 109 above).

<sup>202</sup> As above.

<sup>203</sup> See Rules of Procedure and Evidence of the SCSL Adopted on 16 January 2002, as amended on 7 March 2003, as amended on 1 August 2003, as amended on 30 October 2003, as amended on 14 March 2004, as amended on 29 May 2004, as amended 14 May 2005, as amended 13 May 2006 <http://www.scs-l.org/rulesofprocedureandevidence.pdf> (accessed 27 October 2006). Rule 72 of the Rules of Procedure and Evidence of the SCSL was amended on 29 May 2004. This Rule was changed to eliminate review by the Trial Chamber for certain preliminary motions, namely those made prior to the prosecutor's opening statement, which raise a serious issue relating to jurisdiction or an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial. The revised rule also provided that such motions will be referred to a bench of Appeals Chamber judges, where they will proceed to a determination as soon as practicable.

is particularly important for witnesses who want to give their testimony before the SCSL's for a number of reasons<sup>204</sup>. These include *inter alia* deficiencies within the Sierra Leonean police and Republic of Sierra Leone Armed Forces<sup>205</sup>. Sierra Leone is a small country and has no witness protection experience. The easy accessibility of the Court to the public and the nature of close-knit communities that exist in Sierra Leone also render witnesses more vulnerable to being identified than if the court were located outside the country where the crimes occurred<sup>206</sup>. Besides, witness can be identified<sup>207</sup> by the substance of their testimony even though their identity is withheld. In addition, not all witnesses address the court through voice distortion equipment<sup>207</sup>.

Despite the high degree of risk that exist for witnesses in Sierra Leone, however, there were a number of instances, identifying information about a witness whose identity needed to be kept confidential has been improperly disclosed in the courtroom. Some disclosure has been attributable to defence counsel, the accused, or the prosecution, while in some cases it has been the judges who disclosed the identity<sup>208</sup>. In view of this state of affairs, witnesses run a substantial risk in giving testimony. It is therefore incumbent on all participants in the case, which is to say, principally the judges, prosecution, and defence counsel, to ensure that identifying information about a witness whose identity is protected, is secured during proceedings. This is necessary to avoid re-traumatisation of witnesses. Overall it could also create a disincentive for witnesses to testify unless the Court addresses it early.

#### **4.3.3.3 Deficiency in the performance of a Defence counsel**

One of the requirements of fair trial is that the accused must have competent legal representation. High quality representation is also important in SCSL given the complex nature of the cases and high level of responsibility of the people indicted.

The SCSL has adopted a high, standard criterion and strict rules in its recruitment procedures to ensure that defence lawyers are properly qualified<sup>209</sup>. In addition to this, Sierra Leonean and international counsels were made to work together side by side. This is to ensure the

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<sup>204</sup> Human Rights Watch (n 15 above) 21.

<sup>205</sup> United Nations Security Council, Twenty-first report of the Secretary-General on the United Nations Mission in Sierra Leone (n 139 above).

<sup>206</sup> Human Rights Watch (n 15 above) 21.

<sup>207</sup> As above.

<sup>208</sup> Human Rights Watch (n 15 above) 22.

<sup>209</sup> Human Rights Watch (n 15 above) 17.

high quality of representation. The idea has been to combine expertise and experience as both international law and Sierra Leonean law are applied in the proceedings<sup>210</sup>.

Notwithstanding the innovative efforts made by the Office of Defence to ensure high caliber legal representation for the accused, problems impeding optimal performance persist. These include problems with effective cross-examination by defence counsel, including failure to lay an adequate foundation for questioning and failure to address core issues in their client's case. Inadequate preparation, poor quality of motions, and insufficient knowledge of international law were also identified as shortcomings<sup>211</sup>.

#### **4.3.4 Limited credibility and impact**

##### **4.3.4.1 Non-prosecution of child offenders**

Children were active combatants in the civil war in Sierra Leone<sup>212</sup>. They were often perpetrators of amputations, sexual assaults and summary executions<sup>213</sup>. Yet some of these children were themselves victims, abducted from their families and drugged by their leaders before they were sent to kill and destroy<sup>214</sup>. Young boys often held leadership positions, up to the rank of Brigadier<sup>215</sup>. Many Sierra Leoneans would like to see juveniles tried for their crimes<sup>216</sup>.

International law also supports the trial of juveniles who fall between the ages of 15-18 at the time of the commission of the crime. The Convention on the Rights of the child<sup>217</sup> and the International Covenant on Civil and Political Rights hereafter the (ICCPR)<sup>218</sup> make provision for juveniles to be prosecuted. This is provided for by the UN Standard Minimum Rules for the Administration of Juvenile Justice 1985<sup>219</sup>, the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990<sup>220</sup> and the UN Guidelines for the Prevention of

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210 As above.  
211 As above.  
212 Schocken (n 24 above) 449.  
213 As above.  
214 Tejan-Cole (n 6 above) 117.  
215 Schocken (n 24 above) 449  
216 As above.  
217 Convention on Rights of Child. Arts37 & 40.  
218 Art 14(4).  
219 The Beijing Rules adopted by the UN General Assembly Resolution 40/33 of the November 1985.  
220 Tejan-Cole (n 6 above) 117.

Juvenile Delinquency<sup>221</sup>. The law of Sierra Leone and the Statute of the SCSL also provide for juvenile justice<sup>222</sup>.

However, the personal jurisdiction of the SCSL is limited only to persons” who bear the greatest responsibility for the Commission of the crimes”. Accordingly, the Court has indicted 13 people none of whom are children. This has affected the credibility of the Court at a national level especially within the victim’s community as all suspected children of committing serious human rights violations are walking free. But the TRC offered children a plat form to talk about their experiences as victims , but also as perpetrators .For former child soldiers this provides an opportunity to confess the atrocities they committed during the war , to ask for forgiveness , and hence to support their integration into their former communities<sup>223</sup>.

#### 4.3.4.2 Disadvantage of the Sitting away provision of the SCSL Statute

The SCSL is located in the place where crimes were committed<sup>224</sup>. This has the advantage, unlike the ICTY and the ICTR, that the trials are taking place locally. But the Court may sit also outside Sierra Leone if necessary, according to the Rules of Procedure and Evidence of the Court<sup>225</sup>. The repercussion of this rule became very recently when former president of Liberia, Charles Taylor, the main catalyst of the Sierra Leonean civil war, appeared before the SCSL for trial but was subsequently transferred to The Hague for alleged security reasons<sup>226</sup>. This has created a real risk that his trial will be rendered distant and less meaningful to the people most affected by the crimes he committed and planned<sup>227</sup>. This has also created a huge responsibility on the Court to ensure that the proceedings of Taylor’s trial be made accessible in Sierra Leone and across West Africa<sup>228</sup>. This requires the Court to implement robust outreach activities such as video and audio summaries of the

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<sup>221</sup> Te Riyadh Guidelines adopted by the UN General assembly Resolution 45/112 of 14 December 1990.

<sup>222</sup> Tejan-Cole (n 6 above) 117.

<sup>223</sup> A May , *‘Dealing With The Past : Experience of transitional justice , truth and reconciliation processes after period of violent conflicts in Africa’* (2006) 21.

<sup>224</sup> The Special Court for Sierra Leone is located in the country’s capital, Freetown (n 8 above).

<sup>225</sup> Rules of Procedure and Evidence of the SCSL Adopted on 16 January 2002, as amended on 7 March 2003, as amended on 1 August 2003, as amended on 30 October 2003, as amended on 14 March 2004, as amended on 29 May 2004, as amended 14 May 2005, as amended 13 May 2006

<sup>226</sup> <<http://www.sc-sl.org/rulesofprocedureandevidence.pdf>> (accessed 27 October 2006) Art. 4.

<sup>227</sup> Charles Taylor: Hague Trial must be Accessible to West Africans

<sup>228</sup> <<http://hrw.org/english/docs/2006/06/20/liberi13590.htm>> ( accessed 16 October 2006)

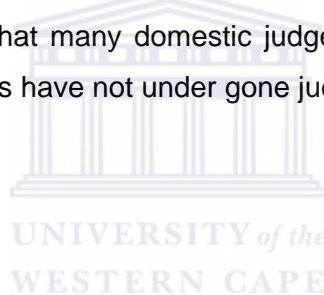
<sup>227</sup> As above.

<sup>228</sup> As above.

trial for dissemination throughout the country<sup>229</sup>. Given the Court's Scarce resources, it remains to be seen if all these outreach activities will eventually materialise.

#### 4.3.4.3 Limited impact on the Sierra Leone judicial system

As was analysed in Chapter Three of this thesis, the decade-long civil war has left the Sierra Leonean judiciary weak. One of the main reasons for locating the SCSL in Sierra Leone was to strengthen the national judiciary by building human capital and the pool of legal expertise<sup>230</sup>. This has been achieved to some extent as there are many Sierra Leoneans working in the SCSL<sup>231</sup>. However the SCSL has yet to achieve its broad goals. Several of the lawyers employed by the SCSL are either from private practice or from Sierra Leoneans living outside the country, who are less likely to go back and work with the government's judiciary<sup>232</sup>. According to the statute of the SCSL the Sierra Leone government is entitled to appoint four Sierra Leonean judges to the Chambers of the SCSL, however it has appointed only two Sierra Leonean judges. The other two are appointees are a U.K judge and one from Samoa<sup>233</sup>. The lack of more local representation on the benches is due to the fact that many domestic judges are either retired or over seas<sup>234</sup>. Besides, national court judges have not undergone judicial training offered by the SCSL<sup>235</sup>.



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As above.  
Security Council resolution 1315 (2000) on the situation in Sierra Leone (n 7 above).  
Justice in motion: The Trial Phase of the Special Court for Sierra Leone (n 131 )  
above).  
Human Rights Watch (n 15 above) 37.  
Chambers <<http://www.sc-sl.org/chambers.html>> (accessed 29 October 2006).  
Human Rights Watch (n 15 above) 37.  
As above.

## 5. CONCLUSIONS AND RECOMMENDATIONS

The civil war in Sierra Leone has left the country destroyed. Between 100,000 and 200, 000 people were killed and tens of thousands were mutilated. The SCSL is helping the country to deal with its past and to punish those most responsible for this death and destruction. In this regard the Court has been able to establish accountability, Rule of Law and to end a culture of impunity in a society in which the Rule of Law was dwnetrodden altogether.

Apart from this, the Court has accomplished much in certain areas. These include the establishment of the independent Defence Office, which generally enjoys a higher level of institutional support than the other UN international *ad hoc* tribunals tribunals. The office of the Principal Defender provides a counterbalance to the prosecution. In this regard the SCSL complies with the principle that adversarial trials should manifest an “equality of arms”. The Court has also come up with two other novel institutional developments as part of its legacies. These are the establishment of domestic witness protection office that is envisaged to help the domestic courts of Sierra Leone, and the opening of independent radio station that will broadcast the Special Court’s proceedings in English and Kirio. The radio will also broadcast other related programmes, one focusing on issues of national justice system, workings of the TRC, and human rights matters. However the implementation of the latter two projects remains a matter of concern, as the Court is suffering from lack of financial resources.

Outside this, the Court has added value to international criminal justice by enumerating new jurisprudences in the areas of child recruitment, forced marriage, application amnesty to international crimes, and doctrine of sovereign immunity.

The Court is also in the process of bequeathing Sierra Leone with a heritage of justice and an indelible legacy of the need to protect human rights. The location of the Court in the place where the crimes were committed has made easier for the people who need to participate, or at least, to witness justice at close range. The Court is also enhancing the Sierra Leone judicial system as a significant number of Sierra Leoneans are working in almost all sections and organs of the Court. The Court will also leave a tangible legacy; the court house with its full facilities to the state of Sierra Leone.

Despite the aforementioned achievements the SCSL appears to have a number of shortcomings and faces serious challenges that implicate the overall operations of the Court, thus placing the issue of justice delivery into question.

To begin with, the court has only limited temporal, personal and territorial jurisdiction. Thus, it responds only partially to ending abuse and a culture of impunity. Lack of funding persists as the main impediments in the operation of the Court. Courts cannot be run without significant funding since they require qualified personnel, adequate resources and institutional support. Therefore the issue of funding needs to be addressed to enable the Court to fairly and effectively complete its operations and conduct necessary residual activities during the court's post-completion phase.

Proceedings in the SCSL remain inefficient in many ways. Substantial delays in decisions on motions continue to exist. In court proceedings judges, accused, prosecution and defence counsel have at times inadvertently disclosed the identity of witnesses. Despite the improvement in the Defence Office, performance of some defence counsel remains deficient. The Court needs to make improvements in these areas to guarantee fair and effective trials and also to protect the safety of witnesses.

One of the main reasons that made the SCSL to be located in Sierra Leone was to strengthen the weak judicial system of the country through various means such as on-the-job trainings. For several reasons the impact of the SCSL on the national justice system has thus far been limited. The government of Sierra Leone and the SCSL need to ensure that the Sierra Leone judiciary benefits from the presence of the SCSL as it was envisaged at the beginning and stipulated in the UN Security Council Resolution.

Charles Taylor has been already transferred to The Hague to face his trial. This has made it hard for the victims to gain access to his trial. The international community needs to assist the SCSL to ensure that Taylor's trial be made accessible to people in Sierra Leone and across West Africa through robust outreach activities such as video and audio summaries of the trials.

Finally, I hope that the lessons detailed in this thesis will help to inspire policy makers to replicate its successes elsewhere while avoiding its pitfalls.

Word Count 16715 (excluding table of contents, bibliography and annexes)



## **ANNEXURE "A"**

### **ITINERARY**

#### **CENTRE FOR HUMAN RIGHTS PRETORIA UNIVERSITY VISIT TO THE SPECIAL COURT FOR SIERRA LEONE**

**4 - 14 APRIL 2006**

##### **Day 1: Tuesday, 4 April 2006**

**17:10** Arrival by Kenya Airways

**18:20** Transfer to Hill Valley Hotel

##### **Day 2: Wednesday, 5 April 2006**

9:15 RUF trial - Courtroom I

13:00 Brief tour of the Special Court (Mariatu)

13:15 Lunch - Special Fork (Cafeteria)

14:30 Briefing by the Registrar - Registry Conference Room  
(Mr. Lovemore Munlo)

15:30 Briefing by the Prosecutor - OTP Conference Room  
(Mr. Desmond de Silva)

16:30 Briefing with Saleem Vahidy -  
Chief of Witness and Victims Support  
(Registry Conference Room)

##### **\*\*\*\* Day 3: Thursday, 6 April 2006**

9:15 RUF trial Courtroom 1

13:00 Lunch at the Special Fork

2:00 Briefing with Legal Officer TC2  
-AFRC - Simon Meisenberg  
(Registry Conference Room)

2:30 RUF trial continues

**Day 4: Friday, 7 April 2006**

09:30 Briefing with Barry Wallace  
Chief of Detention Facility  
(Registry Conference Room)

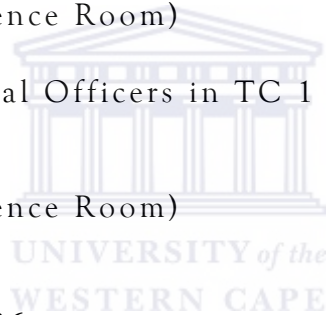
10:30 Briefing by the Principal Defender  
Vincent Nmehielle  
(Registry Conference Room)

11:30 Meeting with Peter Andersen  
(Deputy Chief, Press & Public Affairs  
Conference room - Registry)

12:30 Lunch

14:00 Briefing with Outreach Coordinator - (Binta Mansaray)  
(Registry Conference Room)

15.00 Briefing with Legal Officers in TC 1  
-CDF - Candice  
-RUF- Roza  
(Registry Conference Room)



**Day 5: Saturday, 8 April 2006**

08:00 Research time in Freetown  
Suggested locations: Siaka Stevens Street,  
Lightfoot Boston Street  
Lumley / Regent Road junction

16:00 Visit to the American Ambassador's residence

**Day 6: Sunday, 9 April 2006**

09:00 Visit to River No. 2 beach - Sussex

16:00 Return to Freetown.

**Day 7: Monday 10 April 2006**

08:00 Practicals for the whole day with:

- Ahmaddya Muslim Secondary School
- LAWCLA
- Blind School (TBC)

18:00 Return Home

**Day 8: Tuesday, 11 April 2006**

09:30 Forum for African Women Educationalist (FAWE)  
4 Hill Street (by Fort Street) (Ms Hancils - 022 227076)

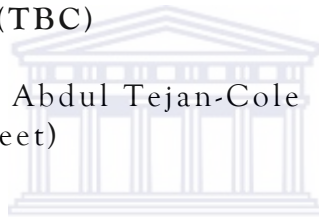
11:00

13:00 Lunch

14:30 National Commission for Social Action (NaCSA) (TBC)  
Pultney Street

16:00 National Electoral Commission (Ms.Christiana Thorpe)  
076 - 611 - 525 (TBC)

18:30 Meeting with Mr. Abdul Tejan-Cole  
(18 Charlotte Street)



**\*\*\* Day 9: Wednesday, 12 April 2006**

09:30 National Accountability Group (Salia Kpaka)  
022 - 240995

11:00 National Commission for War Affected Children(NACWAC)  
(TBC)  
Ms. Bintu Magona (Coordinator) (TBC)

12:30 Lunch

14:00 Briefing with ICRC - Caroline Douilliez ??????????  
(Wilkinson Road, Behind Monoprix supermarket) (TBC)

16:00 Inter-religious Council - Rev. Moses Kanu  
(Youth Centre - 30 Garrison Street) 076-628-042

**Day 10: Thursday, 13 April 2006**

09:30 Personal Research  
11:00 Anti-Corruption Commission  
13:00 Lunch Time  
14:15 National Forum for Human Rights  
29B Waterloo Street (Alfred Carew)  
076 - 663 - 343

**Day 11: Friday, 14 April 2006**

09:15  
10:30  
12:00 Lunch  
14:00 Depart for helipad  
14:30 Arrival at helipad  
15:00 Helicopter flight to Lungi  
16:00 Check-in  
18:10 Take-off by Kenya Airways



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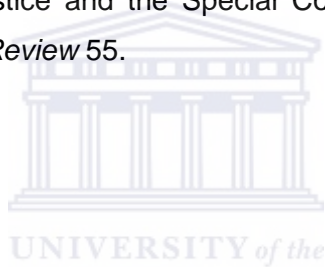
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