



SIERRA LEONE: INTERACTION BETWEEN INTERNATIONAL AND NATIONAL RESPONSES TO THE MASS ATROCITIES

BY SIGALL HOROVITZ

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ABOUT DOMAC

THE DOMAC PROJECT focuses on the actual interaction between national and international courts involved in prosecuting individuals in mass atrocity situations. It explores what impact international procedures have on prosecution rates before national courts, their sentencing policies, award of reparations and procedural legal standards. It comprehensively examines the problems presented by the limited response of the international community to mass atrocity situations, and offers methods to improve coordination of national and international proceedings and better utilization of national courts, inter alia, through greater formal and informal avenues of cooperation, interaction and resource sharing between national and international courts.

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EXECUTIVE SUMMARY

The civil war in Sierra Leone involved unspeakable mass atrocities. Nonetheless, most perpetrators were exempt from prosecution in national courts by a government-granted blanket amnesty. In 2002, the United Nations and the Government of Sierra Leone jointly established the Special Court for Sierra Leone (hereinafter: Special Court). By this act, the international community sought to send a message that impunity for international crimes cannot be tolerated.

Due to its limited mandate and resources, the Special Court only prosecuted ten high ranking individuals. Thousands of perpetrators still walk free in Sierra Leone, including fairly senior mid-level commanders who perpetrated some of the war's worst atrocities. This situation can seriously undermine the Special Court's message of accountability. Although the national Truth and Reconciliation Commission associated the atrocities with some of the parties to the conflict, and even named some specific perpetrators, it was not designed to establish individual criminal responsibility. There were two national trials in Sierra Leone for war-related crimes, but these only concerned relatively minor crimes connected to the hostilities of 2000. The worst atrocities occurred before July 1999, but the national amnesty prevents their prosecution by Sierra Leonean courts.

The position forwarded in this report is that in order to effectively fight impunity for international crimes, the international community should promote the parallel utilization of international and national courts. This is mainly because of the limited capacity of international (or hybrid) courts. One way to do this is by designing international (or hybrid) courts in a manner which encourages parallel national trials of minimum fairness standards.

In the case of Sierra Leone, such a comprehensive approach was not adopted and the world's attention focused solely on trials at the international level. Still, these international trials had certain positive impacts on national justice in Sierra Leone, including impacts which could encourage national prosecutions for war-related crimes, or improve their quality. This report purports to identify these impacts and propose ways to maximize them.

In preparing this report, documentary material was analysed and 20 experts were interviewed. The interviewees were all core professionals involved either in the Special Court or the Sierra Leonean national justice system, including top legal and judicial policy makers at both systems. The findings of the report indicate that while the Special Court did (and still does) have a certain degree of impact on the level of national capacity to handle criminal proceedings in Sierra Leone, it had no impact on the quality or rates of war-related domestic prosecutions. In fact, it may have even had a discouraging effect on national war-related prosecutions in Sierra Leone. In addition, the Special Court had no impact on the sentencing practices applied in connection with national war-related prosecutions in Sierra Leone.

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LIST OF ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
APC	All People's Congress
CDF	Civil Defence Forces
DFID	UK Department for International Development
EC	European Commission
ECOMOG	Economic Community of West African States Cease-fire Monitoring Group
EO	Executive Outcomes
EU	European Union
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
JSDP	Justice Sector Development Programme
NGO	Non-governmental organization
NPRC	National Provisional Ruling Council
OTP	Office of the Prosecutor
RUF	Revolutionary United Front
RUFP	Revolutionary United Front Party
SLA	Sierra Leone Army
SLPP	Sierra Leone People's Party
TRC	Truth and Reconciliation Commission
UK	United Kingdom
UN	United Nations
UNAMSIL	United Nations Mission to Sierra Leone
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNIPSIL	United Nations Peacebuilding Office in Sierra Leone
UNOMSIL	United Nations Observer Mission to Sierra Leone
US	United States
USAID	United States Agency for International Development
WSB	West Side Boys
WVSU	Witness and Victim Support Unit

1. INTRODUCTION

From March 1991 to January 2002, Sierra Leone was engaged in a brutal civil war. Mass atrocities against the civilian population were committed by all factions involved, including murder, sexual crimes, amputation of limbs, abductions, recruitment of child soldiers, and burning of villages. A blanket amnesty was granted by the government on 7 July 1999, protecting all combatants from prosecution by national courts for all crimes committed until that date. On 16 January 2002, the United Nations (hereinafter: UN) and the Government of Sierra Leone jointly established the Special Court for Sierra Leone (hereinafter: Special Court) to prosecute key perpetrators of the war's atrocities. It was believed that such a system of justice would "end impunity" in Sierra Leone and "contribute to the process of national reconciliation and to the restoration and maintenance of peace."¹

In light of its limited jurisdiction and budget, the Special Court indicted only 13 high ranking suspects. In 2003, the Sierra Leone Police cooperated with the Special Court in arresting most of the Court's indictees, including a government minister who was apprehended in his office. The Special Court subsequently started its trials, eventually prosecuting a total of ten individuals. National courts did not prosecute wartime atrocities, aside from very few exceptions regarding crimes committed after the amnesty was granted. Thus, while the Special Court is trying a handful of "big fish", and the national courts are prosecuting very few "small fry", all the mid-level perpetrators enjoy freedom sanctioned by the national amnesty. According to various reports, some of these mid-level perpetrators committed some of the worst atrocities.

1.1 OBJECT OF REPORT

The position of this report is that international courts, due to their limited capacity, have a greater chance to end impunity in the countries they address if their process is

¹ UNSC Res 1315 on the Establishment of a Special Court for Sierra Leone (14 August 2000) UN Doc. S/RES/1315 (hereinafter: UNSC Resolution on the Establishment of the Special Court), preamble, para. 7.

complemented by national prosecutions of minimum fairness standards.² The absence of national prosecutions could lead to an “accountability gap” which could prevent the eradication of impunity. This is particularly so in the case of Sierra Leone, where some of the mid-level perpetrators not prosecuted by the Special Court are considered to have committed serious atrocities (see section 6.2 below). In this light, the report considers that the Special Court’s message of accountability could be significantly undermined if only a few individuals are tried for Sierra Leone’s wartime atrocities, while thousands of perpetrators walk free.

The Special Court was not mandated to proactively promote national prosecutions of atrocity crimes. However, its process may have had certain impacts on national proceedings in Sierra Leone. The object of this report is to identify these impacts, in the following four areas: (1) the *application of international norms* in domestic proceedings which address atrocity crimes; (2) *rates and trends* of domestic prosecutions of atrocity crimes; (3) domestic *sentencing practices* in relation to atrocity crimes; (4) *national capacity* to handle domestic prosecutions of atrocity crimes. After identifying the Special Court’s impacts on national proceedings, the report will offer ways to maximize any positive impacts identified.³

1.2 STRUCTURE AND METHODOLOGY

Chapters 2 and 3 of the report provide a general background on Sierra Leone and its civil war. In Chapter 4, the report outlines the political and legal conditions in Sierra Leone after the war, in an attempt to identify the willingness and ability of the local authorities to prosecute the war’s atrocities. Chapter 5 describes the national response to the atrocities, which included the establishment of a truth commission in lieu of prosecutions for crimes covered by the amnesty, and the holding of two national trials involving a total of 88 persons accused of crimes falling outside the temporal scope of the amnesty. Chapter 6 describes the international response to the atrocities, namely, the establishment and process of the Special Court. In Chapter 7, the cooperation between the Special Court and the national justice system in Sierra Leone is discussed.

² These national prosecutions, in order to contribute to the fight against impunity, must meet minimum fairness standards, as to not amount to “victor’s justice” or “sham trials”.

³ Impacts of international courts on national proceedings can be positive or negative. Positive impacts can occur when the activities of the international court entail an increase in rate or an improvement in quality of national war-related prosecutions. However, if the operation or existence of the international court motivates the national courts to remain inactive about prosecuting the atrocities, this is a negative impact.

Chapter 8 assesses the impacts that the Special Court had on national criminal proceedings in Sierra Leone, in the four above-mentioned areas (see section 1.1 above). Chapter 9 concludes the report and provides recommendations on how to maximize the Special Court's positive impacts on national proceedings in Sierra Leone.

This report is based on information provided in interviews with 20 core professionals affiliated with the Special Court or the Sierra Leonean justice system, as well as documentary materials such as Special Court and national case-law, UN documents, academic articles, news items, NGO reports, etc. The interviews were conducted by the author between July and November 2008, during her missions to The Hague, Freetown, and Arusha. The interviewees were selected based on their seniority and knowledge of the Special Court or the Sierra Leonean justice system. Since many of the interviewees did not want the information they provided to be attributed to them, the majority of sources are cited in this report with generic references, such as "a Sierra Leonean official", or "a Special Court judge". The interviews helped in identifying the channels of cooperation between the Special Court and the national justice system, and the resulting (positive or negative) impacts of the former on the latter. They also provided proposals, informed by their particular experiences, on how to maximize positive impacts of the Special Court on the national system.

The difficulties encountered while preparing this report included the lack of publicly available Sierra Leonean judgments, which could have helped assess the impacts of the Special Court on national proceedings. Instead, in relation to national case law, aside from a print-out of one judgment which was provided by an interviewee, the author had to rely exclusively on information given orally in interviews. Nonetheless, it is stressed that the interviewees included Sierra Leonean legal professionals who were involved in relevant national cases. One such interviewee explained that judgments in Sierra Leone are not published. He noted that in national courts, submissions are made orally and off head, and there are no court reporters. During the trial, the judge takes notes and in the end renders the judgment orally. For it be printed, the court clerk must ask the typist to type the judgment.⁴

⁴ Interview notes with author.

2. COUNTRY BACKGROUND

2.1 GENERAL

The Republic of Sierra Leone is a small West African state covering an area of 71,740 sq km. Freetown is its capital. Sierra Leone is bordered by Liberia to its south and Guinea to its north and east. The Atlantic Ocean forms its western border, with 400 km of attractive coastline. The country is abundant in agricultural and mineral resources. Sierra Leone has a population of about six million inhabitants, composed of 18 ethnic groups. About 60% are Muslim and the rest are either Christian or practice indigenous religions. Sierra Leone is ranked lowest on the UNDP Human Development Index for 2007/2008.⁵

In 1808, Freetown became a British Crown Colony and in 1896, the interior of the country became a British Protectorate. Sierra Leone gained independence from British rule on 27 April 1961. In 1968, the All People's Congress (hereinafter: APC) became the ruling party and remained in power until 1992. The APC regime was known for its rampant corruption, false imprisonments, and bad one-party governance.⁶ Thus, Sierra Leone experienced serious human rights violations even before the commencement of the civil war in 1991. According to the Sierra Leone Human Rights Commission, "[b]ad governance, endemic corruption and the denial of human rights together with their attendant consequences made conflict inevitable".⁷ During the war, the APC government was overthrown on 29 April 1992, by army officers who established a military government called the National Provisional Ruling Council (hereinafter: NPRC). On 26 February 1996, Ahmad Tejan Kabbah of the Sierra Leone People's Party (hereinafter: SLPP) was elected President in democratic elections.

2.2 POLITICAL, ADMINISTRATIVE AND LEGAL SYSTEMS

Sierra Leone is a republic with an executive president, a multi-party government system, and a 124-seat parliament (112 elected members and 12 paramount chiefs). Freetown

⁵ US Central Intelligence Agency (CIA), 'The World Factbook: Sierra Leone' <<https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html>> accessed 30 May 2009; UN Development Programme, 'Human Development Index for 2007/2008' <<http://hdr.undp.org/en/statistics>> accessed 30 May 2009.

⁶ No Peace Without Justice, 'Conflict Mapping in Sierra Leone: Violations of International Humanitarian Law from 1991 to 2002: Executive Summary' (by A. Smith, C. Gambette and T. Longley, 10 March 2004) <<http://www.specialcourt.org>> accessed 30 May 2009 (hereinafter: NPWJ Executive Summary), pp. 13-33.

⁷ The Human Rights Commission of Sierra Leone, 'First Annual Report on the State of Human Rights in Sierra Leone 2007' (March 2008) (hereinafter: HRC-SL 2007 Report). Copy with author.

and its rural surroundings are known collectively as the Western Area. The Western Area has a rural area council and a city council for Freetown. Outside the Western Area there are district and town councils. The basic administrative unit outside the Western Area is the chiefdom, headed by a paramount chief who is elected for a life term. According to some reports, chiefdom and council authorities have recently started to collect taxes.⁸

Two legal systems co-exist in Sierra Leone – the common law system and the customary law system. The common law system is operated through Sierra Leone's Supreme Court, Court of Appeals, High Court, and magistrate courts. The president appoints and parliament approves justices for the three higher courts. While the common law system is widely accepted in Freetown, most people in the provinces follow the customary law system. The customary law system is operated by the chiefdom authorities, which are funded by local taxes and include local police and courts of first instance and appellate jurisdiction. The customary legal system encompasses the laws of local communities, which are based on ethnic cultures and the wisdom of elders. In the customary law setting, the chief often acts as the judge, although his decisions are not recognized by Sierra Leone's law. Most people turn to the chief after failing to resolve their disputes through secondary dispute resolution mechanisms operated by respected members of their community, such as religious leaders, professional and gender groups, and secret societies.⁹

The principle legal advisor to the Government of Sierra Leone is the Attorney General who is also the country's Minister of Justice.¹⁰ His principle assistant is the Solicitor General.¹¹ The national prosecution is headed by the Director of Public Prosecutions, who reports to the Attorney General.¹² Minimum due process and human rights guarantees are provided in the national Constitution of 1991.¹³ International crimes are not defined as crimes under Sierra Leone's national law, and although Sierra Leone has ratified the Rome Statute of the International Criminal Court (hereinafter: ICC), it has

⁸ US Department of State, 'Background Note: Sierra Leone' (June 2009) <<http://www.state.gov/r/pa/ei/bgn/5475.htm>> accessed 25 August 2009.

⁹ National Forum for Human Rights (Sierra Leone), 'The Law People See - The Status of Dispute Resolution in the Provinces of Sierra Leone in 2002' (by O. Alterman, A. Binienda, S. Rodella and K. Varzi, January 2003) <http://www.daco-sl.org/encyclopedia/8_lib/8_3/research/lawpeoplesee.pdf> accessed 30 May 2009, pp. 4-5.

¹⁰ The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991) <<http://www.sierra-leone.org/Laws/constitution1991.pdf>> accessed 25 August 2009 (hereinafter: Sierra Leone Constitution of 1991), Article 64.

¹¹ Sierra Leone Constitution of 1991 (n 10), Article 65.

¹² Sierra Leone Constitution of 1991 (n 10), Article 66.

¹³ Sierra Leone Constitution of 1991 (n 10), Chapter III.

not yet implemented it into domestic law.¹⁴ The maximum sentence in Sierra Leone is the death penalty, which was last imposed in 1998 in connection with treason charges.¹⁵

3. CONFLICT BACKGROUND

3.1 THE CONFLICT

In March 1991, forces of the organized armed group known as the Revolutionary United Front (hereinafter: RUF), with help from Liberian forces, entered Sierra Leone from Liberia.¹⁶ The RUF declared that their aim was to overthrow the APC government. But despite this declaration, they continued to carry out attacks within Sierra Leone even after the APC government was overthrown by the NPRC military government on 29 April 1992. By late 1992, the RUF occupied diamond-rich areas and began sending gems to their foreign patrons, in exchange for weapons and logistical support. The RUF's patrons allegedly included Charles Taylor, who was the leader of the National Patriotic Front of Liberia and in 1997 became Liberia's president. In 1995, having continually lost ground to the RUF, the government hired a South African private military company called Executive Outcomes (hereinafter: EO) to assist the Sierra Leone Army (hereinafter: SLA).¹⁷ Consequently, the RUF was defeated in most areas.

As mentioned above, Ahmad Tejan Kabbah was elected President in democratic elections on 26 February 1996 (see section 2.1 above). On election-day, the RUF

¹⁴ According to Section 40(4) of the Sierra Leone Constitution of 1991 (n 10), treaties must be approved by parliament.

¹⁵ In October 1998, 24 persons were publicly executed after a military court convicted and sentenced them to death for treason charges (see note 20 below and attached text). Although death sentences were imposed in Sierra Leone after this trial, none were actually executed. As of the end of 2008, Amnesty International reported that 13 persons were on death row. See Amnesty International, 'Report 2009: The State of the World's Human Rights' (Annual Report covering the period January to December 2008) <<http://report2009.amnesty.org/en/regions/africa/sierra-leone>> accessed 13 August 2009 (hereinafter: AI 2009 World Report). Human Rights Watch reported that 12 individuals were on death row in early 2009. See Human Rights Watch 'World Report 2009: Events of 2008' <<http://www.hrw.org/en/node/79252>> accessed 13 August 2009 (hereinafter: HRW 2009 World Report).

¹⁶ NPWJ Executive Summary (n 6), pp. 13-33; International Crisis Group, 'Sierra Leone: Time for a New Military and Political Strategy' (11 April 2001) <<http://www.crisisgroup.org/home/index.cfm?id=1491&l=1>> accessed 14 August 2009; Human Rights Watch, 'Getting Away With Murder, Mutilation, And Rape: New Testimony From Sierra Leone' (24 June 1999) <<http://www.hrw.org/en/reports/1999/06/24/getting-away-murder-mutilation-and-rape>> accessed 14 August 2009; Amnesty International, 'Sierra Leone: A disastrous set-back for human rights' (19 October 1997) <<http://www.amnesty.org/en/library/info/AFR51/005/1997>> accessed 14 August 2009. These authorities were the sources of the information provided in this entire section, unless otherwise noted.

¹⁷ The Sierra Leone Army lacked adequate weapons and technical capacity. In addition, many of its soldiers were disloyal to the state, and became known as "sobels" - soldier by day, rebel by night. See more on this subject at 'Sierra Leone: Belated International Engagement Ends A War, Helps Consolidate A Fragile Democracy', in *A Diplomat's Handbook for Democracy Development Support* (2008) <http://www.diplomatshandbook.org/pdf/Handbook_SierraLeone.pdf> accessed 14 August 2009 (hereinafter: A Diplomat's Handbook), p. 82.

attacked central towns in Sierra Leone. In response, various civil militia forces, including groups of traditional hunters, united into a centralized force which became known as the Civil Defence Forces (hereinafter: CDF).¹⁸ The CDF fought alongside EO and the SLA against the RUF, until a peace agreement was eventually signed between President Kabbah and RUF leader Foday Sankoh, on 30 November 1996, in the Ivory Coast capital of Abidjan (hereinafter: Abidjan Peace Accord).¹⁹ In return for terminating the hostilities, the Abidjan Peace Accord granted RUF forces a blanket amnesty with regards to all crimes committed during the war. In addition, it required the government to terminate the activities of EO. This undertaking critically tilted the military balance in Sierra Leone, and eventually led to the recommencement of hostilities between the RUF on the one side, and the SLA and CDF on the other.

On 25 May 1997, army elements calling themselves the Armed Forces Revolutionary Council (hereinafter: AFRC) overthrew the government.²⁰ The AFRC was led by Johnny Paul Koroma, who immediately after the coup invited the RUF to join the government. Combined AFRC/RUF forces began attacking the CDF as well as civilians deemed to be collaborating with the CDF, while the CDF did the same with perceived AFRC/RUF collaborators. Consequently, the Organization of African Unity mandated the Economic Community of West African States Cease-fire Monitoring Group (hereinafter: ECOMOG) to stabilize the Freetown area. By 12 February 1998, ECOMOG forcefully drove the AFRC/RUF regime out of Freetown.²¹

President Kabbah was reinstated on 10 March 1998. Shortly after, RUF leader Foday Sankoh was found guilty of treason and sentenced to death, and was transferred to Sierra Leonean custody from Nigeria (where he was under arrest for arms dealing). Around that time, AFRC/RUF forces began attacking several strategic areas of the country, culminating on 6 January 1999 in an attack on Freetown where they committed

¹⁸ The CDF troops were also known as “Kamajors”. They were organized in local units, armed and consisting mostly of youths. The national coordinator of the CDF forces was Sam Hinga Norman, who subsequently became Deputy Defence Minister in Kabbah’s government, and was later indicted and tried by the Special Court. He died before the judgment in his case was delivered.

¹⁹ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Abidjan, 30 November 1996) <<http://www.sierra-leone.org/abidjanaccord.html>> accessed 24 August 2009 (hereinafter: Abidjan Peace Accord).

²⁰ In connection with this coup, a military court convicted 24 members of the AFRC for treason in October 1998 (after Kabbah’s government was re-installed). They were sentenced to death and publicly executed.

²¹ On their retreat from Freetown, AFRC/RUF forces committed wide-scale looting and attacks on the civilian populations in the areas through which they passed before settling mainly around the diamond-rich areas in the northern and eastern provinces. Thereafter, the intensity of the fighting increased as the factions focused on gaining control over these diamond rich areas.

some of the most appalling atrocities recorded in this war.²² They were driven away from Freetown by ECOMOG within less than a month but continued to hold much of the country.

International efforts produced a cease-fire agreement on 18 May 1999 between President Kabbah and Sankoh, who was released from prison for this purpose and acted on behalf of the AFRC/RUF.²³ This was followed by a peace agreement signed on 7 July 1999 in Lomé, Togo (hereinafter: Lomé Peace Agreement).²⁴ The Lomé Peace Agreement granted Sankoh a senior position in the transitional government and powerful political posts to other AFRC/RUF leaders.²⁵ It also accorded an amnesty to him and all combatants for all crimes committed during the conflict (hereinafter: Lomé Amnesty).²⁶ In lieu of prosecutions for the crimes committed during the war, the Lomé Peace Agreement called for the creation of the Truth and Reconciliation Commission (hereinafter: TRC).²⁷ In October 1999, the United Nations Mission to Sierra Leone (hereinafter: UNAMSIL) was established.²⁸ The AFRC/RUF forces neither disarmed nor released abducted civilians, and despite the Lomé Peace Agreement resumed attacks on the CDF and on the civilian population.²⁹

The Lomé Peace Agreement accorded an amnesty to all combatants for all crimes committed during the conflict. In lieu of prosecutions for the crimes committed during the war, the Lomé Peace Agreement called for the creation of the Truth and Reconciliation Commission.

²² According to a senior official of the Special Court, the AFRC increased its violence as a reaction to the 1998 treason trial (see note 20 above). Interview notes with author.

²³ Agreement on Ceasefire in Sierra Leone (Lomé, 18 May 1999) <<http://www.sierra-leone.org/ceasefire051899.html>> accessed 30 May 2009.

²⁴ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé, 7 July 1999) <www.sierra-leone.org/Loméaccord.html> accessed 30 May 2009 (hereinafter: Lomé Peace Agreement).

²⁵ Lomé Peace Agreement (n 24), Article V, granted Foday Sankoh the chairmanship of the Commission for the Management of Strategic Resources, National Reconstruction and Development, and the status of Vice-President. It also granted four additional cabinet posts and four Deputy Minister posts to RUF members. Johnny Paul Koroma received chairmanship of the government's Commission for the Consolidation of Peace.

²⁶ Lomé Peace Agreement (n 24), Article IX.

²⁷ Lomé Peace Agreement (n 24), Article XXVI(1).

²⁸ UNSC Res 1270 (22 October 1999) UN Doc S/RES/1270. UNAMSIL replaced the UN Observer Mission to Sierra Leone (UNOMSIL), which was established under UNSC Res 1181 (13 July 1998) UN Doc S/RES/1181.

²⁹ M.P. Scharf, 'The Special Court for Sierra Leone', ASIL Insight (October 2000) <<http://www.asil.org/insigh53.cfm>> accessed 25 August 2009, para. 3; Human Rights Watch, 'Sierra Leone Rebels Violating Peace Accord' (30 August 1999) <<http://199.173.149.120/press/1999/oct/sierra1027.htm>> accessed 14 August 2009.

In May 2000, AFRC/RUF forces took hostage and abused about 500 UN peacekeepers. That month, RUF supporters opened fire on a crowd of demonstrators who were protesting in front of Sankoh's house against the abduction of the peacekeepers.³⁰ At least 20 civilians were killed. Sankoh was subsequently arrested by the Sierra Leone authorities in connection with this event, as were over 400 individuals.³¹ Also in May 2000, British troops were deployed in Sierra Leone to deter violence and train the local army and police forces. Hostilities henceforth declined, notwithstanding sporadic incidents such as the abduction by rebels of 11 British troops in August 2000.³² Ceasefire agreements were signed in November 2000 and May 2001, and AFRC/RUF forces began disarming to UN peacekeepers.³³ On 18 January 2002, Sierra Leone's civil war was officially declared over.³⁴

3.2 THE MASS ATROCITIES

The war killed between 50,000 and 75,000 people. It rendered almost half of the country's population either internally displaced persons or refugees. Mass atrocities against civilians were committed by members of all factions involved in the war, including the RUF, AFRC and CDF. The atrocities included systematic rape and sexual violence, mutilations, murder, abduction and recruitment of child soldiers, mass pillage and burning of villages. The RUF's "trademark" was hacking off limbs with machetes. Its members would invade a village and ask the inhabitants to choose between "long sleeves" (having their hands cut off) and "short sleeves" (having their arms cut off above the elbow). Other notorious crimes committed during the war included opening the abdomens of pregnant women in order to settle bets of rebels concerning the sex of the foetus.

³⁰ Sierra Leone News (17 May 2000) <<http://www.sierra-leone.org/Archives/slnews0500.html>> accessed 14 August 2009.

³¹ Some of these individuals were later released, transferred to the SCSL, or died in prison, while 57 faced trial before the High Court in Freetown in 2005. Ten were convicted but were eventually released by the President (see section 5.2 below).

³² Sierra Leone News (26 August 2000) <<http://www.sierra-leone.org/Archives/slnews0800.html>> accessed 14 August 2009; Sierra Leone News (6 and 10 September 2000) <<http://www.sierra-leone.org/Archives/slnews0900.html>> accessed 14 August 2009. The alleged abductors were later tried by the High Court in Freetown, which convicted seven of them. Their appeal is still pending (see section 5.2 below).

³³ Ceasefire Agreement (Abuja, 10 November 2000) <<http://www.sierra-leone.org/ceasefire1100.html>> accessed 25 August 2009. This agreement was renewed in Abuja in May 2001. See Sierra Leone News (3-15 May 2001) <<http://www.sierra-leone.org/Archives/slnews0501.html>> accessed 25 August 2009.

³⁴ NPWJ Executive Summary (n 6), p. 33.

The prevalence of rape and other sexual assaults during the war resulted in the widespread increase of sexually transmitted diseases, especially HIV/AIDS. The impact on infrastructure and property was enormous – many hospitals, schools, community facilities and private houses were demolished; telephone and electric infrastructure were destroyed; roads and bridges were severely damaged. Around 45,000 ex-combatants, including 5,600 child soldiers, were disarmed and demobilized.³⁵

4. POST-WAR CONDITIONS IN SIERRA LEONE

4.1 POLITICAL WILL TO PROSECUTE THE MASS ATROCITIES

As noted above, the Lomé Peace Agreement granted a sweeping amnesty to all combatants for all crimes committed during the conflict. However, the UN representative to the peace negotiations appended a reservation to the Lomé Peace Agreement, stating that the amnesty cannot apply to international crimes.³⁶ When hostilities resumed

The Lomé Peace Agreement granted a sweeping amnesty to all combatants for all crimes committed during the conflict. However, the UN representative to the peace negotiations appended a reservation to the Lomé Peace Agreement, stating that the amnesty cannot apply to international crimes.

and 500 UN Peacekeepers were abducted by the RUF in May 2000, Sierra Leone's President Kabbah requested the UN's assistance in setting up a special court to prosecute the wartime crimes committed by the RUF.³⁷ Consequently, the Special Court

³⁵ Human Rights Watch, 'Bringing Justice: the Special Court for Sierra Leone Accomplishments, Shortcomings, and Needed Support' (September 2004) <www.hrw.org/reports/2004/sierraleone0904/index.htm> accessed 25 August 2009 (hereinafter: HRW Bringing Justice); Government of Sierra Leone, 'Sierra Leone Vision 2025: Sweet Salone: Strategies for National Transformation' (published with support from UNDP, August 2003) <www.sl.undp.org/1_doc/Vision_2025.pdf> accessed 25 August 2009, p. 32.

³⁶ This reservation is referred to in UNSC 'Seventh Report of the Secretary-General on the United Nations Military Observer Mission in Sierra Leone' (30 July 1999) UN Doc S/1999/836, <<http://www.un.org/Docs/sc/reports/1999/sgrep99.htm>> accessed 25 August 2009, paras. 7 and 54. In addition, the UN High Commissioner for Human Rights insisted that peace was incompatible with impunity, and international NGOs opposed the 'blanket' amnesty and demanded prosecutions. See Sierra Leone News (9 July 1999) <<http://www.sierra-leone.org/Archives/slnews0799.html>> accessed 14 August 2009; Amnesty International, 'Sierra Leone: A Peace Agreement but No Justice' (9 July 1999) <<http://www.amnesty.org/en/library/info/AFR51/007/1999/en>> accessed 30 May 2009; Human Rights Watch, 'U.N. Must Clarify Position on Sierra Leonean Amnesty' (12 July 1999) <<http://www.hrw.org/press/1999/juls10712.htm>> accessed 30 May 2009; Amnesty International, 'Sierra Leone: The Security Council Should Clarify the United Nations' Position on Impunity' (4 August 1999) <<http://www.amnesty.org/en/library/info/AFR51/010/1999/en>> accessed 30 May 2009.

³⁷ UNSC 'Letter dated 12 June 2000 from President of Sierra Leone to the Secretary-General' (10 August 2000) UN Doc S/2000/786, annex <<http://www.undemocracy.com/S-2000-786.pdf>> accessed 4 December 2009 (hereinafter: Sierra Leone President's Letter to the UN Secretary-General).

was established on 16 January 2002, two days before peace was officially declared in Sierra Leone (see section 6.1 below).

On 14 May 2002, President Kabbah of the SLPP was re-elected for a further five-year term. The RUF's political wing, the Revolutionary United Front Party (hereinafter: RUF), did not win a single seat in parliament. Human Rights Watch reported about the elections as follows:

That the elections could be held nationwide and were conducted peacefully indicates that Sierra Leone has entered a new, more optimistic phase after the years of conflict, destruction, and abuse. Yet, the peace remains fragile. Deep-rooted issues that gave rise to the war – a culture of impunity, endemic corruption, weak rule of law, crushing poverty, and the inequitable distribution of the country's vast natural resources – remain largely unaddressed.³⁸

In July 2002, the British Government withdrew most of its troops from Sierra Leone, aside from about 100 military trainers who remained in the country to train the national security forces. Around that time, the TRC and Special Court began their respective processes. Later that year, UNAMSIL began sizing down gradually and in December 2005 its mandate was terminated. It was replaced by the 300-strong United Nations Integrated Office in Sierra Leone (hereinafter: UNIOSIL), under a peacebuilding mandate. UNIOSIL was replaced in October 2008 by the United Nations Integrated Peacebuilding Office in Sierra Leone (hereinafter: UNIPSIL), mandated to address the ongoing political, economic, security, and rule of law challenges. UNIPSIL still operates at the time of writing, staffed by 70 individuals.

On 11 August 2007, Sierra Leone held nation-wide presidential and parliamentary elections for the first time since the departure of UN peacekeepers. The elections were considered internationally as credible and peaceful. The APC, the opposition party since 1992, won a parliamentary majority taking 59 of 112 seats, while the previously ruling SLPP took 43 seats. Ernest Bai Koroma of the APC was elected as Sierra Leone's president. This outcome reportedly "marked a smooth democratic transition from one government to the other".³⁹

³⁸ Human Rights Watch, 'The Jury Is Still Out - A Human Rights Watch Briefing Paper on Sierra Leone' (11 July 2002) <<http://www.hrw.org/en/reports/2002/07/11/jury-still-out>> accessed 30 May 2009 (hereinafter: HRW The Jury Is Still Out).

³⁹ HRC-SL 2007 report (n 7).

In early 2009, President Koroma expressed his desire to see the Special Court conclude its work, so that the nation can move on.⁴⁰ Koroma also asked that the Special Court's convicts serve their sentences abroad, possibly fearing the recurrence of tension if they remain imprisoned in Sierra Leone after the Court's closure.⁴¹ Interviewees affiliated with the Sierra Leone justice system confirmed that there are no discussions at the national level about limiting the Lomé Amnesty or trying mid-level perpetrators, and there is no national political will to prosecute the wartime atrocities.⁴² The Lomé Amnesty and the desire "to move on" are the formal reasons given by Sierra Leonean officials for the lack of such prosecutions.⁴³

One possible explanation for the current lack of political will to address the war's atrocities is the affiliation of the APC government with AFRC elements.⁴⁴ It also seems that the current government is not interested in enabling the national prosecution of future atrocities: although Sierra Leone has ratified the Rome Statute of the ICC, it has not yet implemented it into domestic law, as required by the national Constitution.⁴⁵

4.2 CAPACITY OF THE LEGAL SYSTEM TO PROSECUTE MASS ATROCITIES

In his letter of June 2000, requesting the UN's assistance in setting up the Special Court, President Kabbah acknowledged that Sierra Leone's judicial system was too weak and compromised to prosecute the war's atrocities. He wrote as follows:

With regard to the magnitude and extent of the crimes committed, Sierra Leone does

⁴⁰ The President was quoted addressing members of the Special Court's Management Committee on their visit to Freetown in February 2009, as follows: "we are happy about the progress made so far and it's our desire that we bring to a conclusion the issues of the Special Court as soon as possible". According to the local press, he said that the Special Court's activities should be quickly concluded so that the nation can move on. See Sierra Express Media 'President Koroma Urges Speedy End to Special Court Chapter' (19 February 2009) <www.sierraexpressmedia.com/articles2/id547.html> accessed 14 August 2009.

⁴¹ *Ibid.* Eight Special Court's convicts were eventually transferred to Rwanda to serve their sentences. See Sierra Express Media 'Special Court Prisoners Transferred to Rwanda to Serve Their Sentences' (1 November 2009) <<http://www.sierraexpressmedia.com/archives/2301>> accessed 4 December 2009.

⁴² Interview notes with author.

⁴³ Interview notes with author.

⁴⁴ E.g., the APC chief presidential bodyguard is former AFRC combatant Idriss Kamara (nicknamed "Leather Boots"). It is recalled that this government was in opposition to the SLPP government which requested the Special Court.

⁴⁵ See note 14 above. According to a Special Court official, the domestic implementation of the Rome Statute of the ICC is not a national priority, and even if it did take place, such domestic implementation would only have a prospective effect. Interview notes with author. Also see Amnesty International, 'Sierra Leone: Despite Guilty Verdicts Today, Impunity is Still the Rule' (25 February 2009) <www.amnesty.org/en/for-media/press-releases/sierra-leone-despite-guilty-verdicts-today-impunity-still-rule-20090225-0> accessed 13 August 2009 (noting that "[e]ven if the amnesty did not apply, however, prosecution for [international] crimes would not be possible since Sierra Leone has not yet defined them as crimes under national law").

not have the resources or expertise to conduct trials for such crimes. This is one of the consequences of the civil conflict, which has destroyed the infrastructure, including the legal and judicial infrastructure, of this country. Also, there are gaps in Sierra Leonean criminal law as it does not encompass such heinous crimes as those against humanity and some of the gross human rights abuses committed by the RUF. It is my view, therefore, that, unless a court such as that now requested is established here to administer international justice and humanitarian law, it will not be possible to do justice to the people of Sierra Leone or to the United Nations peacekeepers who fell victim to hostage-taking.⁴⁶

In fact, the justice system in Sierra Leone practically collapsed as a result of the war. Courtrooms and police stations were destroyed, and many legal professionals were killed or had fled. The judges and prosecutors who remained in

The justice system in Sierra Leone practically collapsed as a result of the war. Hundreds of criminal suspects were detained without the due process guarantees provided in the national Constitution.

the country were too few to sustain the justice system, and were reportedly corrupt and politically manipulated. At the same time, hundreds of criminal suspects were detained without the due process guarantees provided in the national Constitution.⁴⁷

In addition, specific conditions necessary for the prosecution of mass atrocities were absent in Sierra Leone. For example, as noted by President Kabbah, domestic law did not cover international crimes. A senior Sierra Leonean official added that judges and lawyers lacked knowledge of international law. They had no access to legal libraries, and lacked computer skills. Further, the system was technically ill-equipped to handle complicated trials, lacking basic court management and reporting systems.⁴⁸

A 2002 report by Human Rights Watch estimated that customary law was the only system of justice available at the time to about 70 percent of the population in Sierra Leone. The report explained that customary law is applied by local courts which often discriminate against women, detain people illegally, charge excessively high fines for

⁴⁶ Sierra Leone President's Letter to the UN Secretary-General (n 37), p. 3. Moreover, the letter recommended that: "[a]ssistance should be provided to strengthen the security and the infrastructure of the Sierra Leone court, detention facilities and institutions. International personnel should also be appointed to assist in providing security and training." It also proposed that "consideration should be given to enhancing Sierra Leonean prisons to allow for secure incarceration within Sierra Leone." The Security Council, two months later, took note of "the pressing need for international cooperation to assist in strengthening the judicial system of Sierra Leone". UNSC Resolution on the Establishment of the Special Court (n 1), para. 11.

⁴⁷ HRW Bringing Justice (n 35).

⁴⁸ Based on an interview with a judge of the Sierra Leone Supreme Court. Interview notes with author. Also see HRW The Jury Is Still Out (n 38).

minor offences, and adjudicate criminal cases which should by law be tried in the higher courts.⁴⁹

Interviews and NGO reports suggest that Sierra Leone still lacks capacity to prosecute

Interviews and NGO reports suggest that Sierra Leone still lacks capacity to prosecute complex criminal cases.

complex criminal cases today. For example, Amnesty International reported that, in 2008, “[c]ourts [in Sierra Leone] remain understaffed and underequipped with only 19 magistrates and 13 prosecution lawyers for the entire country”.⁵⁰ The report also noted that “[l]ittle progress was made in reducing excessive delays in hearing criminal cases and prolonged pre-trial detention due to repeated adjournments and remands in custody”.⁵¹ In addition, Human Rights Watch reported that, in 2008, “serious deficiencies in the [Sierra Leonean] police and judiciary continue to undermine fundamental human rights”. In particular, the report noted as follows:

Deficiencies in the judicial system persist, including extortion and bribe-taking by officials; insufficient numbers of judges, magistrates, and prosecuting attorneys; absenteeism by court personnel; inadequate remuneration for judiciary personnel; and extended periods of pretrial detention. In 2008 some 90 percent of prisoners lacked any legal representation. Hundreds of people—over 40 percent of the country’s detainees—were held in prolonged pretrial detention ... Prisons were severely overcrowded, in violation of international standards. Some 20 people reportedly died in detention, a consequence of overcrowding and the lack of adequate food, clothing, medicine, hygiene, and sanitation in Sierra Leone’s prisons. The population of the country’s largest detention facility—designed for 350 detainees—stands at over 1,100.⁵²

Special Court officials have been considering Sierra Leone’s judicial capacity in connection with their search for a jurisdiction to which the Special Court could transfer its residual obligations after its anticipated closure in 2010 (see section 6.4 below). In interviews, they indicated that the main weaknesses in Sierra Leone’s national capacity are the lack of human and material resources, limited normative framework addressing international crimes, low level of knowledge of international law, insufficient protection of witnesses and victims, and absence of fair trials. It was noted in particular that national

⁴⁹ HRW *The Jury Is Still Out* (n 38). Human Rights Watch repeated this observation in 2009 (see note 52 below).

⁵⁰ AI 2009 World Report (n 15).

⁵¹ *Ibid.*

⁵² HRW 2009 World Report (n 15). At the same time, the report also noted that: “A concerted effort by the government, UN, and UK-funded Justice Sector Development Programme (JSDP) to improve the rule of law led to some improvements in the sector, including a decrease in the number of prisoners held in pretrial detention, slight improvements in healthcare and access to water for detainees, and the opening of a separate detention facility for juvenile offenders”. The report repeated, regarding the year 2008, its observation made in 2002 that 70 percent of the population must rely on traditional justice as the only available justice system.

courts fail to prosecute promptly and efficiently, and that their independence and impartiality is questionable. Furthermore, pre-trial detentions are prolonged, the domestic system does not provide legal aid, and more than half of the defendants charged of capital offences are not represented.⁵³

Various reports stress the dreadful conditions of

the prison facilities, and the fact that many inmates spend years in jail without being charged.⁵⁴ A Sierra Leonean judge noted that national courts still lack management and reporting systems.⁵⁵

The main weaknesses in Sierra Leone's capacity are the lack of human and material resources, limited normative framework addressing international crimes, low level of knowledge of international law, insufficient protection of witnesses and victims, and absence of fair trials.

Finally, regardless of the level of national judicial capacity, it is stressed that the Lomé Amnesty bars national prosecutions for most of the wartime atrocities. Interestingly, in his letter requesting the UN's assistance in establishing the Special Court, President Kabbah mentioned that the RUF "reneged" on the Lomé Peace Agreement. This could suggest that he questioned the Agreement's validity and the consequent applicability of its amnesty provision. Indeed, the letter did not explicitly admit that the amnesty barred national prosecutions.⁵⁶ Nonetheless, the amnesty has in practice been respected in Sierra Leone (see section 5.2 below).

4.3 CAPACITY BUILDING EFFORTS IN SIERRA LEONE

The main entities involved in capacity building in Sierra Leone are the UN and the UK, through its Department for International Development (hereinafter: DFID).⁵⁷ DFID is the main financier of the Sierra Leone Justice Sector Development Programme (hereinafter:

⁵³ Interview notes with author. In addition, an article by Allieu Vandii Koroma and published by the Sierra Leone Court Monitoring Programme provides some insight as to the lack of due process in Sierra Leone. See Allieu Vandii Koroma, 'The Treason Trial of Omrie Golley and Two Others: Justice Must Be Done' (28 July 2007) <http://www.slcmp.org/drwebsite/articles/The_Treason_Trial_of_Omrie_Golley_and_Two_Others_Justice_Must_Be_Done.shtml> accessed 30 May 2009.

⁵⁴ See e.g. A Diplomat's Handbook (n 17), p. 82; HRW 2009 World Report (n 15).

⁵⁵ But he considered, contrary to others, that due process is followed in Sierra Leone. Interview notes with author.

⁵⁶ In the opinion of international law expert Prof. Antonio Cassese, the Lomé Amnesty should not apply in Sierra Leone's national courts, as the Lomé Peace Agreement (n 24) was violated by the RUF and AFRC, given the continued violence subsequent to its conclusion. As a result, his view is that the amnesty clause is not binding. See 'Report on the Special Court for Sierra Leone', Submitted by the Independent Expert Antonio Cassese (12 December 2006) <<http://www.sc-sl.org/LinkClick.aspx?fileticket=VTDHyrHasLc=&tabid=176>> accessed 30 May 2009 (hereinafter: Cassese Report on the Special Court).

⁵⁷ UK Department for International Development, 'Sierra-Leone: Major Challenges' <<http://www.dfid.gov.uk/Where-we-work/Africa-West--Central/Sierra-Leone/Major-challenges/>> accessed 25 August 2009.

JSDP), a 50 million dollar five-year project which started in 2005.⁵⁸ However, the JSDP does not focus on building specific capacity to prosecute the war's atrocities.

The newly created UN Peacebuilding Fund has allocated over 35 million US dollars to Sierra Leone, to fund projects in the following five "priority areas": youth empowerment and employment, democracy and good governance, justice and security, support to increased energy, and capacity building of public administration.⁵⁹ But this program is a general reform initiative and, like the JSDP, does not focus on building specific capacity to prosecute atrocities.

In addition, the US provides funds for development in Sierra Leone through the US Agency for International Development (hereinafter: USAID). Some USAID funds are diverted to complement DFID's JSDP. The US has also brought American legal experts to Sierra Leone for short capacity building programs, and helped in developing the legal library of the Sierra Leone Supreme Court.⁶⁰ There are other governments, organizations and agencies engaged in capacity building activities in Sierra Leone, including the World Bank and the European Commission (hereinafter: EC).⁶¹ Finally, the Special Court also engages in capacity building activities in Sierra Leone (see section 8.4 below).

5. THE NATIONAL RESPONSE TO THE MASS ATROCITIES

5.1 TRUTH AND RECONCILIATION COMMISSION

The TRC was a national body created pursuant to the Lomé Agreement.⁶² It was mandated to create an impartial historical record of human rights abuses and violations

⁵⁸ *Ibid*; A Diplomat's Handbook (n 17), p.82; Encyclopedia 2008 of Sierra Leone, 'Justice Sector Development Programme' <http://www.daco-sl.org/encyclopedia/1_gov/1_4jsdp.htm> accessed 25 August 2009 (the Encyclopedia is a joint effort of the UN and the Government of Sierra Leone).

⁵⁹ UN Peacebuilding Fund, 'Sierra Leone Priority Plan' <<http://www.unpbf.org/docs/PBF-Sierra-Leone-Priority-Plan.pdf>> accessed 14 August 2009.

⁶⁰ A Diplomat's Handbook (n 17), p. 82.

⁶¹ In December 2007, a joint country strategy paper was signed by the EC, DFID and Sierra Leone. It covers the period of the 10th European Development Fund (2008-2013) and provides 242 million Euros of assistance to Sierra Leone, to support two focal areas: good governance and institutional support (37 million Euro) and rehabilitation of priority infrastructure (95 million Euro). An additional 90 million Euro goes to general budget support and the remaining 20 million Euro to Sierra Leone's endeavours in the areas of trade, agriculture and regional programmes. The EC leads the process. See European Commission, 'EU Relations with Sierra Leone', <http://ec.europa.eu/development/geographical/regionscountries/countries/country_profile.cfm?cid=sl&type=short&lng=en> accessed 14 August 2009.

⁶² Lomé Peace Agreement (n 24), Article XXVI(1).

of international humanitarian law from 1991 to July 1999, to address impunity, to respond to the needs of victims, to promote healing and reconciliation and to prevent a repeat of the violations and abuses suffered.⁶³ The commissioners were officially sworn in by Sierra Leone's President Kabbah on 5 July 2002. They included three foreigners and four Sierra Leoneans, headed by a Sierra Leonean priest. The TRC conducted its tasks mainly through open public hearings, closed sessions, and thematic hearings. Some of the hearings were broadcasted on national radio and television, or reported about in the newspapers. The TRC also relied on written submissions made by individuals and institutions. UNAMSIL and the Office of the UN High Commissioner for Human Rights helped in the establishment and operation of the TRC.⁶⁴

In October 2004, the TRC submitted its final report to the government.⁶⁵ The report addressed the nature and root causes of the conflict, as well as the role of external actors and natural resources. It associated some of the wartime atrocities with the various factions involved, and even named some individual perpetrators. By hearing a wide range of perpetrators and producing a record of the conflict and its root causes, it was envisaged that the TRC would establish a degree of accountability for most of the pre-Lomé wartime atrocities.⁶⁶

The recommendations of the TRC included increasing the protection of human rights, strengthening democracy and the rule of law, improving good governance, abolishing the death penalty, repealing laws that criminalize seditious libel, increasing the transparency of the mining industry, and establishing a reparations fund for war victims.⁶⁷ In June 2005, the Government of Sierra Leone issued a White Paper officially accepting some but not all of the TRC recommendations, attracting criticism from NGOs.⁶⁸

⁶³ Final Report of the Truth and Reconciliation Commission of Sierra Leone (October 2004) <www.trcsierraleone.org> accessed 25 August 2009 (hereinafter: Sierra Leone TRC Report), Vol. 1, Ch 1.

⁶⁴ HRW The Jury Is Still Out (n 38).

⁶⁵ Sierra Leone TRC Report (n 63).

⁶⁶ See e.g. Sierra Leone TRC Report (n 63), Vol. 1, p. 2: "Through attributing responsibility for the different causes of the conflict, and the many violations of human rights committed throughout it, we create accountability and state unequivocally that we reject impunity".

⁶⁷ HRW 2009 World Report (n 15); Amnesty International USA 2005 Annual Report for Sierra Leone, <www.amnestyusa.org/annualreport.php?id=ar&yr=2005&c=SLE> accessed 30 May 2009.

⁶⁸ See e.g. Amnesty International, 'Sierra Leone: The Implementation of Key TRC Recommendations: Priorities in 2008 and Beyond' (6 March 2008) <<http://www.amnesty.org/en/library/asset/AFR51/001/2008/en/AFR510012008en.html>> accessed 30 May 2009; AI 2009 World Report (n 15) ("Despite a presidential promise in February to implement the TRC recommendations, little progress was made during the year. No steps were taken to

5.2 TRIALS FOR POST-AMNESTY CRIMES

Consistent with the Lomé Amnesty, the national courts of Sierra Leone refrained from prosecuting wartime atrocities which were committed before July 1999. However, in 2005 and 2006, the High Court in Freetown held two trials against a total of 88 individuals for war-related crimes which were perpetrated in 2000, and therefore not covered by the amnesty.⁶⁹ All 88 accused were charged with multiple crimes under domestic law.

The RUF Case

The first trial concerned 57 members of the RUF, the political party of the RUF (hereinafter: RUF case). They were prosecuted for their alleged involvement in the shooting of demonstrators outside Foday Sankoh's house on 8 May 2000, where at least 20 people were killed (see section 3.1 above). Over 400 individuals, including Foday Sankoh, were arrested by the Sierra Leonean authorities in connection with this event.⁷⁰ They

Consistent with the Lomé Amnesty, the national courts of Sierra Leone refrained from prosecuting wartime atrocities which were committed before July 1999. However, in 2005 and 2006, the High Court in Freetown held two trials against a total of 88 individuals for war-related crimes which were perpetrated in 2000, and therefore not covered by the amnesty. All 88 accused were charged with multiple crimes under domestic law.

were jailed in Freetown's Pademba Road Prison, and placed in "protective custody" ordered by President Kabbah under the State of Emergency Act. In August 2000, about 200 of the detainees were released from custody, including women and child combatants. Others were released later on, and some had died in detention.⁷¹ By early

create a TRC follow-up committee"); HRW 2009 World Report (n 15) ("The government has been slow to implement the [TRC] recommendations and openly rejected some of them, including the abolition of the death penalty. However, after a long delay, one of the commission's recommendations—the establishment of a reparations fund for war victims—was established and funded by the UN Peacebuilding Fund").

⁶⁹ Information about these domestic trials in Sierra Leone was difficult to obtain. One valuable source was Clare da Silva, a Canadian lawyer who provided pro bono assistance over a number of years to the defendants in these trials. Ms. da Silva was also involved in proceedings before the Special Court, in particular, she was associated with the defence of Sam Hinga Norman and the appeal of Allieu Kondewa. She provided valuable information which she collected during her work in Sierra Leone. There were also other interviewees who provided information on these trials, as well as some relevant written materials. Unless stated otherwise, all the information in this section of the report (including in the footnotes) was provided to the author by Clare da Silva.

⁷⁰ From May 2000 until November 2000, approximately 400 RUF members were arrested in different parts of Sierra Leone and brought to Pademba Road Prison in Freetown.

⁷¹ One of the detainees who were released was Mike Lamin, a high ranking RUF member. He was released in September 2001. According to information provided by Clare da Silva (n 69), Lamin was probably released because of his high rank. The TRC suggests that his release may have been attributable to his ethnicity (Mende), which was favoured among the politicians at the time. See Sierra Leone TRC Report (n 63), Vol. 3A, p. 397, ft. 744 ("Some of

2002, only 49 of the detainees remained in custody, including Foday Sankoh (who was later transferred to the Special Court). According to interviews, the detentions were unduly prolonged, inhumane treatment was inflicted in some cases, and charges were not made known to many of the accused for long periods.⁷²

On 4 March 2002, the remaining detainees were arraigned in court.⁷³ During the following months, detainees from other jails joined this group, which eventually included 57 defendants. The prosecution team was led by the then Minister of Justice and Attorney General, Solomon Berewa. There were no defence counsel involved, and no preliminary investigations were carried out. The defendants were charged with 71 counts of conspiracy to commit murder, shooting with intent to murder, and murder “on or about the 8th May 2000 at Spur Road, Freetown”. On 29 May 2002, the case was committed to the High Court in Freetown, and the 71 original counts were increased to 81 (including 15 counts of conspiracy to commit murder, 15 counts of murder, and 51 counts of shooting with intent to murder). The vast majority of the accused were not served with any proof of evidence, until about two and a half years later, on 20 October 2004. Furthermore, the indictments which were served on the accused were incomplete. Some of them lacked the voluntary caution statements of the accused, or the statements of prosecution witnesses. Some indictments contained errors in the names of the accused.⁷⁴ In addition, the names of three accused who were initially included in the trial, were omitted from the indictments.⁷⁵

those who remain in detention allege that the release of Mike Lamin, a Mende, attests to a policy of ethnic discrimination in the prisons system, since the majority of members of the SLPP governing ‘political elite’ are also Mende.”)

⁷² Information provided by Clare da Silva (n 69), as well as other interviewees. Interview notes with author. Also see Clare da Silva, ‘Will justice prevail?’ (4 June 2007) <www.guardian.co.uk/commentisfree/2007/jun/04/willjusticeprevail> accessed 30 May 2009 (hereinafter: da Silva, Will Justice Prevail?) (“When the special court began operating in Freetown in 2003, half a kilometre away in the Pademba Road maximum security prison hundreds of ex-combatants were waiting for their trials to begin in connection with war-related incidents. Their detention and subsequent trials in 2005 were characterised by gross judicial abuses, detention without charges, a lack of defence counsel, the taking of statements under severe duress, and physical abuse that resulted in a number of deaths. These lower ranking former rebels, some former child soldiers, faced the death penalty as an outcome of a trial with few, if any, judicial guarantees.”)

⁷³ They were arraigned before the Freetown magistrate No. 1 before Magistrate Tarawallie.

⁷⁴ For example, the 12th accused, Prince Emmerson Trevenus Zacharias Adonis, had his name severed into two separate names qualifying him for two indictments.

⁷⁵ On the 16 April 2005, the presiding judge ruled that these three accused were not required to appear in Court. Only on 12 July 2005, they were handed over to the CID police by the prison authorities, and were released on 1 August 2005.

The trial in the RUF case started on 7 June 2005.⁷⁶ Only around this time, did the accused first receive legal representation.⁷⁷ The hearings were concluded in December 2005, and the judgment rendered in April 2006. Ten of the accused were convicted of 15 counts of conspiracy to commit murder.⁷⁸ They received a sentence of ten years for each count to be served concurrently. The sentences were to start from the date in which the case was committed to the High Court (two years after the accused were arrested). The remaining 47 accused were acquitted. While the trial was not overly lengthy, it commenced over three years after the case was committed to the High Court, and about five years after the accused were arrested. All of the ten accused who were convicted have appealed. However, before their appeal was heard, they were released by President Kabbah as a political gesture. The exact reasons for their release are unknown to this day. A Sierra Leonean lawyer who was involved in this case suggested that the RUF members were “unceremoniously released when the former ruling government wanted to use them to disrupt the 2007 general elections”.⁷⁹ It was also suggested that given the nature of the detainees as RUF members, there was no political will to continue the trial.⁸⁰

The WSB Case

The second trial regarded 31 members of a rebel faction called West Side Boys (hereinafter: WSB), a splinter group of the AFRC, who were allegedly involved in the abduction of 11 British soldiers near Freetown on 8 August 2000 (hereinafter: WSB case). The accused were charged with 31 counts as follows: ten counts of conspiracy to commit murder, ten counts of robbery with violence, eight counts of wounding with intent, and three counts of wounding. Arrests were made in 2000 and the case was committed to the High Court in Freetown on 29 May 2002, but charges were not made known to the accused until several years later.⁸¹

⁷⁶ The 57 accused were divided and tried in 2 groups: the first group comprised 30 people (hereinafter: RUF Group I) and the second group included 27 persons (RUF Group II).

⁷⁷ Mr. Osho Williams accepted to stand for the accused as lead defence counsel.

⁷⁸ Seven accused were convicted from the RUF Group I and three were convicted from the RUF Group II.

⁷⁹ Interview notes with author.

⁸⁰ Information provided by Clare da Silva (n 69).

⁸¹ Information provided by Clare da Silva (n 69). Also see OCHA, ‘Humanitarian Situation Report on Sierra Leone’ (July 2004) <<http://www.reliefweb.int/rw/rwb.nsf/db900sid/EVIU-63HJ45?OpenDocument>> accessed 30 May 2009 (“On 21 July an incident occurred within the Pademba Road Prison in central Freetown, involving 33 former-West Side

On 5 April 2006, the High Court rendered its judgment, convicting seven of the accused for ten counts of conspiracy to commit murder. They were sentenced to ten years for each count to be served concurrently, starting from the date of conviction (six years after the accused were arrested and four years after their case was committed to the High Court). All seven have appealed within the provided time limit. One of the grounds of appeal was the court's ruling that the ten-year sentences are to start from the day of the verdict, rather than the day on which the trial was committed to the High Court. Some of the accused have also complained that the court disregarded their alibi, arguing that they had already been in prison when the offences were committed.⁸² At the time of writing, the seven defendants are still in detention, awaiting the consideration of their appeal. It seems that there is little political interest in moving this trial forward.⁸³

Concluding Remarks

The RUF and WSB cases were the only domestic prosecutions of war-related crimes in Sierra Leone. They concerned low level perpetrators who were accused of relatively minor crimes, committed in connection with insular incidents of hostilities which occurred in 2000, after the Lomé Peace Agreement was signed.⁸⁴ The war's main atrocities were committed before the signing of the Agreement. To date, there were no domestic prosecutions concerning pre-Lomé atrocities.⁸⁵ It was left to the

To date, there were no domestic prosecutions concerning pre-Lomé atrocities. It was left to the TRC to establish accountability for pre-Lomé crimes, by providing a historical account of the atrocities and associating them with certain groups and individuals. However, whether the TRC contributed to the eradication of impunity in Sierra Leone remains questionable, especially considering that the blanket amnesty prevents the prosecution of particularly notorious mid-level perpetrators.

Boys. The insurgents have been held at the Prison for over two years without charge and were scheduled to appear in court. At the last minute, they were notified by the High Court that their case had once again been postponed indefinitely and thus should not appear in court. Upon receiving the message the indictees became highly agitated and started yelling that they 'must go to court today'. This situation led the prison authorities to contact the [Sierra Leone Police] who subsequently deployed anti-riot elements at the Prison location.").

⁸² Information provided by Clare da Silva (n 69). She added that some of the WSB detainees were arrested at the same time as those who were arrested in connection with the violent demonstration in front of Sankoh's house in May 2000, and were initially mistakenly lumped into the RUF case.

⁸³ Information provided by Clare da Silva (n 69).

⁸⁴ The high level perpetrators who were arrested by the national authorities in 2000 were either transferred for trial to the Special Court (e.g. Foday Sankoh), or released before the national trials commenced (e.g. Mike Lamin - see note 71 above).

⁸⁵ There was one military trial which pre-dated the Lomé Agreement, held in 1998, but the charges were treason (see note 20 above).

TRC to establish accountability for pre-Lomé crimes, by providing a historical account of the atrocities and associating them with certain groups and individuals. However, whether the TRC contributed to the eradication of impunity in Sierra Leone remains questionable, especially considering that the blanket amnesty prevents the prosecution of particularly notorious mid-level perpetrators.⁸⁶

6. THE INTERNATIONAL RESPONSE TO THE MASS ATROCITIES: THE SPECIAL COURT

6.1 ESTABLISHMENT

On 12 June 2000, as noted above, Sierra Leone's President Kabbah requested the UN's assistance in setting up a special court to prosecute the crimes perpetrated by the RUF during the war.⁸⁷ On 14 August 2000, the UN Security Council asked the UN Secretary-General to negotiate the establishment of such a court with the Government of Sierra Leone.⁸⁸ International pressure demanding prosecutions for Sierra Leone's atrocities

⁸⁶ Some interviewees mentioned that while low-level perpetrators could enjoy an amnesty, this should not be the case with regard to mid-level perpetrators. Thus, a Special Court prosecutor said that, in parallel to the Special Court's trials, a way must be found to deal with the rest of the offenders because "there are too many" of them. Traditional justice mechanisms and truth commissions have a role in this respect because the public has to accept some of the perpetrators back into society. But these mechanisms can only address the lowest level perpetrators, commented the prosecutor, while domestic trials could help establish the accountability of mid-level perpetrators. On the other hand, noted another Special Court prosecutor, the need for a broad based accountability is context specific. In Sierra Leone, he explained, there are no profound ethnic or religious divides like in Rwanda or Yugoslavia, and broad complicity was not an issue as it was in the other places. Therefore, it may be less important in Sierra Leone, in comparison to the other places, to prosecute the mid-level and low-level perpetrators. Thus, in Sierra Leone, the idea of prosecuting the top leadership and combining that with a truth commission is appropriate. However, the prosecutor suggested that a more robust truth commission than the Sierra Leone TRC would have been preferable. Interview notes with author.

⁸⁷ Sierra Leone President's Letter to the UN Secretary-General (n 37). According to a judge of the Sierra Leone Supreme Court, international pressure was put on President Kabbah to request the UN's assistance in setting up a court. Interview notes with author. According to the Sierra Leonean press, after Sankoh's arrest in May 2000, the UN Secretary-General demanded that he be held responsible for the recent crisis in Sierra Leone. See Sierra Leone News (22 May 2000) <<http://www.sierra-leone.org/Archives/slnews0500.html>> accessed 14 August 2009. The British Foreign Secretary supported Sankoh's prosecution, emphasizing that the Lomé Amnesty only applies to acts committed before its signature. The American Senator Gregg stated that the US will "demand that brutal thugs are held accountable for their atrocities". See Sierra Leone News (6 June 2000) <<http://www.sierra-leone.org/Archives/slnews0600.html>> accessed 14 August 2009. International NGOs also demanded that those responsible for the atrocities be held accountable. See e.g. Amnesty International, 'Sierra Leone: Ending Impunity - an Opportunity Not to be Missed' (26 July 2000) <<http://www.amnesty.org/en/library/info/AFR51/060/2000>> accessed 30 May 2009; International Crisis Group, Sierra Leone: Time for a New Military and Political Strategy (11 April 2001) <<http://www.crisisgroup.org/home/index.cfm?id=1491&l=1>> accessed 30 May 2009, pp. 21-22. Sierra Leone's president confirmed that Sankoh would face trial, stressing the importance of establishing accountability for the attainment of a sustainable peace. The country's Finance Minister added that the government would prefer to see Sankoh tried by an international tribunal, as a local court could not guarantee his safety. See Sierra Leone News (26 May 2000) <<http://www.sierra-leone.org/Archives/slnews0500.html>> accessed 14 August 2009. In addition, members of Sierra Leone's civil society requested the creation of an international tribunal. For example, the director of the local NGO 'Campaign for Good Governance' called for the establishment of an international tribunal to prosecute Sierra Leone's atrocities.

⁸⁸ UNSC Resolution on the Establishment of the Special Court (n 1).

increased following the 25 August 2000 abduction of 11 British soldiers by the WSB.⁸⁹ On 4 October 2000, the UN Secretary-General submitted a report on his negotiations with the Government of Sierra Leone concerning the establishment of the Special Court.⁹⁰

On 16 January 2002, the UN and the Government of Sierra Leone concluded an agreement establishing the Special Court (hereinafter: Special Court Agreement).⁹¹ The Special Court was set up to prosecute not only members of the RUF, as requested by President Kabbah, but also members of other factions, including the pro-government militia CDF. The Special Court is located in Freetown, Sierra Leone's capital. Over half of its 300 employees are Sierra Leoneans, and it is mandated to prosecute both domestic and international crimes (see section 6.2 below). Unlike other international criminal tribunals, the Special Court is funded by voluntary contributions from interested states. A Management Committee was established to assist in obtaining funding for the Special Court and approving its budget. The Committee also advises on policy matters and other non-judicial functions of the Court. It comprises representatives of Canada (chair), the UN, Sierra Leone, Nigeria, The Netherlands, the UK and the US.

The Special Court is governed by its Statute (hereinafter: Statute), which is annexed to the Special Court Agreement, and its Rules of Procedure and Evidence (hereinafter: Rules), which were adopted by its judges.⁹² The Statute and Rules enshrine international standards of due process and fair trial.

⁸⁹ This event was eventually prosecuted before the High Court in Freetown (see section 5.2 above).

⁹⁰ UNSC Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone (4 October 2000) UN Doc. S/2000/915 (hereinafter: UN Secretary-General's Report on the Establishment of the Special Court).

⁹¹ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (16 January 2002) <<http://www.sc-sl.org/ABOUT/CourtDocuments/tabid/144/Default.aspx>> accessed 25 August 2009 (hereinafter: Special Court Agreement). The delay in concluding the Special Court Agreement was due the instability in Sierra Leone and difficulties in finding funds for the Special Court.

⁹² The Special Court's Rules of Procedure and Evidence were originally based on those of the ad hoc International Criminal Tribunal for Rwanda (hereinafter: ICTR), which was established in 1994. Modifications were made to accommodate the circumstances of the Special Court.

6.2 JURISDICTION

The Statute restricts the Special Court's personal jurisdiction to "persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law".⁹³

Indictments were issued by the Special Court against 13 individuals who were considered by its Prosecutor as "bearing the greatest responsibility", and trials eventually commenced

The Court's limited personal jurisdiction was intended to ensure that it tries only a handful of high-ranking individuals. It was a result of international pressure to create a court which will be cheaper and faster than the International Criminal Tribunals for the former Yugoslavia and Rwanda.

against ten of them (one of whom died before the judgment in his case was rendered).

The Court's limited personal jurisdiction was intended to ensure that it tries only a handful of high-ranking individuals. It was a result of international pressure to create a court which will be cheaper and faster than the International Criminal Tribunals for the former Yugoslavia and Rwanda (hereinafter: ICTY and ICTR, respectively, or ad hoc tribunals, collectively). This was the first time that a formulation of this nature was used in a statute of an international or hybrid court. Subsequently, a similar approach shaped the prosecutorial strategies of the ICTY, ICTR and ICC, potentially creating a division of labour between international and national courts along the lines of the rank of the perpetrators.

But is it always desirable to try only the top level perpetrators at the international level and leave the mid and low level ones to be handled domestically? Perhaps such a strategy is more appropriate where national courts actively prosecute atrocities, and it makes sense to try the top-ranking leaders before an international court, as their prosecution may be too politically challenging for a country emerging from a prolonged conflict. But in the case of Sierra Leone, many of the mid-level perpetrators who walk free because of this strategy (and because of the national amnesty) are responsible for some of the worst atrocities. Some of them are even considered by the local population as "bearing the greatest responsibility": a Special Court senior official explained that when the Special Court began operating, its Prosecutor consulted with the Sierra Leonean public about who to indict but some of the individuals mentioned by the public as "bearing the greatest responsibility" were eventually not indicted by the Special

⁹³ Statute of the Special Court (hereinafter: Statute), Article 1.

Court.⁹⁴ Other senior members of the Special Court added that the names of certain mid-level perpetrators, who were not indicted by the Special Court, are mentioned repeatedly in the evidence before the Court. Also, some of the “insider witnesses” who testified before the Special Court were themselves mid-level commanders who were involved in atrocities. Some were relocated by the Special Court for their protection, at times to other countries.⁹⁵ The Special Court’s Prosecutor did not indict these mid-level perpetrators as he did not consider them to “bear the greatest responsibility” for the atrocities. Perhaps his reliance on their testimony to prosecute the top leaders guided his choice not to consider the mid-level perpetrators as “bearing the greatest responsibility”.

A 2006 report published by the Berkeley War Crimes Study Center named four fairly senior mid-level perpetrators who escaped prosecution.⁹⁶ Amnesty International suggested that there could be up to several hundred perpetrators who “bear the greatest responsibility” for Sierra Leone’s wartime atrocities. It recommended that they be investigated and, if necessary, prosecuted by Sierra Leone or another state asserting universal jurisdiction.⁹⁷ Even the Sierra Leone TRC attributed responsibility for some of the wartime atrocities to mid-level perpetrators who were not indicted by the Special Court.⁹⁸

In terms of temporal jurisdiction, the Special Court is mandated to prosecute violations that occurred after 30 November 1996. This was the date on which the failed Abidjan Peace Accord was signed (see section 3.1 above). It was chosen as it was considered a non-politically biased date, which provided a time-frame that ensures the Court would not be overburdened while it still addresses the most serious atrocities committed during the

The temporal jurisdiction potentially sets out the division of labour between the Special Court and national courts.

⁹⁴ Interview notes with author.

⁹⁵ Interview notes with author. Also a Special Court judge suggested that the Special Court may have information on persons who committed worse crimes than those indicted by the Court. Interview notes with author.

⁹⁶ These were Gibril Massaquoi (former RUF spokesman), Albert Nallo (former CDF National Deputy Director of Operations), Staf Al Haji aka Al Haji Boyoh (of the AFRC), and Commander Savage (of the AFRC). See University of California Berkeley War Crimes Study Center, ‘Second Interim Report on the Special Court for Sierra Leone - Bringing Justice an Ensuring Lasting Peace: Some reflections on the Trial Phase at the Special Court for Sierra Leone’ (By M. Staggs, March 2006) <http://socrates.berkeley.edu/~warcrime/documents/SecondInterimReport_003.pdf> accessed 10 December 2009, footnote 135.

⁹⁷ Amnesty International, ‘Senior Rebels Sentenced to Long Prison Terms in Sierra Leone’ (9 April 2009) <<http://www.amnesty.org/en/news-and-updates/news/senior-rebels-sentenced-long-prison-terms-sierra-leone-20090409>> accessed 13 August 2009.

⁹⁸ See e.g. Sierra Leone TRC Report (n 63), Vol. 3A, paras. 1154-1156 (discussing the responsibility of former RUF spokesman Gibril Massaquoi “for the deteriorating security situation in Sierra Leone”).

war, in all geographical areas and by all parties involved.⁹⁹ The temporal jurisdiction potentially sets out the division of labour between the Special Court and national courts.

The subject matter jurisdiction of the Special Court is a blend of international and national law. It extends to crimes against humanity and war crimes, as well as to the domestic crimes of sexually assaulting young girls and setting fire to property.¹⁰⁰ However, despite the Court's mandate to try domestic crimes, the indictments to date charge accused persons only with international crimes. This has been criticized as limiting the potential of the Special Court to have an impact on domestic normative developments (see section 8.1 below). The Court can also apply a mix of international and national procedural norms.¹⁰¹

Despite the Special Court's mandate to try domestic crimes, the indictments to date charge accused persons only with international crimes.

Finally, it is noted that the Special Court has primacy over national courts.¹⁰² Consequently, it is authorized to request at any stage of national proceedings that a Sierra Leonean court defer to its jurisdiction. This, however, did not cause "competition" over cases between the international and national courts, as almost no trials started at the national level.

⁹⁹ Prof. William Schabas questions whether this date was not selected because the UN had failed to attach a reservation to the amnesty provision in the Abidjan Peace Accord (n 19), similar to the one it attached to the Lomé Peace Agreement (n 24). See W. A. Schabas, 'The Sierra Leone TRC', in *Beyond Truth versus Justice: Transitional Justice in the Twenty First Century* (Ed. N. Roht-Arriaza & J. Mariezcurrena, Cambridge, 2006), p. 34. Former British High Commissioner in Freetown, Peter Penfold, theorizes that the date was chosen because violence in Freetown broke out in 1997 (criticizing the international community's greater concern with Freetown than with the rest of the country). See P. Penfold, 'Will Justice Help Peace in Sierra Leone?', *The Observer* (20 October 2002) <<http://www.guardian.co.uk/world/2002/oct/20/sierraleone.theworldtodayessays>> accessed 30 May 2009, para. 16.

¹⁰⁰ The international crimes over which the Special Court has jurisdiction are punishable under Articles 2–4 of the Statute, and the domestic crimes under Article 5 thereof. The Court's jurisdiction over "war crimes" extends to violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II, and "other serious violations of international humanitarian law." The Court lacks jurisdiction over genocide, as there was no evidence that genocide was committed in Sierra Leone. No specific groups were targeted on the basis of religious, ethnic, national or racial features. Interestingly, the President of Sierra Leone suggested that, in addition to international crimes, "[o]ther crimes to be taken into account [by the Special Court] are grave criminal offences and for them the domestic law of Sierra Leone will be used in the court. This approach roots the process in Sierra Leone and makes it uniquely Sierra Leonean." See Sierra Leone President's Letter to the UN Secretary-General (n 37). This suggestion was indeed adopted.

¹⁰¹ According to Article 14(2) of the Statute, the judges of the Special Court may be guided by Sierra Leone's 1965 Criminal Procedure Act when amending or adopting rules of procedure and evidence.

¹⁰² Statute, Article 8(2).

6.3 ORGANIZATION AND OUTREACH

In accordance with Article 11 of the Statute, the Special Court's structure resembles the tripartite organization of the ICTY, ICTR, and ICC, consisting of the Chambers, Office of the Prosecutor (hereinafter: OTP), and Registry. But the Registry uniquely includes an independent Defence Office and a particularly active Outreach Section. These components are discussed in further detail below. The Chambers comprise two Trial Chambers and an Appeals Chamber, the formers consisting each of three judges (one nominated by the Government of Sierra Leone and two by the UN Secretary-General), and the latter consisting of five judges (two nominated by the Government and three by the UN Secretary-General). The participation of Sierra Leonean judges can increase the Court's potential to have an impact on the national judiciary. The OTP is divided into Prosecution and Investigation sections. It enjoyed the assistance of Sierra Leone police officers and investigators who have been seconded to the OTP for 90 day periods. This cooperation allowed the Special Court to have a certain degree of impact on the national capacity to handle complex criminal cases (see section 8.4 below). In addition, the OTP enjoys the assistance of the national authorities pursuant to Article 17 of the Special Court Agreement (see section 7.1 below).

The Special Court's Registry provides support to the Chambers and OTP, through its offices of Court Management, Detention, Public Affairs, Security, Procurement, Witness and Victim Support Unit (hereinafter: WVSU), the Library, and various administrative offices. It is noted that the WVSU is in direct contact with the national police force, and is currently preparing to assist the Sierra Leonean authorities in establishing a national witness protection program (see section 8.4 below). Besides the above components, the Registry includes the Defence Office and Outreach Section. The Defence Office was established under Rule 45 of the Special Court Rules. It functions independently from the Registry, despite being part of it, and is therefore considered an innovation of the Special Court in relation to the ad hoc tribunals.¹⁰³ The Defence Office is headed by the Principal Defender and its roles include giving initial advice and assistance to suspects and accused persons, providing administrative and substantive

¹⁰³ Examination of the experience of defence counsel at the ICTR, who complained about the lack of resources and the poor quality of assistance they received from the ICTR, brought about the creation of the Special Court's Defence Office. See S. Horowitz, 'Transitional Criminal Justice in Sierra Leone' in *Beyond Truth versus Justice: Transitional Justice in the Twenty First Century* (Ed. N. Roht-Arriaza & J. Mariezcurrena, Cambridge, 2006), pp. 43-68 (hereinafter: Horowitz, *Transitional Criminal Justice in Sierra Leone*), p.51.

support to defence counsel, and assigning defence counsel to suspects and accused persons who lack the financial means to secure legal representation. By engaging Sierra Leonean lawyers and investigators and by setting an example to the national legal system, the Defence Office has had some impact on the national level. In particular, it inspired the local civil society to request the establishment of a national public defence office in Sierra Leone (see section 8.4 below).

The Special Court's extremely active Outreach Section is another one of the Court's innovations when comparing it to the ad hoc tribunals. The aims of the section include keeping the local population informed about the Court's missions and activities. According to various report, the section has done extremely well, especially in the first five years of the Court's operation. For example, in late 2006, Professor Antonio Cassese called the Special Court's outreach program "the crown jewel of the Special Court", and noted that the program "has proved to be exemplary and should constitute a model for future international courts".¹⁰⁴ A 2006 report by the International Center for Transitional Justice explains that "[t]he Special Court for Sierra Leone boasts the strongest Outreach program of any tribunal to date".¹⁰⁵

The Outreach Section conducts educative activities nationwide and in local languages, enhancing the national relevance of the Special Court's trials by rendering them clear and understandable to the local population. In particular, the section organizes public meetings where the Prosecutor and Principal Defender discuss their respective functions; conducts educational programs for school children; funds victims' journeys to the Court; promotes a book it published about the Special Court in basic English; and encourages radio programs discussing the Court's process. In addition, it educates the local population about general issues pertaining to justice and accountability.¹⁰⁶ Before the trials started, the Outreach Section pursued its aims through holding workshops for special groups, such as ex-combatants, victims, military

¹⁰⁴ Cassese Report on the Special Court (n 56), paras. 270 and 30, respectively.

¹⁰⁵ International Center for Transitional Justice, 'Prosecutions Case Studies Series: The Special Court for Sierra Leone Under Scrutiny' (by T. Perriello and M. Wierda, March 2006) <www.ictj.org/static/Prosecutions/Sierra.study.pdf> accessed 26 August 2009 (hereinafter: ICTJ The Special Court Under Scrutiny).

¹⁰⁶ For example, the Outreach Section trains lay magistrates on issues such as the presumption of innocence and due process of law. These lay magistrates are traditional chiefs who engage in adjudication, and although too marginalized by the national legal institutions to receive formal training they still have a stronghold throughout the nation. Moreover, to promote the involvement of local students beyond the Court's tenure in advocating broader legal and social transformations, the Outreach Section established the 'Accountability Now Club', which comprises representatives of 13 higher education facilities throughout Sierra Leone. See Horowitz, *Transitional Criminal Justice in Sierra Leone* (n 103), p. 58.

representatives, policemen, and youth groups, with the intention of preparing them for the trials while taking into account their peculiar needs and roles in society. Approximately 2,000 people participated nationwide in these workshops, which were conducted by Outreach representatives in cooperation with the NGO 'No Peace Without Justice'. In mid-2003, the section began employing district officers who are based in the provinces, to conduct community meetings updating the public on the Special Court's proceedings.¹⁰⁷

The Special Court's outreach activities have contributed to enhancing the level of knowledge of many Sierra Leoneans about the Special Court and other justice related matters. While such an impact is significant, the present report focuses on the Court's role in encouraging and influencing domestic atrocity-related prosecutions. It is questionable whether the Outreach Section had any direct contribution in this regard.

Outreach initiatives are also in place to listen to public concerns and address them accordingly. Thus, the Outreach Section established the 'Special Court Interactive Forum' to provide a link between the public and the Court. This forum comprises representatives of 28 local organizations, who inform people in remote areas of the Court, and direct public concerns to the Registrar's attention. Having learned that among other concerns, the public is anxious to be compensated for the past injustices, the Outreach Section held consultations concerning a victim commemoration scheme, which also addressed the issue of reparations.¹⁰⁸

The Special Court's engagement in outreach activities was anticipated by the UN Secretary-General:

If the role of the Special Court in dealing with impunity and developing respect for the rule of law in Sierra Leone is to be fully understood and its educative message conveyed to Sierra Leoneans of all ages, a broad public information and education campaign will have to be undertaken as an integral part of the Court's activities.¹⁰⁹

Indeed, the Special Court's outreach activities have contributed to enhancing the level of knowledge of many Sierra Leoneans about the Special Court and other justice related matters. While such an impact is significant, the present report focuses on the Court's role in encouraging and influencing domestic atrocity-related prosecutions. It is

¹⁰⁷ See Horovitz, *Transitional Criminal Justice in Sierra Leone* (n 103), p. 58.

¹⁰⁸ See Horovitz, *Transitional Criminal Justice in Sierra Leone* (n 103), p. 59.

¹⁰⁹ UN Secretary-General's Report on the Establishment of the Special Court (n 90), para. 7.

questionable whether the Outreach Section had any direct contribution in this regard. However, by keeping large sectors of the population informed about the Court's missions and activities, the Outreach Section has helped in generating positive local perceptions of the Special Court, especially in its early years of operation.¹¹⁰ Such local perceptions, in turn, may affect the quality and degree of impact that the international court has on national proceedings (for a discussion about the local perceptions of the Special Court see section 6.7 below).

6.4 JUDICIAL ACTIVITY

In August 2002 the Special Court became operational. Between March and September 2003, it issued 13 indictments. These include indictments against five former leaders of the RUF (Foday Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon, Augustine Gbao), four former leaders of the AFRC (Johnny Paul Koroma, Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu), three former leaders of the CDF (Sam Hinga Norman, Moinina Fofana, Allieu Kondewa), and the former president of Liberia, Charles Taylor. The accused were charged with numerous counts of crimes against humanity and war crimes, for acts which included murder, mutilation, rape and other forms of sexual violence, sexual slavery, conscription of children to fight, abductions and forced labor.¹¹¹ Trials eventually commenced against ten individuals (as Sankoh and Bockarie died before their trial started and Koroma is still at

In August 2002 the Special Court became operational. Between March and September 2003, it issued 13 indictments. Trials eventually commenced against ten individuals (as Sankoh and Bockarie died before their trial started and Koroma is still at large). This low number of trials is a direct result of the Special Court's limited capacity. Not only the Special Court, but international (and hybrid) courts in general are limited in terms of the number of persons they can prosecute. This is precisely the basis for this report's position that the activation of national courts is necessary in order to achieve the goals of international courts.

¹¹⁰ However, since the start of the Charles Taylor trial in The Hague (see section 6.4 below), it has proved challenging for the Special Court to keep the Sierra Leonean population informed about the trial. See Amnesty International, 'Sierra Leonean Unaware of Charles Taylor Trial' (14 July 2009) <<http://www.amnesty.org/en/news-and-updates/news/sierra-leoneans-unaware-of-charles-taylor-trial-20090714>> accessed 13 August 2009.

¹¹¹ The RUF and AFRC leaders were indicted on 17 counts (later amended to 18 counts and in the case of the AFRC leaders, on 18 February 2005 further amended to 14 counts). The CDF leaders were indicted on 8 counts, and Charles Taylor was indicted on 17 counts (later amended to 11 counts). The accused were charged with these crimes by virtue of having commanded the perpetrators, pursuant to the doctrine of command responsibility, as well as for having directly perpetrated the crimes. Direct perpetration under international law includes having committed, planned, ordered, instigated, aided and abetted the crimes, or having participated in a joint criminal enterprise which produced them.

large). This low number of trials is a direct result of the Special Court's limited capacity. Not only the Special Court, but international (and hybrid) courts in general are limited in terms of the number of persons they can prosecute. This is precisely the basis for this report's position that the activation of national courts is necessary in order to achieve the goals of international courts.

The joint trial of Sesay, Kallon and Gbao commenced in Freetown on 5 July 2004, before Trial Chamber I (hereinafter: RUF case). The trial judgment in the RUF case was rendered on 25 February 2009. Sesay and Kallon were convicted on 16 of 18 counts, and Gbao was convicted on 14 counts. Interestingly, the Trial Chamber concluded that the three were not responsible for crimes committed in the Western Area, including the bloody January 1999 attack on Freetown which left over 5,000 dead. On 8 April 2009, Sesay, Kallon and Gbao were sentenced to 52, 40 and 25 years imprisonment, respectively. On 26 October 2009, the Appeals Chamber upheld their sentences.¹¹²

Turning to the AFRC indictees, Johnny Paul Koroma fled Freetown in January 2003 and his whereabouts are still unknown. Brima, Kamara and Kanu were arrested in 2003 and their joint trial began in Freetown on 7 March 2005, before Trial Chamber II (hereinafter: AFRC case). On 20 June 2007, the Trial Chamber rendered its judgment in the AFRC case, convicting all three accused on 11 of 14 counts in the indictment. On 19 July 2007, the Trial Chamber imposed sentences of 50 years for Brima, 45 years for Kamara, and 50 years for Kanu. On 22 February 2008, the Appeals Chamber rendered its judgment, dismissing the appeal and upholding the sentences.

The joint trial of the three CDF indictees, who were also arrested in 2003, started in Freetown on 3 June 2004, before Trial Chamber I (hereinafter: CDF case). Closing arguments were heard in November 2006, but before the Chamber reached a judgment, Sam Hinga Norman died from an illness and the proceedings against him were terminated.¹¹³ On 2 August 2007, the Trial Chamber rendered its judgment in the CDF case. Fofana was found guilty on four counts, and Kondewa was found guilty on five counts. On 9 October 2007, the Trial Chamber sentenced Fofana to six years

¹¹² The Appeals Chamber, however, overturned Gbao's conviction on Count 2 (collective punishments). It also found that Gbao was not responsible for one of the two attacks against UN peacekeepers (Count 15) for which he was convicted by the Trial Chamber.

¹¹³ On 21 May 2007, the Trial Chamber decided to terminate the proceedings against Norman due to his death. See *Prosecutor v. Sam Hinga Norman*, SCSL-2004-14-T, Decision on Registrar's Submission of Evidence of death of Accused Samuel Hinga Norman and consequential issues, 21 May 2007.

imprisonment and Kondewa to eight years imprisonment. In deciding on the sentences, the Chamber considered as a mitigating factor the fact that the accused had committed the crimes while fighting to restore the legitimate democratic Government of Sierra Leone. On 28 May 2008, the Appeals Chamber, by a majority, overturned some of the convictions (including, in the case of Kondewa, for enlistment of child soldiers), entered two new convictions, and sustained two convictions. It also increased the sentences, rejecting the Trial Chamber's finding that an alleged "just cause" for fighting can mitigate the sentence of persons convicted for international crimes. Fofana is now sentenced to a total of 15 years and Kondewa has been given a 20 year sentence.

Charles Taylor was indicted by the Special Court on 7 March 2003, while still sitting as the head of state of Liberia, for his alleged support and assistance to the AFRC/RUF forces in carrying out their mission.¹¹⁴ His indictment was kept under seal until 4 June 2003, when the Special Court Prosecutor unsealed it during Taylor's first trip out of Liberia since the indictment was confirmed.¹¹⁵ Taylor evaded arrest and in August 2003 went into exile in Nigeria. Almost three years later, on 29 March 2006, Taylor was arrested in Nigeria and transferred to Liberia, from where he was immediately surrendered to the Special Court's custody. On 3 April 2006, Taylor made his initial appearance before the Special Court, pleading "not guilty" to all counts.¹¹⁶ On 20 June 2006, the proceedings against him were transferred from Sierra Leone to The Hague, Netherlands, for security reasons.¹¹⁷ Taylor's trial started on 4 June 2007 before Trial Chamber II, but the proceedings were immediately adjourned to ensure that his newly appointed counsel have adequate time to prepare the defence. The trial resumed in January 2008. The Prosecution closed its case on 30 January 2009, having presented 91 witnesses, and the Defence case started on 13 July 2009.

All judicial activities at the Special Court are expected to be completed by October 2010. Still, an additional trial may take place if the Special Court obtains custody over

¹¹⁴ Charles Taylor served as Liberia's president from 2 August 1997 until he went into exile in Nigeria on about 11 August 2003. From the late 1980's, Taylor was the leader of the organized armed group called the National Patriotic Front of Liberia.

¹¹⁵ Ironically, this was during Taylor's trip to Ghana where he participated in the Liberian peace talks.

¹¹⁶ On 16 March 2006, a Judge of the Special Court approved an amended indictment reducing the number of counts from 17 to 11. See *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-I, Decision on Prosecution's application to amend indictment and on approval of amended indictment, 16 March 2006.

¹¹⁷ UNSC Res 1688 (16 June 2006) UN Doc S/RES/1688 (noting "that at present the trial of former President Taylor cannot be conducted within the sub region due to the security implications if he is held in Freetown at the Special Court"). The trial is held at the ICC premises but under the exclusive jurisdiction of the Special Court.

former AFRC leader, Johnny Paul Koroma.¹¹⁸ In principle, new indictments could be issued by the Special Court, although it is unlikely at this stage due to the Court's limited funding and duration.

At present, the Special Court is searching for ways to ensure that its critical residual functions (i.e. its ongoing core obligations) will be fulfilled after it closes. Ten such residual functions were identified: protecting witnesses, supervising sentences, preserving and managing the archives, trying the fugitive Johnny Paul Koroma, handling claims for compensation, defence counsel and legal aid issues, assistance to national prosecution authorities, prevention of double jeopardy, holding review proceedings, and holding contempt-of-court proceedings.¹¹⁹ According to a Special Court official, it is unlikely that many of these responsibilities would be transferred to the Sierra Leonean authorities. First, the national system could not meet the standards in terms of protecting the rights of accused, victims or witnesses (see section 4.2 above). Second, there is no international support for such an idea. For example, the UK would not welcome the idea that Sierra Leone will supervise sentences served in the UK (where Charles Taylor is expected to serve his sentence, if convicted by the Special Court). Nonetheless, the transfer of witness protection obligations to Sierra Leone is being presently considered. A final decision on this matter depends on whether a national witness protection program is established in Sierra Leone (see section 8.4 below).¹²⁰

¹¹⁸ He cannot be tried in absentia, in accordance with his rights under Article 17 of the Statute.

¹¹⁹ Special Court for Sierra Leone, 'Report on the Residual Functions and Residual Institution Options of the Special Court for Sierra Leone' (by F. Donlon, 16 December 2008). Confidential copy with author.

¹²⁰ Interview notes with author. Interestingly, the Secretary-General's report stated: "The lifespan of the Special Court ... will be determined by a subsequent agreement between the parties upon the completion of its judicial activities, *an indication of the capacity acquired by the local courts to assume the prosecution of the remaining cases*, or the unavailability of resources. In setting an end to the operation of the Court, the Agreement would also determine all matters relating to enforcement of sentences, pardon or commutation, transfer of pending cases to the local courts and the disposition of the financial and other assets of the Special Court." (Emphasise added). See UN Secretary-General's Report on the Establishment of the Special Court (n 90), para. 28.

6.5 JURISPRUDENCE

The judgments the Special Court have contributed significantly to the development of international criminal law. For example, the Appeals judgment in the AFRC case established that “forced marriage” is a crime against humanity. It also confirmed the Trial Chamber’s convictions for the crimes of recruiting children under 15 to an armed force, sexual slavery as the war crime of outrage against personal dignity, and acts of terror in a civil war. This was the first time that an international court has convicted anyone for these crimes. In establishing that these acts constitute crimes against humanity or serious violations of international humanitarian law, their universal prohibition is strengthened. Another interesting contribution to international law is found in the Appeals judgment in the CDF case, which established that an alleged “just cause” for the fighting cannot mitigate the punishment of persons convicted of serious violations of international humanitarian law.

The judgments the Special Court have contributed significantly to the development of international criminal law. For example, the Appeals judgment in the AFRC case established that “forced marriage” is a crime against humanity. It also confirmed the Trial Chamber’s convictions for the crimes of recruiting children under 15 to an armed force, sexual slavery as the war crime of outrage against personal dignity, and acts of terror in a civil war. This was the first time that an international court has convicted anyone for these crimes.

Two landmark decisions by the Special Court’s Appeals Chamber are those asserting that neither the position of an accused as a head of state nor the granting of a national amnesty to perpetrators, preclude prosecution for international crimes by international tribunals. On 31 May 2004, the Appeals Chamber held that heads of states are not immune from prosecution by international tribunals.¹²¹ The decision was given in the case against Charles Taylor. Taylor’s defence counsel argued that under customary international law, heads of states enjoy immunity from criminal prosecution in foreign or international courts. The Appeals Chamber rejected this argument, finding that under customary international law, “the principle seems now established that the sovereign

¹²¹ *Prosecutor v. Charles Ghankay Taylor*, SCSL–2003–01–AR72(E), Decision on Immunity from Jurisdiction, 31 May 2004 (hereinafter: Taylor Immunity Decision).

equality of states does not prevent a Head of State from being prosecuted before an international criminal tribunal or court.”¹²²

On 13 March 2004, the Special Court’s Appeals Chamber issued a decision that the granting of a national amnesty to perpetrators does not preclude prosecution for international crimes by international tribunals or national courts in third states asserting universal jurisdiction.¹²³ In its decision, Appeals Chamber held that “[w]hatever effect the amnesty granted in the Lomé Agreement may have on a prosecution for such crimes as are contained in Articles 2 to 4 [of the Statute] in the national courts of Sierra Leone, it is ineffective in removing the universal jurisdiction to prosecute persons accused of such crimes that other states have by reason of the nature of the crimes. It is also ineffective in depriving an international court such as the Special Court of jurisdiction.”¹²⁴ The Appeals Chamber affirmed that “[e]ven if the opinion is held that Sierra Leone may not have breached customary law in granting an amnesty, this court is entitled in the exercise of its discretionary power, to attribute little or no weight to the grant of such amnesty which is contrary to the direction in which customary international law is developing.”¹²⁵

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6.6 FUNDING

The Special Court is funded through voluntary contributions of interested states, unlike the ad hoc tribunals which are funded through assessed dues. The Special Court’s funding mechanism also differs from that of the “hybrid” courts in Kosovo and East Timor, which are funded through the budget of an existing UN mission. The Special

¹²² Taylor Immunity Decision, para. 52. Considering that at the time of the hearing Taylor was no longer head of state, the Court also held that “[t]he immunity *ratione personae* which he claimed had ceased to attach to him. Even if he had succeeded in his application the consequence would have been to compel the Prosecutor to issue a fresh warrant.” See Taylor Immunity Decision, para. 59.

¹²³ *Prosecutor v. Morris Kallon, Brima Bazzy Kamara*, SCSL–2004–15–AR72 (E), SCSL–2004–16–AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004 (hereinafter: Lomé Amnesty Decision).

¹²⁴ Lomé Amnesty Decision (n 123), para. 88. The Special Court’s Appeals Chamber also noted that the president of Sierra Leone acknowledged that “the intention of the amnesty granted was to put prosecution of such offences outside the jurisdiction of national courts.” See Lomé Amnesty Decision (n 123), para. 74.

¹²⁵ Lomé Amnesty Decision (n 123), para. 84.

Court's limited resources do not allow it to prosecute more than a handful of perpetrators. Insufficient and insecure donor funding has been reportedly one of the most serious challenges facing the Court, putting an enormous strain on the operation of many of its sections.¹²⁶ Other international courts face similar challenges, even those which are funded more generously than the Special Court. As mentioned earlier, the limited capacity of international courts requires the parallel involvement of national courts in prosecuting atrocities, if fighting impunity is the ultimate goal.

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The Special Court received so far contributions in cash and in kind from over 40 states. Key donors include Canada, the Netherlands, Nigeria, the UK and the US. The budget for its first three years of operation (1 July 2002 to 30 June 2005) was originally set at 114.6 million US dollars, but due to donor reluctance, it was lowered to 57 million US dollars. When this amount proved insufficient, the UN approved a one-time subvention grant to the Court of 16.7 million US dollars, to finance its third year of operation. This brought the total funding of the Court's first three years to 73.7 millions US dollars. An additional amount of about 71 millions US dollars was used to fund the subsequent three year period (1 July 2005 to 30 June 2008), bringing the total amount for the Court's first six years of operation to around 144.7 million US dollars. In addition, to cover the activities of the Court in the subsequent period, and until the conclusion of all its activities in October 2010, the Management Committee has recently approved a "completion budget" of about 68.4 million US dollars.¹²⁷ This brings the total expected cost of the Special Court to 213.1 million US dollars.¹²⁸ It is noted that the Special Court receives financial

¹²⁶ See e.g. HRW Bringing Justice (n 35), p. 4.

¹²⁷ Special Court for Sierra Leone, 'Annual Report for 2007-2008' <<http://www.sc-sl.org/DOCUMENTS/SpecialCourtAnnualReports/tabid/201/Default.aspx>> accessed 30 May 2009.

¹²⁸ The author tried to ascertain the cost of the two national war-related prosecutions in Sierra Leone, namely, the RUF and WSB cases, but the Sierra Leonean authorities would not provide such figures. This data was sought in order to stress that disproportionately greater resources were allocated to the Special Court's trials, in comparison to the parallel national proceedings.

support from the European Union (hereinafter: EU) through the European Instrument for Democracy and Human Rights.¹²⁹

6.7 LOCAL PERCEPTIONS

According to a Sierra Leonean human rights activist, the local perceptions of the Special Court were predominantly negative during its first several years of existence, but once the trials commenced, these perceptions became more positive.¹³⁰ Several interviewees considered that the Special Court's strong outreach program contributed to its growing acceptance by Sierra Leoneans (for a discussion about the outreach program see section 6.4 above).¹³¹ A senior official of the Special Court referred to a survey conducted by the Special Court in 2006, which indicated that about 80 percent of the Sierra Leonean population understood what the Special Court was doing, and around 90 percent thought the Special Court has promoted peace and stability in Sierra Leone.¹³²

According to a Sierra Leonean human rights activist, the local perceptions of the Special Court were predominantly negative during its first several years of existence, but once the trials commenced, these perceptions became more positive. A survey conducted by the Special Court in 2006, indicated that about 80 percent of the Sierra Leonean population understood what the Special Court was doing, and around 90 percent thought the Special Court has promoted peace and stability in Sierra Leone.

However, it was also mentioned that the local support for the Special Court has lately been dropping, and the public is growing impatient to see the Court wind up its work.¹³³ Negative local perceptions were – and to a certain extent still are – based on different grounds, from the belief that CDF leaders should not have been indicted because of their role in resisting the RUF, to the notion that “insider witnesses” who testified before the

¹²⁹ Official Journal of the European Union, C 187 E/242, 24 July 2008, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:187E:0242:0244:EN:PDF>> accessed 30 May 2009.

¹³⁰ Interview notes with author.

¹³¹ Interview notes with author.

¹³² See Special Court for Sierra Leone, ‘Nationwide Survey Report on Public Perceptions of the Special Court for Sierra Leone’ (by M. B. Pratt, March 2007), indicating that 79 percent of the population “understood the role of the Court” and 91 percent of the respondents strongly agreed “that the Special Court has contributed to building peace after intense violence”. Copy of survey with author. The Special Court official who was interviewed confused the two figures, mistakenly recalling that the survey indicated that “90 percent knew what ... we were doing ... and 80 percent thought we were enforcing the peace and stability”. The official added that in the days leading to the 2007 national elections, local newspapers published articles claiming that the Special Court would prosecute election-related violence. While this was not true, he noted, it shows that the Court has succeeded in creating an impression that power cannot be changed through violence. The Special Court official considered this a big accomplishment, given the small number of cases tried by the Special Court. Interview notes with author.

¹³³ Based on an interview with a Sierra Leonean human rights activist. Interview notes with author.

Special Court themselves bear the greatest responsibility for the atrocities and should have been prosecuted. There are also those who regard the trials as inconsistent with the Lomé Amnesty. Some locals criticize the Court for not employing enough Sierra Leoneans in professional positions, or for only employing Sierra Leoneans from abroad who will leave Sierra Leone once the Court closes down.¹³⁴ It is recalled, however, that the Government of Sierra Leone initially had the opportunity to appoint four Sierra Leoneans to senior positions at the Special Court, but chose to only appoint two.¹³⁵

While the general public's support is important, for the Court to have a strong domestic impact it must also be accepted as a credible institution by the local elite: those who take judicial and prosecutorial decisions on the national level. In interviews, senior officials of the Sierra Leonean government were highly critical of the Special Court. They did not seem to view it as a role model for a justice administration institution, and complained that its proceedings differ from national proceedings, in terms of the use of jurors and rules of evidence.¹³⁶ A senior Special Court

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official noted that Sierra Leone's current Attorney General and Minister of Justice, Serry Kamal, has been known to refer to the Special Court as "a foreign country".¹³⁷ Such opinions could promote ignorance of the Special Court's work among Sierra Leonean lawyers and judges, as well as lack of interest in applying the principles it established on the national level.

¹³⁴ Additional complaints against the Special Court include: that it is an imposition of the West; that its trials will destabilize the nation by increasing existing tensions between RUF supporters and CDF supporters who often live in the same communities; that the millions spent on it so far could have been used to compensate the victims or rebuild their houses and villages; and that discrepancies between local and international standards in terms of maximum punishment and detention conditions undermine the credibility of the Special Court as an institution of justice. See Horowitz, *Transitional Criminal Justice in Sierra Leone* (n 103), pp. 59-60.

¹³⁵ The criticism that the Special Court does not employ enough Sierra Leoneans has been repeated in many interviews conducted by the author. However, there is some indication that this perception may be changing as a result of the recent appointment of a Sierra Leonean to the position of Deputy Prosecutor of the Special Court. Thus, a Special Court official noted that while the Special Court was criticized in the past for not hiring enough nationals, it has since made up for this shortcoming. Interview notes with author.

¹³⁶ Interview notes with author.

¹³⁷ Interview notes with author.

These negative perceptions of government officials could be attributed to the fact that the current APC government was in opposition to the previous SLPP government, which requested the Special Court, and that it is affiliated with AFRC elements (see section 4.1 above). In fact, the incoming Attorney General and Minister of Justice, Serry Kamal, represented certain parties who argued before the Supreme Court of Sierra Leone that the Special Court was unconstitutional and therefore illegally established. The Supreme Court of Sierra Leone rejected the motion, and recognized the Special Court as a legitimate and independent court. It held that since the Special Court is external to the national court system, it was not required to be established in accordance with the constitution of Sierra Leone.¹³⁸ While this decision may have contributed to the Special Court's acceptance in Sierra Leone, it also sent a message to the public that the Court is an external entity to Sierra Leone.

Nonetheless, even the Special Court's critics admit that it has had some positive effects in Sierra Leone. For example, two senior Sierra Leonean government officials, who were generally opposed to the Special Court, noted that it succeeded in sending a message that leaders can no longer get away with crimes they commit while in office.¹³⁹ According to a senior Special Court official, even Sierra Leone's Justice Minister Serry Kamal, a known critic of the Special Court, admitted that the 2007 national elections would not have gone as smoothly as they did without the Special Court's presence. A Special Court judge added that there is a growing appreciation of the Special Court among Sierra Leone's judicial and legal elites.¹⁴⁰

¹³⁸ Supreme Court of Sierra Leone, *Issa Hassan Sesay et al. v. The President of the Special Court et al.*, SC 1/2003, 10 May 2005.

¹³⁹ Interview notes with author.

¹⁴⁰ Interview notes with author.

7. COOPERATION BETWEEN THE SPECIAL COURT AND THE NATIONAL SYSTEM

7.1 STRUCTURE

Cooperation between the Special Court and the Government of Sierra Leone is regulated by Article 17 of the Special Court Agreement, which stipulates as follows:

1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.
2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:
 - a. Identification and location of persons;
 - b. Service of documents;
 - c. Arrest or detention of persons;
 - d. Transfer of an indictee to the Court.

However, no arrangements were made regarding cooperation or information sharing between the Special Court and the national courts in Sierra Leone. This is despite the fact that the UN Secretary-General envisaged that such arrangements would be made once the Special Court is set up and its Prosecutor is appointed.¹⁴¹ The only provision regulating the relationship between these respective systems is Article 8 of the Special Court's Statute, which establishes the latter's primacy over national courts (see section 6.2 above). In addition, it should be noted that the Special Court's Rules were amended on 27 May 2008, to allow the transfer of cases to national courts. Rule 11 *bis*, titled "Referral of an Indictment to Another Court", regulates such transfers.¹⁴²

No arrangements were made regarding cooperation or information sharing between the Special Court and the national courts in Sierra Leone. This is despite the fact that the UN Secretary-General envisaged that such arrangements would be made once the Special Court is set up.

¹⁴¹ UN Secretary-General's Report on the Establishment of the Special Court (n 90), para. 8 ("Since the present report is limited to an analysis of the legal framework and the practical operation of the Special Court, it does not address in detail specifics of the relationship between the Special Court and the national courts in Sierra Leone.... It is envisaged, however, that upon the establishment of the Special Court and the appointment of its Prosecutor, arrangements regarding cooperation, assistance and sharing of information between the respective courts would be concluded...").

¹⁴² Rule 11 *bis* of the Special Court Rules stipulates as follows:

The above provisions in Article 17 of the Special Court Agreement were intended to provide the Special Court with enforcement capacity; a point clearly demonstrated by the effective arrests made during 2003 by the local police force pursuant to orders of the Special Court. The Sierra Leonean legislation which incorporates into domestic law the obligation to assist the Special Court is the Special Court Agreement Ratification Act (2002).¹⁴³

7.2 POLICIES

The Special Court enjoyed President Kabbah's assistance in matters such as facilitating arrests and obtaining witnesses, despite its mandate to prosecute perpetrators of all factions, including the pro-government militia CDF (it is recalled that Kabbah requested a court which would prosecute only RPF members). However, the Government of

The Special Court enjoyed President Kabbah's assistance in matters such as facilitating arrests and obtaining witnesses. However, the Government of Sierra Leone kept its involvement in the Special Court's process to a minimum.

(A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Special Court, the President may appoint a bench of three Judges selected from the Trial Chambers (hereinafter referred to as the "Referral Bench"), which solely and exclusively shall determine whether the case should be referred to the authorities of a State having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

(B) The Referral Bench may order such referral at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that, if convicted, neither the death penalty nor a term of life imprisonment, as opposed to a fixed number of years, will be imposed on the accused.

(C) The Referral Bench may instruct the Registrar to assign counsel to represent an accused in proceedings pursuant to this Rule, whether or not the accused is in the custody of the Special Court.

(D) Where an order is issued pursuant to this Rule:

(i) the accused, if in the custody of the Special Court, shall be handed over to the authorities of the State concerned;

(ii) the Referral Bench may order that protective measures for certain witnesses or victims remain in force;

(iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment.

(E) Where the accused is not in the custody of the Special Court, the Referral Bench may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred for trial.

(F) A Referral Bench shall have the powers of, and insofar as applicable shall follow the procedures laid down for, a Trial Chamber under the Rules.

(G) An appeal by the accused or the Prosecutor shall lie as of right to the Appeals Chamber from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fourteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.

¹⁴³ The Special Court Agreement, 2002 (Ratification) Act, 2002, Supplement to the Sierra Leone Gazette Vol. CXXXIII. No. 22 (25 April 2002) <<http://www.sc-sl.org/LinkClick.aspx?fileticket=BcKTbFltxZk%3d&tabid=176>> accessed 26 August 2009. This Act has been amended by The Special Court Agreement, 2002 (Ratification) (Amendment) Act, 2002, Supplement to the Sierra Leone Gazette No. 69 (21 November 2002) <<http://www.sc-sl.org/LinkClick.aspx?fileticket=BJ26T04jIAk%3d&tabid=176>> accessed 26 August 2009.

Sierra Leone kept its involvement in the Special Court's process to a minimum. It was initially authorized to appoint three of the Court's judges, as well as its Deputy Prosecutor, but only appointed two Sierra Leonean judges.¹⁴⁴ By appointing foreigners to fill the other two positions (the third judge and the Deputy Prosecutor), the Government contributed to the perception that the Special Court is mostly international, rather than a true hybrid institution.¹⁴⁵

According to a 2006 report by the International Center for Transitional Justice:

Sierra Leone is often cited as an example of positive political will in terms of government support for the Court. The Sierra Leonean government compares favourably to a number of other governments that have interacted with hybrid or international tribunals. However, the government has been careful to distance itself from the Special Court's work. The government is represented on the Management Committee in the form of Ambassador Kanu, but other senior government officials often decline to comment on the Court, arguing that doing so would have implications for its independence. However, while it would be inappropriate for political leaders to comment on the particularities of cases or on ongoing trials, the government's 'hands-off' attitude has contributed to the perception that the Special Court is imposed and run by internationals, which has diminished its relevance.¹⁴⁶

This "distance" between the Special Court and the national system may have served the Government of Sierra Leone, in the sense that the latter disassociated itself from the arrest and trial of Sam Hinga Norman and other pro-government militia leaders. These leaders were still viewed by sectors of the population as national heroes, and the Government, still fighting for its own legitimacy, may not have wanted to associate itself with their arrest and trial.

The Special Court also contributed to the perception that it is a pure international institution. In one of its early decisions, on 13 March 2004, the Special Court's Appeals Chamber held that the treaty-based nature of the Special Court removes it from subordination to the Sierra Leonean court system and thus renders it an international tribunal.¹⁴⁷ In addition, during the Court's first two or three years of existence, its officials

¹⁴⁴ With the creation of a second Trial Chamber, a fifth position was allocated to an individual selected by the Government of Sierra Leone.

¹⁴⁵ The Supreme Court decision mentioned in note 138 above may have also contributed to this perception (by establishing that the Special Court is external to the national court system).

¹⁴⁶ ICTJ *The Special Court Under Scrutiny* (n 105).

¹⁴⁷ *Prosecutor v. Morris Kallon, Sam Hinga Norman, Brima Bazzy Kamara*, SCSL-2004-15- AR72(E), SCSL-2004-14-AR72(E), SCSL-2004-16-AR72(E), Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004. Also see UN Secretary-General's Report on the Establishment of the Special Court (n 90), para. 9 ("... the Special Court is not anchored in any existing system (i.e., United Nations administrative law or the national law of the State of the seat ...)"); and para 39 (... the Special Court for Sierra Leone is established outside the national court system...).

deliberately kept a distance from the Sierra Leonean justice system. This was not a written policy, explained a senior Special Court official, but an attempt by the Special Court to establish its international character and assert its independence. On the one hand this approach denied an opportunity for interaction between the two systems, according to the Court official, but on the other hand it promoted a positive local perception of the Special Court among the Sierra Leonean public, which had little faith in the national courts.¹⁴⁸

7.3 TRENDS

There are some indications that the gap between the Special Court and the national system is narrowing. According to senior Special Court members, at present there is a certain degree of interaction between the two systems. For example, Special Court officials are involved in advocating for the domestic implementation of the Rome Statute of the ICC (see section 8.1 below). A Special Court official noted that this is much to the satisfaction of the local civil society.¹⁴⁹ In this context, the discussion in section 8.4 about the Special Court's impact on national capacity is relevant, as it highlights some of the recent bridges created between the Special Court and the national justice system.

There are some indications that the gap between the Special Court and the national system is narrowing. According to senior Special Court members, at present there is a certain degree of interaction between the two systems.

Interestingly, if indeed the relationship between the Special Court and national system is “warming up”, this is despite the fact that the current ruling party in Sierra Leone (APC) seems less supportive of the Special Court than the previous ruling party (SLPP), which requested the Special Court (see section 6.7 above).

¹⁴⁸ Interview notes with author.

¹⁴⁹ Interview notes with author.

8. THE IMPACT OF THE INTERNATIONAL RESPONSE ON THE NATIONAL RESPONSE

This part addresses the impact of the Special Court on national criminal proceedings in Sierra Leone. It does not discuss the Special Court's impact on or relationship with the TRC. It is noted at the outset that the Special Court's potential to influence national proceedings in Sierra Leone was a fortiori limited as such proceedings hardly took place because of the Lomé Amnesty.

8.1 NORMATIVE IMPACTS

Substantive/Procedural Norms

As noted above, Sierra Leone's domestic law does not cover international crimes (see section 4.2

above). It was mentioned in interviews that Special Court officials are currently advocating for the domestic implementation of the Rome Statute of the ICC.¹⁵⁰ If such efforts prove successful, this could be an important impact of the Special Court on the national system. But it is too early to tell at the moment whether these efforts will succeed. Moreover, according to interviews, a Sierra Leonean law which would implement the Rome Statute of the ICC could only have a prospective effect.¹⁵¹

Nonetheless, war-related crimes have been prosecuted nationally as ordinary crimes in the RUF and WSB cases.¹⁵² Both trials commenced in the High Court in Freetown after the Special Court began its process. However, the due process violations which characterized these national trials (see section 5.2 above) suggest that their quality was hardly influenced by the Special Court. A Sierra Leonean lawyer who was involved in the RUF case noted that no references were made during this case to the Special Court's normative framework.¹⁵³ This is despite the fact that some of the defence attorneys in the RUF case, including the lead defence counsel, were previously

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¹⁵⁰ Interview notes with author.

¹⁵¹ Interview notes with author.

¹⁵² Section 5.2 above discusses these trials, which addressed post-Lomé crimes. A senior official of the Special Court noted that pre-Lomé atrocities could also be prosecuted in Sierra Leone as ordinary crimes, had there been political will in Sierra Leone to do so. Interview notes with author.

¹⁵³ Interview notes with author.

involved with the Special Court.¹⁵⁴ The interviewee explained that referring to Special Court rules in national trials would have been useless, as the bench would not have applied such provisions.¹⁵⁵

It may also be useful to examine a third national trial in Sierra Leone, which concerned a 2003 coup attempt.¹⁵⁶ The trial judgment was rendered by the High Court in Freetown on 20 December 2004. Of the 15 defendants, ten received the death penalty, one was sentenced to ten years of imprisonment, and four were acquitted. The men who were sentenced to death included nine members of the AFRC or RUF, and one civilian. Although the charges were treason and the event in question occurred after the official end of the war, something can be learned from this trial about the quality of domestic prosecutions for hostility-related crimes. A legal professional who assisted the defence criticised the fairness of the proceedings, stating that “[a] number of those convicted were guilty only of being present at the barracks where the alleged treason attempt was made”.¹⁵⁷ In addition, the imposition of the death penalty only weeks after the TRC recommended its abolition attracted criticism.¹⁵⁸ However, in an interesting turn of events, four years later, the Court of Appeals acquitted all the defendants, overturning their convictions and revoking all death penalties. They were subsequently released in late 2008.¹⁵⁹

It is unclear whether the above acquittal is a result of improved justice standards in Sierra Leone or political pressure. The 2003 coup attempt was committed by elements of the AFRC, against the previous SLPP government. The trial judgment was rendered while the SLPP government was still in power, but the Court of Appeals issued its judgment after the APC government came to power. Thus, the acquittal could be a

¹⁵⁴ As mentioned in note 77 above, Mr. Osho Williams was lead defence counsel in the RUF case. Mr. Williams, who recently died, was also involved as defence counsel in one of the trials before the Special Court.

¹⁵⁵ Interview notes with author.

¹⁵⁶ The trial concerned an armed attack in January 2003 on a military barracks outside Freetown. Johnny Paul Koroma, the former AFRC leader, was arrested by the national authorities in connection with this event, but escaped two months before he was indicted by the Special Court. Information about this case was provided to the author by Clare da Silva (n 69), a Canadian lawyer who provided pro-bono assistance to the accused in this case. Also see Amnesty International ‘Sierra Leone: Amnesty International expresses dismay at 10 death sentences for treason’ (Press Release, 21 December 2004) <www.amnesty.org/en/library/asset/AFR51/009/2004/en/dom-AFR510092004en.html> accessed 30 May 2009 (hereinafter: AI Expresses Dismay).

¹⁵⁷ da Silva, Will Justice Prevail? (n 72).

¹⁵⁸ *Ibid.* Also see AI Expresses Dismay (n 156).

¹⁵⁹ A senior Special Court official noted that the acquittal by the appellate court was based on a technical detail – the lack of corroboration of an accomplice’s testimony. Nonetheless, this result is considered in Sierra Leone as a victory of justice. Interview notes with author. See discussion related to this trial in section 8.3 below.

consequence of political pressure by the newly elected APC government. This is especially likely in light of the involvement of a prominent AFRC member in the current government. In any event, there is nothing indicating that the Special Court had any impact on the proceedings in this case.¹⁶⁰

Finally, it is recalled that the Special Court's Statute authorizes the Court to prosecute domestic crimes, and be guided by domestic criminal procedures (see section 6.2 above).¹⁶¹ By applying these provisions, the Special Court could have had some impact on domestic norms, both substantive and procedural. But the Special Court refrained from resorting to domestic norms. A Special Court judge considered that the Court thus missed an important opportunity to interpret and develop national law, and promote a public debate on whether Sierra Leonean courts can prosecute certain atrocities.¹⁶² He generally considered, as did another senior member of the Special Court, that the Court did not thus far encourage the national system to improve criminal norms, whether procedural or substantive.¹⁶³

Jurisprudential Impacts

Finally, it could be expected that the jurisprudence of the Special Court would have had an impact within Sierra Leone: local awareness to the Court's decisions regarding the international prohibition of certain acts (such as recruiting child soldiers, committing "forced marriage", etc.) should help

The Special Court refrained from resorting to domestic norms. A Special Court judge considered that the Court thus missed an important opportunity to interpret and develop national law, and promote a public debate on whether Sierra Leonean courts can prosecute certain atrocities. He generally considered that the Court did not thus far encourage the national system to improve criminal norms, whether procedural or substantive.

¹⁶⁰ In addition, criminal proceedings were initiated two years ago against former RUF spokesman Omrie Golley. He was arrested in 2006, when the SLPP was in power, and charged with an attempted coup. Golley was in pre-trial detention for 22 months, at which stage the charges against him were dropped and he was released by the current APC government. Similarly to the acquittal of ten soldiers on death row, the dropping of the treason charges against Omrie Golley could be a result of either improved justice standards or political pressure. Either way, nothing indicates that this development is attributable to the Special Court.

¹⁶¹ Articles 5 and 14(2) of the Statute.

¹⁶² Interview notes with author. Another senior member of the Special Court suggested that the Court's first Prosecutor refrained from charging the accused with national crimes because he assumed that the Lomé Amnesty would require the Special Court judges to cancel the charges. At the same time, however, the interviewee noted that it would have been useful to have charged some of the Special Court's defendants for the domestic crime of setting fire to property (under Article 5 of the Statute), as eventually their burning acts became un-punishable. He explained that the prosecution tried to present the evidence of burning acts as support for the charge of pillage (as a war crime), but the judges rejected this attempt and eventually considered the evidence as relating to the charges of terrorism and collective punishment. Interview notes with author.

¹⁶³ Interview notes with author.

prevent their reoccurrence in Sierra Leone (on the jurisprudence of the Special Court see section 6.5 above). However, a Sierra Leonean lawyer explained that national judges and lawyers lack knowledge of the Special Court's jurisprudence. He added that in the national RUPF case (see section 5.2 above), in which he was personally involved, no references were made to the Special Court's jurisprudence. The lawyer also stressed that the development of criminal law in Sierra Leone is generally discouraged, and national courts do not normally rely on new jurisprudence, especially when it relates to human rights issues.¹⁶⁴

As for principles established by the Special Court, the local lawyer noted that there was no need to apply them in the RUPF case. For example, the principles of command responsibility or joint criminal enterprise were irrelevant because the case only concerned the direct conduct of the accused (and not their orders or influence over others). Moreover, there was no need to refer to factual findings of the Special Court, as the factual scenario addressed by the national court concerned the 8 May 2000 demonstration, which was not addressed by the Special Court.¹⁶⁵

8.2 PROSECUTION RATES AND TRENDS

As already mentioned, the Government of Sierra Leone did not prosecute any of the war's serious atrocities, all of which occurred before the signing of the Lomé Peace Agreement. The creators of the Special Court did not consider it their task to encourage national trials in Sierra Leone, and accordingly, this was not an aim of the Special Court. The international community's disregard to national proceedings in Sierra Leone could be a result of its lack of trust in

The creators of the Special Court did not consider it their task to encourage national trials in Sierra Leone, and accordingly, this was not an aim of the Special Court. The international community's disregard to national proceedings in Sierra Leone could be a result of its lack of trust in the local justice institutions, or its reluctance to frustrate the efforts of the TRC, a national body which received international support.

¹⁶⁴ Interview notes with author. The Sierra Leonean lawyer also explained that in national courts, lawyers must cite cases which were decided in relation to the specific legislation in question. Judges discourage bringing case law related to more advanced laws. Nonetheless, the lawyer added, some national judges conduct research and enjoy gaining knowledge, and they may welcome new references.

¹⁶⁵ Nonetheless, the Special Court did address the abduction of the 500 UN Peacekeepers, which was the reason for holding the demonstration of 8 May 2000.

the local justice institutions, or its reluctance to frustrate the efforts of the TRC, a national body which received international support.¹⁶⁶

A senior Special Court official expressed the view that it is better not to have national trials if the local system cannot offer fundamental guarantees. Even if international standards of justice are provided by law, national trials should only be held if these standards are applied in practice, including protection to victims and witnesses. In Sierra Leone, there are concerns of fairness towards the accused and witnesses, and it may take time until fair trials are possible. However, the same Court official noted that the creators of international courts should bear in mind that the international cases may eventually have to be handed over to national courts. They should therefore plan in advance how to ensure that national courts are ready for such transfers.¹⁶⁷

In one of its earliest decisions, the Special Court's Appeals Chamber held that the Lomé Amnesty was inapplicable before an international court or national courts applying universal jurisdiction (see section 6.5 above).¹⁶⁸ But it did not challenge the applicability of the Lomé Amnesty in the national courts of Sierra Leone, in relation to international crimes. While international crimes do not exist as such a category under Sierra Leonean domestic law, the Special Court could have drawn attention to this issue and thus perhaps encouraged a national discussion about the need for accountability for pre-Lomé crimes.¹⁶⁹ However, this issue was not raised before the Special Court judges, and besides, they did not consider it their business to encourage national prosecutions. Hence, the Special Court's existence or process did not thus far encourage the initiation of domestic proceedings concerning atrocity crimes in Sierra Leone.

¹⁶⁶ Members of the international community may have assumed that if perpetrators fear prosecution, they will refrain from discussing their crimes before the TRC.

¹⁶⁷ Interview notes with author.

¹⁶⁸ Lomé Amnesty Decision (n 123). It is also relevant to note that the Special Court's Appeals Chamber referred to this decision (in particular to paragraphs 82 and 84 therein) in its judgment in the CDF case ("the Appeals Chamber has held that a norm of customary international law is developing towards the affirmation that granting amnesty for serious violations of Human Rights is in breach of international law"). See *Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL-04-14-A, 28 May 2008, Judgment (AC), footnote 1338.

¹⁶⁹ According to a Sierra Leone Supreme Court judge, national discussions about prosecuting post-Lomé crimes never took place in Sierra Leone. Interview notes with author.

It is interesting to note, that even with regard to post-Lomé hostilities, the Special Court did not have an encouraging effect on the initiation of national prosecutions. The contrary may be true – a Sierra Leonean lawyer explained that because the Special Court’s trials addressed the abduction of the 500 UN peacekeepers, this event was not subject to a national prosecution (despite its occurrence after the signing of the Lomé Peace Agreement).¹⁷⁰ So in a way, the fact that the Special Court was dealing with certain events, allowed the national courts to remain inactive about them.

8.3 SENTENCING PRACTICES

Sentences issued by the Sierra Leonean court in the RUF and WSB cases were low in relation to those given at the Special Court (see sections 5.2 and 6.4 above). But this difference may be explained by the difference in the nature of the crimes. Still, a senior government official in Sierra

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Leone opined that the sentences imposed at the Special Court were too high.¹⁷¹ This is particularly interesting considering that in Sierra Leone the death sentence still applies to ordinary crimes such as murder. However, the death sentence was last executed in 1998, in relation to treason charges.

The Special Court did not have an impact thus far on sentencing practices in Sierra Leone. However, the rhetoric of NGOs such as Amnesty International, which stresses the discrepancies between the Special Court’s penalty standards and those of local courts, may have an impact in the long run.

It is recalled that the death penalty was imposed in Sierra Leone on ten persons in 2004, in connection with the 2003 coup attempt, but reversed on appeal four years later (see section 8.1 above). Following the 2004 trial judgment, Amnesty International immediately called for “an end to the discrepancy [in sentencing practices] between national courts and the Special Court for Sierra Leone”.¹⁷² After the convictions and death penalties were reversed in 2008, a news article reported that it was “the first successful appeal against a death penalty...opening the possibility of

¹⁷⁰ Interview notes with author. It is noted that only the top level perpetrators are prosecuted by the Special Court while the lower level perpetrators who were involved in the abduction were never prosecuted.

¹⁷¹ Interview notes with author.

¹⁷² Al Expresses Dismay (n 156).

an eventual end to capital punishment [in Sierra Leone]”.¹⁷³

It is also recalled that one of the TRC recommendations was to abolish the death penalty.¹⁷⁴ However, Amnesty International recently reported that “[i]n August [2008], civil society groups [in Sierra Leone] unsuccessfully lobbied the Constitutional Review Commission to abolish the death penalty. In December [2008], Sierra Leone abstained on a UN General Assembly resolution calling for a worldwide moratorium on executions.”¹⁷⁵ Hence, it seems that the Special Court did not have an impact thus far on sentencing practices in Sierra Leone. A Sierra Leonean human rights activist noted that the Special Court has not been actively encouraging Sierra Leoneans who are advocating locally for the abolition of the death penalty.¹⁷⁶ However, the Special Court may serve as an inspiration to local activists. Moreover, the rhetoric of NGOs such as Amnesty International, which stresses the discrepancies between the Special Court’s penalty standards and those of local courts, may have an impact in the long run.

8.4 CAPACITY BUILDING

As the Special Court’s mandate comes to its end, it is increasingly becoming engaged in capacity building initiatives in Sierra Leone. While these activities do not necessarily focus on enabling national prosecutions of the war’s atrocities, some of them may enhance the domestic capacity to handle complex criminal proceedings. For

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example, the Special Court is preparing to assist the Government of Sierra Leone in establishing a witness protection program. Other capacity building initiatives of the Special Court focus on developing a legal and institutional framework to prosecute future international crimes: it was mentioned in interviews that senior Court officials are promoting the domestic implementation of the Rome Statute of the ICC, a domestic legislation which would have a prospective effect (see section 8.1 above).¹⁷⁷ In addition,

¹⁷³ Mohamed Fofanah, ‘Death Penalty – Sierra Leone: Successful Appeal Strengthens Case For Abolition’, IPS News (Freetown, 12 December 2008) <<http://ipsnews.net/news.asp?idnews=45088>> accessed 30 May 2009.

¹⁷⁴ Sierra Leone TRC Report (n 63), Vol. 2, Ch. 3, para. 54.

¹⁷⁵ AI 2009 World Report (n 15).

¹⁷⁶ Interview notes with author.

¹⁷⁷ Interview notes with author.

a Special Court official indicated that there are discussions within the Special Court about encouraging the establishment of a war crimes office under Sierra Leone's Ministry of Justice.¹⁷⁸ Some of these capacity building initiatives are a result of the Special Court's desire to ensure that its ongoing residual obligations, such as the protection of its witnesses, are taken care of after it shuts down. Other motivations for these initiatives include the Court's desire to leave behind a legacy, and the hope of its Sierra Leonean staff members to see their national system improve.

In a briefing given in 2007 to the Security Council on the Special Court's achievements and challenges, the President of the Special Court explained that "[t]he Court was continuing to transfer expertise to Sierra Leoneans through a number of programmes, including training on courtroom interpretation, witness protection and detention standards."¹⁷⁹ He added that "[i]t should come as no surprise that, as the Court approaches the end of its mandate, legacy issues are one of its top most priorities".¹⁸⁰ A top Special Court official noted that in late 2008 the Court has embarked on about 20 different training programs for Sierra Leoneans, from teaching the anti-corruption commission how to use "insider witnesses" in their proceedings, to holding a course on defensive driving given by the Special Court's transport unit. Any skill which exists in the Special Court is being transferred to the nationals. The Special Court plans to continue in this path until it winds up, he added.¹⁸¹ According to other Special Court officials, a Legacy Working Group has been established within the Court, in which national institutions participate. The group's primary aim is to ensure skill transfer to the national level. The Special Court has assessed the needs of national institutions, such as prisons, police, and the Attorney General's office. It is now training the personnel in these institutions in the needed areas. The Court is also training investigators of the national Human Rights Commission and Anti-Corruption Commission, as well as court reporters.¹⁸²

¹⁷⁸ The official explained that while there is no political will to hold national cases for past atrocities, such a war crimes office may be useful in future cases of atrocities. Interview notes with author.

¹⁷⁹ UNSC Department of Public Information (News and Media Division) 'Special Court for Sierra Leone Faces Funding Crisis, as Charles Taylor Trials Gets Underway, Security Council Told Today in Briefing by Court's Senior Officials' (8 June 2007) UN Doc SC/9037 <<http://www.un.org/News/Press/docs/2007/sc9037.doc.htm>> accessed 28 August 2009.

¹⁸⁰ *Ibid.*

¹⁸¹ Interview notes with author.

¹⁸² Interview notes with author.

A Special Court official spoke about the Court's intention to help establish a national witness support and protection program in Sierra Leone. This will be a two year program, led by the Special Court's WVSU and funded by the OAK Foundation. WVSU already provided the Government with a layout of the infrastructural requirements, personnel needs, a tentative budget, and draft legislation. It is also preparing for the program's implementation process, including holding training sessions for the Sierra Leone Police with trainers from a UK police force.¹⁸³ According to the Special Court official, the Government is receptive to the Court's suggestions. He added that Sierra Leone's President and other senior officials agree that there is a need for a national witness protection program. Another high official of the Special Court noted that the national interest in a witness protection plan was a result of the Special Court's presence and process. Sierra Leoneans requested the Special Court to encourage the local authorities to set up a witness protection system on the national level.¹⁸⁴ According to yet another Special Court official, a national witness protection scheme would allow the Sierra Leonean authorities to deal better with ordinary criminal cases, as today even basic contact with witnesses is lacking.¹⁸⁵ Finally, it is noted that an official of the Sierra Leonean judiciary, who was generally critical of the Special Court, referred with satisfaction to the Special Court's intention to establish a national witness protection program.¹⁸⁶

Additional capacity building initiatives of the Special Court in Sierra Leone, explained a high official of the Special Court, include conducting seminars about international humanitarian law at the law school of Foray Bay College and at the local Bar School. This is done every year or two.¹⁸⁷ Another member of the Special Court mentioned that the Court is encouraging the establishment of a public defence office at the national level, which would select and assign duty counsel, and which would largely rely on the local bar association.¹⁸⁸

¹⁸³ Interview notes with author. Also see Special Court Press Release, 5 November 2009 <<http://www.sc-sl.org/LinkClick.aspx?fileticket=kJu0OgoLU2E%3d&tabid=53>> accessed 3 December 2009 (referring to a one-month training program given by the Special Court to local officers with the assistance of UK trainers).

¹⁸⁴ Interview notes with author. The official added that since such activities were not budgeted for in advance, the Special Court had to fund-raise for this initiative.

¹⁸⁵ Interview notes with author.

¹⁸⁶ Interview notes with author.

¹⁸⁷ Interview notes with author.

¹⁸⁸ Interview notes with author. Also a senior Sierra Leonean official noted that the government has been encouraged by the Special Court to create a national public defender's office. Interview notes with author.

In this context, it should also be noted that the Special Court's reliance on national staff has a strong capacity building component. It could ensure that once the Court completes its work, Sierra Leone will be left with professionals capable of supporting a rule of law society.¹⁸⁹ Sierra Leone police officers and investigators have been seconded to the Special Court for 90 day periods, exposing them to complex criminal investigations and evidence handling.¹⁹⁰ Defence and Prosecution recruit young Sierra Leonean lawyers as "Junior Professional Consultants".¹⁹¹ In addition, there is an internship program at the Special Court for Sierra Leoneans.

The Special Court's reliance on national staff has a strong capacity building component. It could ensure that once the Court completes its work, Sierra Leone will be left with professionals capable of supporting a rule of law society. However, a Sierra Leonean lawyer indicated that too few local lawyers were involved in the Special Court's process to be able to influence national criminal proceedings.

However, a Sierra Leonean lawyer indicated that too few local lawyers were involved in the Special Court's process to be able to influence national criminal proceedings. Several lawyers who had worked at the Special Court tried to approach criminal practice at the national courts in a different way, but their colleagues could not understand them. In his view, had more national lawyers been involved in the work of the Special Court, a more significant local impact would have resulted.¹⁹² Another

¹⁸⁹ A senior official of the Special Court indicated that by employing nationals, the Court exposes them to international standards of trial conduct, including with regard to evidence management and court administration. Another Special Court official theorized that the involvement in the Special Court of Sierra Leonean judges, prosecutors, defence lawyers, finance and administrative staff will bring knowledge and expertise into the Sierra Leonean system. Further, a Special Court judge considered that by employing nationals, the Special Court creates an important impact on national capacity. However, Special Court officials also stressed that there is a risk that nationals working at the Special Court would not return to the national system after the Court winds up, preferring instead to seek international jobs. For example, it is unlikely that the Sierra Leonean judges at the Special Court will later serve with the Sierra Leonean judiciary. From this perspective, the Court may be depleting national capacity instead of improving it. Interview notes with author. It should be noted in this context that although more than half of the Special Court's staff members are Sierra Leoneans, many of them are in non-professional posts, such as drivers, security guards, cleaners, etc.

¹⁹⁰ According to a 2006 report: "Some human rights observers have expressed concern privately about police involvement [with the Special Court], given the negative track record of the police during the conflict, but in general the officers conducted themselves well and generated no complaints. Two of the officers who spent extended time working with the OTP have returned to top positions in the police, one as the third-highest ranking member of the office and another as director for the Eastern District." See ICTJ The Special Court Under Scrutiny (n 105). The report also noted that Sierra Leonean police officers have been working as investigators at the Special Court since it became operative, and were responsible for the arrests of five of its indictees within a matter of hours in March 2003.

¹⁹¹ A Sierra Leonean lawyer, who was involved with the Special Court, explained that the Defence teams at the Special Court were initially hesitant to employ Sierra Leoneans. However, when the Registry allocated resources for this purpose (out of a special EU fund) the Defence teams began recruiting young Sierra Leonean lawyers as "Junior Professional Consultants". This was done to build domestic capacity, but also to reinforce the Defence teams. From 2007, the lawyer added, the Prosecution also began admitting national lawyers as Junior Professional Consultants. Interview notes with author.

¹⁹² Interview notes with author.

interviewee, a Sierra Leonean human rights activist, said that some of the Sierra Leoneans who had worked at the Special Court and subsequently returned to the national judiciary, did not eventually use the skills they acquired at the Special Court to improve processes at the national level.¹⁹³

A Special Court judge expressed uncertainty as to whether the national judges of Sierra Leone, at present, were willing to learn from the experience of the Special Court.¹⁹⁴ Another Special Court judge tried once to interest the former Chief Justice of Sierra Leone in establishing a liaison between national and Special Court judges, but there was little interest among both judiciaries.¹⁹⁵ There was also an unsuccessful attempt by the Special Court to hold training sessions in cooperation with the local bar association.¹⁹⁶ Such formal or informal liaisons, including training sessions involving both international and local legal professionals, could have helped increase the Special Court's impact on domestic capacity to handle war related prosecutions.

The Special Court's geographical location, combined with the institutional support it receives from the Government of Sierra Leone, provide it with an excellent opportunity to engage in local capacity building initiatives. While most interviewees agreed that the Special Court should contribute to capacity building in Sierra Leone, they expressed mixed views on whether the Court is in fact achieving this aim.¹⁹⁷ An official of the Sierra Leonean judiciary, who was generally very critical about the Special Court, did not consider that the Court has significantly contributed to national capacity.¹⁹⁸ When asked about the recent training the Special Court has given to national court reporters, the official complained that only a limited number of nationals were trained, and that the training was too short to be significant.¹⁹⁹ The local

It may be premature at this stage to conclude to what extent the Special Court has contributed to capacity building in Sierra Leone. This is mainly because the focus of the Special Court on transferring skills to the national system is relatively recent, and is expected to increase in late 2009 and 2010 as the Court winds up its work.

¹⁹³ Interview notes with author.

¹⁹⁴ Interview notes with author.

¹⁹⁵ The judge was generally disappointed by the lack of liaisons between Special Court judges, prosecutors, defence attorneys, investigators, court administrators, etc., and their national counterparts. Interview notes with author.

¹⁹⁶ Based on an interview with a Special Court senior official. Interview notes with author.

¹⁹⁷ Interview notes with author.

¹⁹⁸ Interview notes with author.

¹⁹⁹ Interview notes with author.

judiciary official was also critical about the Special Court's intention to leave behind the court-house building to the national judiciary, noting that the national system does not have the available means to maintain the building.²⁰⁰

However, it may be premature at this stage to conclude to what extent the Special Court has contributed to capacity building in Sierra Leone. This is mainly because the focus of the Special Court on transferring skills to the national system is relatively recent, and is expected to increase in late 2009 and 2010 as the Court winds up its work.²⁰¹ It should also be noted that any capacity building activities undertaken by the Special Court were not mandated by the Court's creators and were therefore not budgeted for in advance. This forces the Court's staff to continuously raise funds to finance capacity building initiatives. It also means that such initiatives are designed according to their personal vision, and not as part of an organized comprehensive plan aimed at enhancing national capacity (and willingness) to try perpetrators of war-related crimes.

9. CONCLUSION AND RECOMMENDATIONS

In transitioning societies, coming to terms with the past is not always achieved through criminal law enforcement. In South Africa, for example, the approach adopted was to grant amnesty in return for truth. Sierra Leone initially sought to follow the footsteps of South Africa. Thus, the Lomé Peace Agreement granted an amnesty and in parallel called for the creation of a truth commission, the TRC. Prosecutions were not contemplated at the time. However, when peace failed to come and hostilities persisted, criminal law alternatives were considered. Trials of the masses – such as the approach adopted in Rwanda – were neither feasible nor desirable, given the state of national capacities and political realities in Sierra Leone. The caveat inserted by the UN at Lomé – that the amnesty cannot cover international crimes – provided a “way out” of the amnesty regime: international trials for international crimes. The Special Court was thus created. But it had to adopt a selective approach, as international courts have their limitations as well, particularly in terms of the number of people they can prosecute.

²⁰⁰ However, the official noted that there are discussions about turning the Special Court building into a regional court or a legal training institute, with foreign funding. Interview notes with author.

²⁰¹ Based on interviews with Special Court officials. Interview notes with author.

It should be added that transitional justice mechanisms in Sierra Leone are not limited to the Special Court and the TRC. To guarantee a transformation into a rule of law society, new institutions were created, such as the Human Rights and the Anti-Corruption Commissions. These government agencies are responsible for addressing some of the issues that gave rise to the conflict, such as corruption and lack of respect for basic human rights. In addition, rehabilitation and reintegration programs were facilitated by the UN and other international agencies. Finally, a victims' reparation scheme is currently being contemplated.²⁰²

The Special Court's chances to end impunity in Sierra Leone would have been greater had its process been complemented by national prosecutions of pre-Lomé crimes, at least with regard to the mid-level commanders. But there were no such prosecutions, and the Special Court did not try to encourage them.

Nevertheless, the Special Court's chances to end impunity in Sierra Leone would have been greater had its process been complemented by national prosecutions of pre-Lomé crimes, at least with regard to the mid-level commanders. But there were no such national prosecutions, and the Special Court did not try to encourage them. In fact, the findings of this report indicate that the Special Court may have had a discouraging effect on national prosecutions (see section 8.2 above). It did not challenge the applicability of the Lomé Amnesty in local courts. In addition, by steering away from applying domestic law, it failed to contribute to national normative development. Moreover, the Special Court had no impact on the quality of war-related domestic prosecutions, in terms of the applicable substantive and procedural norms, or on the relevant sentencing practices. On the other hand, the findings of this report indicate that the Special Court did (and still does) have a certain degree of impact on the level of national capacity to handle criminal proceedings in Sierra Leone.

What seems to be lacking in the case of Sierra Leone is a comprehensive approach at the international level, which promotes the parallel utilization of both international and national courts to achieve the goals of international criminal justice. The Special Court's distance from and the resulting limited positive impacts on the national system are a likely consequence of the absence of such a comprehensive approach.

²⁰² AI 2009 World Report (n 15) (stating that "a reparation process ... is expected to compensate 100,000 people, including amputees, war wounded, victims of sexual violence, war widows and children. Currently, the bulk of the funding is coming from the UN Peacebuilding Fund, but much more is needed.")

Had the UN, in January 2002, been supportive of encouraging national proceedings in parallel to international trials, it could have designed the Special Court in a way which maximizes its positive impacts on the national system. For example, it could have adopted the model suggested by President Kabbah for the Special Court, which fully engages the national prosecuting authorities by designating an active role to Sierra Leone's Attorney General within the Special Court.²⁰³ Instead, the model which was adopted restricted the involvement of the Government of Sierra Leone to participation in the appointment of some of the Special Court's judges and its deputy prosecutor, and participation in the Management Committee.²⁰⁴

In this context it is interesting to note the following remark made by the UN Secretary-General, in his report predating the establishment of the Special Court:

The Security Council may wish to consider an alternative solution, based on the concept of a 'national jurisdiction' with international assistance, which would rely on the existing — however inadequate — Sierra Leonean court system, both in terms of premises (for the Court and the detention facilities) and administrative support. The judges, prosecutors, investigators and administrative support staff would be contributed by interested States. The legal basis for the special 'national' court would be a national law, patterned on the Statute as agreed between the United Nations and the Government of Sierra Leone (the international crimes being automatically incorporated into the Sierra Leonean common-law system). Since the mandate of the Secretary-General is to recommend measures consistent with resolution 1315 (2000), the present report does not elaborate further on this alternative other than to merely note its existence.²⁰⁵

The model proposed by the Secretary-General would most likely have maximized the Special Court's positive impact on the national system, particularly in terms of normative development. But a deep institutional involvement of the Sierra Leonean authorities could have resulted in an overburdened domestic court system, a depleted national treasury and a government deprived of experienced personnel; factors which inevitably interfere with other transitional justice goals such as institutional development

²⁰³ In his letter requesting the UN's assistance in creating a special court, President Kabbah included a proposed model for such a court. According to his proposal, Sierra Leone's Attorney General would serve as the chief prosecutor or co-chief prosecutor of the court, an arrangement which would "allow the Government of Sierra Leone to play a lead role in the prosecution while receiving international assistance and expertise." See Sierra Leone President's Letter to the UN Secretary-General (n 37).

²⁰⁴ Articles 2, 3, and 7 of the Special Court Agreement (n 91). Also see Lomé Amnesty Decision (n 123), para. 14 (confirming that these are the Government's only forms of involvement in the Special Court). An active engagement of the incumbent Attorney General of Sierra Leone in the Special Court's efforts would have likely maximized the positive impacts of the Special Court on the national justice system, in comparison to the approach eventually adopted, where the Government of Sierra Leone appoints judges and a deputy prosecutor, who then become exclusively part of the Special Court.

²⁰⁵ UN Secretary-General's Report on the Establishment of the Special Court (n 90), para. 72.

and judicial reform. Furthermore, had the government been more involved in the Special Court's process, the Court's appearance of impartiality could have been compromised, especially with respect to the already problematic proceedings against the CDF leaders. These factors needed to be taken into account.

Perhaps the UN, through a parallel program to the Special Court, could have focused on building national capacity to prosecute the atrocities. It is recalled that the main reason advanced by the President of Sierra Leone for requesting the Special Court was the lack of national capacity to handle complex trials (see section 4.2 above). The lengthy and unfair domestic criminal proceedings which took place in connection with the RUF and WSB trials highlight the weaknesses in the national capacity (see section 5.2 above). Instead of exclusively focusing on the Special Court, the international community could have assisted the local authorities in ensuring that domestic trials for war-related crimes are conducted fairly and efficiently. In parallel, the Special Court itself could have been explicitly mandated to assist in building national capacity to that effect. This would have made sense, given that its goals include the restoration of the rule of law in Sierra Leone.

But lack of national capacity to prosecute the war's atrocities is not the only issue. It is recalled that a critical impediment to the existence of domestic war-related prosecutions in Sierra Leone is the lack of national political will to hold them (see section 4.1 above). Thus, incentives should be provided by the international community to motivate the Sierra Leonean authorities to limit the Lomé Amnesty, to enact the necessary legislation, and to eventually prosecute the war's atrocities. This could be achieved through international resource allocation with "strings attached". For example, the international community could invest in Sierra Leonean institutions in return for the country's adherence to its international obligation to prosecute atrocities. Similar pressure could be applied to promote the domestic implementation of international norms and procedures (including provisions of the Rome Statute of the ICC).

Another incentive could be to transfer proceedings from the Special Court to national courts. As noted above, Rule 11 *bis* allows the Special Court to transfer cases to national courts, including Sierra Leonean courts (see section 7.1 above). Such transfers would not only encourage national prosecutions for the war's atrocities, but could also increase the Special Court's positive impact on the quality of existing domestic prosecutions in Sierra Leone. Moreover, national trials against high profile perpetrators

who have already been indicted by an international court could restore the population's faith in the government and attract positive international attention to Sierra Leone. Case transfers would have to be done sensibly and selectively, as trying certain indictees of the Special Court on the national level may cause political instability. Needless to say, the Lomé Amnesty would have to be abolished or qualified to enable Sierra Leone's courts to prosecute most of the crimes addressed by the Special Court.

However, Rule 11 *bis* does not allow the Special Court to monitor or recall the cases it transfers to the national courts.²⁰⁶ This, combined with the lack of fair and efficient criminal proceedings in Sierra Leone, militates against such case transfers. Nonetheless, sometimes merely providing the possibility of case transfers from an international to a domestic court could lead to improvements in the domestic standards of justice.²⁰⁷ Moreover, the transfer of information from the Special Court to national authorities, in certain circumstances, could help galvanize political support for national trials. It is noted in this context that an official of the Sierra Leonean judiciary, during an interview, welcomed the idea of holding a domestic trial against Johnny Paul Koroma with great enthusiasm.²⁰⁸

The Special Court is currently searching for ways to ensure that its ten critical residual functions will be fulfilled after it closes. Even by transferring some of them to Sierra Leonean authorities, for example the witness protection obligations, the Special Court could maximize its positive impact on national capacity to handle war-related criminal proceedings.

As noted above, the Special Court is currently searching for ways to ensure that its ten critical residual functions will be fulfilled after it closes. Indeed, many of these functions will most likely not be transferred to Sierra Leone (see section 6.4 above). But even by transferring some of them to Sierra Leonean authorities, for example the witness protection obligations, the Special Court could maximize its positive impact on national capacity to handle war-related criminal proceedings. Interestingly, a Special Court judge

²⁰⁶ See text of Rule 11 *bis* in note 142 above.

²⁰⁷ In Rwanda, for example, domestic laws were amended to provide certain procedural guarantees as a result of the possibility that the ICTR would transfer cases to Rwanda.

²⁰⁸ Interview notes with author. However, a senior official of the Special Court stated that, from informal contacts, his impression was that the Sierra Leonean authorities do not really want to try this case from an administration of justice perspective. The official added that the Special Court may eventually have to ask the national authorities formally whether they are willing to take on the case, but even if they were interested, he is not sure that they are able to handle the case. Officials at the Special Court are therefore actively looking for another country that will agree to take the case, based on universal jurisdiction, as the Special Court does not want to close down without a "forwarding address". Interview notes with author.

noted that it is not too late for the Special Court to further its interactions with the national justice system even today. After Sierra Leoneans witnessed the Special Court's achievements over the last few years, he believes there is some degree of receptivity on the national level to engage in a dialogue with the Special Court.²⁰⁹

In any event, the international community, whether or not through the Special Court, must think of creative ways to promote a public discussion in Sierra Leone about the applicability of the Lomé Amnesty on the national level. Regardless of their result, such discussions could contribute to the development of a legal framework in Sierra Leone that addresses international crimes and enables their prosecution.²¹⁰ Finally, a positive local perception of an international court should not be underestimated. It could in itself encourage the initiation of national trials. For example, victims who are satisfied from the international process may push for national institutions to become involved, and prosecutors inspired by the success of international trials may decide to initiate parallel national proceedings. Local support for international trials could also help ensure that ongoing national trials comply with international norms and standards. Thus, more attention and resources should be directed to generating positive local opinions of the Special Court.

The international community, whether or not through the Special Court, must think of creative ways to promote a public discussion in Sierra Leone about the applicability of the Lomé Amnesty on the national level.

National trials are important for international trials. If international courts, for political, financial or other reasons, cannot encourage parallel national prosecutions, perhaps an “international package” for post-conflict countries could allocate funds and provide training to build capacity to prosecute atrocities on the national level.²¹¹ But in order to be effective, there should be a comprehensive plan which takes into account the relationship between the international and local justice systems, and ensures that the two systems work in a complementary manner to promote their mutual aims.

²⁰⁹ Interview notes with author.

²¹⁰ Such discussions could have resulted, for example, in limiting the applicability of the Lomé Amnesty on the national level to non-international crimes, or abolishing it altogether. A possible basis for such an approach could have been the notion that the Lomé Peace Agreement (n 24) was violated and therefore its amnesty provision is invalid. This theory has received support from Prof. Antonio Cassese (see note 56 above and attached text).

²¹¹ This idea was suggested by a Special Court official, who noted that given the high level of corruption in many post-conflict countries, simply sending money or starting projects is not sufficient. Instead, creating partnerships, mentoring and monitoring to ensure that the projects are carried out are necessary measures. The Special Court can participate in such activities, but it is limited in that respect in light of its other goals and restricted resources. Another member of the Special Court mentioned that the Court is only one part of a bigger program that should contribute toward improving the rule of law in Sierra Leone. Interview notes with author.

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