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INTERNATIONALIZING POST-CONFLICT JUSTICE: THE “HYBRID” SPECIAL COURT FOR SIERRA LEONE

Lisa Danish*

INTRODUCTION

In the wake of the Cold War, the international community witnessed formerly frozen civil rivalries degenerate into bloody and protracted civil wars. Despite the development of the human rights corpus, which rejected the inviolability of state sovereignty, states were nevertheless wary to undermine the principle of non-interference with sovereign affairs, a vestige of the foundational Westphalian system. This reluctance to intervene was also evident with respect to the new problem of “failed” states, particularly after the debacle in 1993 of the United States’ “Operation Restore Hope” in Somalia.

After developed nations stood by while former Yugoslavs and Rwandans slaughtered one another, by the late 1990s there developed a resolve for new methods of post-conflict resolution. The main institutions that evolved in this vein were: (1) Truth and Reconciliation Commissions and (2) International Criminal Tribunals. This paper focuses on the newest development in post-conflict justice: the role of hybrid international criminal courts. To this end, this paper takes as a case study the Special Court for Sierra Leone, a hybrid court established in 2000. A review of the Spe-

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cial Court is then used to explore and assess the utility of hybrid courts in post-conflict situations.

Accordingly, this paper first reviews the history and context of the Sierra Leonean civil war. The next section assesses the Special Court’s challenges with respect to post-conflict reconstruction in Sierra Leone. The paper concludes with observations about the relative advantage of a hybrid, in-country international tribunal, as opposed to the permanent International Criminal Court at The Hague.

THE SIERRA LEONEAN CIVIL WAR, NARRATED

Failed Post-Colonial Government Inspires Rebellion

The story of Sierra Leone's civil war begins with the failure of its post-colonial government. In 1961, Sierra Leone won its independence from the United Kingdom and was ruled successively for six years by the Margai brothers, Milton and Albert, of the Sierra Leone People’s Party. In the 1967 election, the All People’s Congress (APC) ascended to power and held it, first under Siaka Stevens (1968–1985) and then under General Joseph Momoh (1985–1992), for nearly 30 years. The APC was a corrupt government, and over time, the country’s physical infrastructure decayed, the public bureaucracy atrophied, and the majority of Sierra Leoneans lived in poverty.

However corrupt and abhorrent the Momoh government was, the rebel movement that arose to challenge it was, by comparison, grotesque. The Revolutionary United Front (RUF) formed in 1984 and was composed of “unemployed and unemployable youths... prone to criminal behavior, petty theft, drugs, drunkenness, and gross indiscipline.” The RUF also included some Liberian fighters from Charles Taylor’s National Patriotic

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2 Sierra Leone's colonial history and demographics: The British founded Sierra Leone in 1789 as a colony for freed African slaves. Its people, therefore, are a mix of the descendants of freed immigrants and anglicized Creoles who generally occupy the capital, and other groups who occupy the interior. Indigenous Sierra Leoneans are ethnically Temne (in the northern province) or Mende (in the southern province). The country is religiously diverse, with people observing Islam, Christianity, and traditional religions.


Front of Liberia. Leading the RUF was a former army corporal and photographer, Foday Sankoh, who had been imprisoned in 1971 for plotting a coup against the APC.

In defiance of “all available typologies on guerilla movements,” the RUF’s uniqueness was that it was composed of rebels without a cause. The RUF was not organized enough to be characterized as a warlord insurgency, and its goals did not include regional autonomy, ethnic dominance, or radical reform. Because of its extreme brutality towards civilians, the RUF “remained a bandit organization solely driven by the survivalist needs of its predominantly uneducated and alienated battle front and battle group commanders.” On March 23, 1991, the RUF, with a force of about 100 combatants, invaded Sierra Leone from Liberia, beginning a civil war that lasted at least eleven years. Within a few months, RUF forces controlled one-fifth of the country in the South-East region, and gained strength by forcibly impressing non-combatants into service.

To combat the RUF, General Momoh recruited citizens to a “volunteer brigade” of the Sierra Leonean Army (SLA), doubling the SLA’s size to 6,000 personnel. Once General Momoh delayed elections, citing the SLA’s inability to defeat the RUF, a group of insulted and bedraggled SLA troops marched to Freetown to collect their paychecks in person. General Momoh, anticipating a coup, fled to Guinea, leaving the State House only lightly defended.

With Momoh gone, and his defenders summarily executed on the beach, a 27-year-old army captain, Valentine Strasser, declared himself to

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7 Id. at 191. Certainly there have been guerilla movements that bear similarities to the RUF, however. See Rebels in History - Here is the Profile of Contemporary African Rebels, AFRICA NEWS, Oct. 11, 2004.
8 Id.
9 Id. at 191-92.
10 See ADEKEYE ADEBAJO, BUILDING PEACE IN WEST AFRICA: LIBERIA, SIERRA LEONE AND GUINEA-BISSAU 83 (2002).
be head of state on April 30, 1992. Strasser formed the National Provisional Ruling Council (NPRC), promising an elected civilian government by 1995 and an immediate end to the rebel war. He also increased the army to some 10,000 soldiers.

By October, 1992, the RUF was closing in on the diamond-rich Kono mining district. Called on to defend Kono, SLA soldiers became distracted by diamonds; they began mining for themselves. Many SLA soldiers, at least 20 percent, began fighting on both sides of the civil war, giving rise to the term “sobel” — soldier by day, rebel by night. This blending of RUF and SLA had disastrous effects on the country’s ability to quell the fighting:

This unpopular insurgency turned into an intractable rebel war once the appearance of RUF fighters provided the opportunity for other armed men to take advantage of opportunities to loot and settle local scores. These activities were thus not a rebellion against an old order. Instead, they offered to marginalized youth the prospect that they could renegotiate (or force a change in) their position vis-à-vis an existing political network that controlled economic opportunity. [The loss of centralized patronage under the APC] gave “armed marginals” more diverse points of access through armed gangs and the army to violent commercial networks, now in ways that posed greater threats of what remained of public order.

Despite this phenomenon, the SLA made significant military advances in 1992 and 1993, forcing the RUF into the Gola forest reserves.

During this regrouping, the RUF changed its tactics; instead of capturing and defending permanent settlements, it opted, instead, to establish several bush camps. The RUF traded diamonds for arms in Liberia and Guinea, and by late 1994 made advances toward Freetown in hit-and-run style attacks. Strasser appealed to Nigeria for help, and in response, Nigeria

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13 President of Sierra Leone Ousted; Troops Rule West African Nation, N.Y. TIMES, May 1, 1992, at A10.
14 ADEBAJO, supra note 10, at 84.
15 Id.
16 See SMILLIE, supra note 12, at 104 (NPRC’s estimate).
18 See CAMPBELL, supra note 11, at 73.
sent several hundred troops to guard Freetown and the Gondama refugee
camp near the central city of Bo.

Unable to either make peace with or defeat the rebels with (and
within) the national army, the RUF continued its advance toward Freetown,
threatening the capital’s suburbs in April 1995. As a last resort, in May
1995, Strasser paid a South African private security company, Executive
Outcomes, to retake the valuable diamond mining areas of the country, in
exchange for an estimated $1.8 million each month and diamond mining
concessions.\(^{19}\) By all accounts, the hired guns achieved a measure of suc-
cess, at least wresting away mining territory from the RUF in mid-1995 and
early 1996 – but then that was the source of their income.\(^{20}\)

Executive Outcomes also began working with the Civil Defense
Forces, pro-government militias that different local communities had
formed out of defensive necessity. Reports describing these units conflict –
Human Rights Watch describes them as “traditional hunters and young
fighters” whereas William Reno describes them as “unruly youth” – but
unquestionably the predominant group among these was a force of between
17,000 and 35,000 ethnic Mende fighters called the Kamajors.\(^{21}\)

In January 1996, Strasser, who decided not to run for President af-
ter all, was overthrown in a palace coup by his deputy, Brigadier Julius
Maada Bio.\(^{22}\) To ease the transition, the United States and Britain offered
Strasser and his entourage scholarships and stipends to study abroad at the
universities of their choice.\(^{23}\) Bio started peace negotiations with the RUF,
and under great domestic and international pressure, pledged a return to
civilian rule.\(^{24}\) Sierra Leoneans held elections in February 1996 and voted
into power Ahmad Tejan Kabbah, a former employee of the United Nations
(UN) Development Programme. Kabbah’s election slogan, which would
later prove most unfortunate, was “The Future Is in Your Hands.”

Despite Executive Outcomes, Kabbah’s government was constantly
under threat, and many Sierra Leoneans criticized him as indecisive.\(^{25}\) Una-

\(^{19}\) See generally Elizabeth Rubin, An Army of One’s Own, HARPER’S MAG., Feb.
1997 at 44.

\(^{20}\) Id. at 48.

\(^{21}\) See INST. FOR INT’L STRATEGIC STUD., THE MILITARY BALANCE 1997-1998 257
(1997).

\(^{22}\) See ADEBAJO, supra note 10, at 84-85.

\(^{23}\) See Steve Coll, The Other War: Part V, Buedu to Koidu: The Best Intentions,
WASH. POST MAG., Jan. 9, 2000 available at http://www.washingtonpost.com/wp-
srv/photo/galleries/sierra_leone/part_5.htm.

\(^{24}\) See ADEBAJO, supra note 10, at 85.

\(^{25}\) There were at least three coup attempts in Kabbah’s first ten months in office.
ble to rely comfortably on the SLA, Kabbah turned to the Kamajors for protection. The Kamajors, in turn, used their position to arbitrarily detain people, extract bribes and beat up police officers. Kabbah also received assistance from Nigerian soldiers stationed in Freetown; after its troops foiled a fourth coup attempt in September 1996, Nigeria sent in even more troops. Therefore, in the successful months of Sierra Leone's fledgling democracy, the government was actively defended by its own army, an expensive mercenary outfit, a contingent of Nigerian troops, and a civilian militia.

The Region Steps In, And Nigeria Steps Up

In November 1996, upon the invitation of Cote d'Ivoire's foreign minister, Amara Essy, the RUF and Kabbah's government entered into peace negotiations. On November 30, 1996, Kabbah and Sankoh signed the Abidjan Peace Accord. The Accord gave a blanket amnesty to the RUF in exchange for a ceasefire, disarmament and demobilization. It also called for the deployment of neutral international observers and a capable security force to enforce the peace process. In January 1997, UN Secretary-General Kofi Annan proposed a peacekeeping operation in Sierra Leone with 720 troops, but the UN Security Council never adopted his recommendation.

The RUF did not abide by the Abidjan Accord's disarmament schedule. In January 1997, however, under pressure from the International Monetary Fund, Kabbah released Executive Outcomes from service. A 900-man strong contingent of Nigerian troops replaced the mercenaries, many serving as Kabbah's personal bodyguards. The RUF's Sankoh, meanwhile, left Abidjan without word to his Ivorian hosts, and got arrested in Nigeria while arranging an arms deal.

On May 25, 1997, Kabbah was ousted in a coup led by Major Johnny Paul Koromah, 33, a former army bodyguard to Strasser. Koromah instituted rule by military decree, established the Armed Forces

26 Reno, supra note 17, at 88.
29 ADEBAJO, supra note 10, at 87.
30 Id.
31 Id. at 86.
32 See Coll, supra note 23.
Revolutionary Council (AFRC), and invited the RUF to partner in the new regime. RUF troops entered Freetown openly for the first time, looting the city in a program called, “Operation Pay Yourself.” Kabbah, meanwhile, fled to exile in Conakry, Guinea, and asked Nigeria to restore him to power. Nigerian troops defending Kabbah and the capital attempted to reverse the coup by force, but the AFRC and RUF forced them out of the city. By June 4, 1997, Freetown was in ruins.

Both regional and other international organizations refused to recognize Koromah’s regime. The Nigerian head of state General Sani Abacha, then chairman of the Economic Organization of West African States (ECOWAS), convened several meetings of groups of ECOWAS members to attempt to reverse the coup via diplomatic means. Although ECOWAS levied economic sanctions against Sierra Leone in August 1997, the group stopped short of authorizing the use of force against Koromah’s government. Nevertheless, from August to October 1997, Nigerian forces heavily engaged the rebels in combat, with the ECOWAS Monitoring Group’s (known as ECOMOG) vessels and planes barring all ships and aircraft from Freetown.

Having deliberated for months about an appropriate response, on October 8, 1997, the UN Security Council addressed the situation in Sierra Leone in Resolution 1132. The Resolution requested Koromah to “relinquish power” and allow the “restoration of the democratically elected Government.” Although the Security Council found that the situation represented a threat to international peace and security in the region, it declined to authorize military intervention, and instead instituted an economic sanctions regime (acting under Chapter VIII of the Charter). The sanctions included an oil and arms embargo, and travel sanctions on members of the AFRC and their families.

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33 Id.
34 Id.
35 Id.
38 ADEBAJO, supra note 10, at 87.
41 Id.
Whether because of the economic sanctions, or persistent calls for negotiation, fifteen days after Resolution 1132, on October 23, 1997, the AFRC signed an agreement in Conakry, Guinea, in which they agreed to immediately disarm and respect a six-month timetable for Kabbah’s restoration. By December 1997, however, it was clear that the RUF and AFRC were not disarming, and Koromah spoke of staying on until 2001.

On February 6, 1998, Nigeria accused Koromah’s soldiers of attacking its troops, which it insisted were there with ECOMOG authorization. Although the UN Security Council called for a cease-fire, a Nigerian force of about 12,000, using heavy weaponry and in concert with the Kamajors, moved in from Liberia, finally capturing Freetown after a three-day battle on February 13. Nigeria captured some junta leaders, but Koromah evaded capture and fled to Guinea.

Kabbah became the first democratically elected leader to be restored to power by force on March 10, 1998. On March 16, the Security Council adopted Resolution 1556, which partly lifted the economic sanctions and welcomed Kabbah’s return to power. On April 17, 1998, in response to Kabbah’s request for assistance, the Security Council authorized the deployment of up to ten military liaison and security advisory personnel to help Sierra Leone develop a disarmament plan.

Additionally, at a May 1998 meeting of ECOWAS defense ministers in Accra, Ghana, the Nigerian chief of staff, General Abdulsalam Abubakar, called on other ECOWAS states to increase their contribution of troops to Sierra Leone, but none did. Ninety percent of the 13,000 ECOMOG soldiers serving in Sierra Leone were Nigerian; Ghana and Guinea contributed about 600 troops each, and Mali contributed about 500. The Security Council, for its part, adopted Resolution 1181 in Au-

42 See also David Cortright et al., Sierra Leone: The Failure of Regional and International Sanctions, in The Sanctions Decade: Assessing UN Strategies in the 1990s 167, 170 (David Courtright & George A. Lopez eds., 2000).
44 ADEBAJO, supra note 10, at 88.
46 Id.; see also ADEBAJO, supra note 10, at 88.
47 Nowrot & Schabacker, supra note 28, at 330.
50 ADEBAJO, supra note 10, at 91.
gust 1998, which established the UN Observer Mission in Sierra Leone (UNOMSIL) with about 50 peacekeepers.\textsuperscript{51}

Considering the RUF’s history, even with 13,000 soldiers defending Freetown, it was only a matter of time before the rebels would test the peacekeepers’ mettle. On January 6, 1999, the RUF launched “Operation No Living Thing.”\textsuperscript{52} Over a period of only a couple of months, RUF fighters amputated the limbs of over 1,000 people.\textsuperscript{53} Many amputated hands were deposited on the steps of the Presidential residence as a brutal reminder of Kabbah’s former election slogan. As for the West African peacekeeping force:

ECOMOG soldiers, caught off-guard by the assault, went haywire and embarked on their own version of Operation No Living Thing, executing suspected RUF on the Aberdeen Bridge and dumping their bodies into the river below. Roadside justice was the order of the day. Anyone remotely suspected of being involved with the RUF was tortured, raped, and summarily executed by the Nigerian soldiers, including an unknown number of perfectly innocent civilians whose elbows were tied behind them before they were shot at point-blank range. One retarded 9-year-old-boy, whose plight was highlighted in the documentary film \textit{Cry Freetown}, was stripped naked, beaten, and tortured by Nigerians who suspected him of being an RUF sniper. It’s hard to tell which is worse; that ECOMOG beat and tortured children, or that the RUF had enlisted young kids so extensively that ECOMOG was put into a position where it had no choice but to suspect even the least suspicious of being an RUF killer.\textsuperscript{54}

While Nigeria/ECOMOG did rout the RUF from Freetown within days, the death toll was nearly 6,000.\textsuperscript{55}

Particularly after the release of the CNN-aired documentary \textit{Cry Freetown}, Nigeria was heavily criticized for its operations in Sierra Leone. Following the death of Sani Abacha and Nigeria’s elections in May 1999, President Olusegun Obasanjo asked ECOMOG’s High Command to prepare for the phased withdrawal of Nigerian troops. As Adebajo aptly de-

\begin{itemize}
\item \textsuperscript{52} Nowrot & Schabacker, \textit{supra} note 28, at 331.
\item \textsuperscript{53} Id. at 332.
\item \textsuperscript{54} CAMPBELL, \textit{supra} note 11, at 88-89.
\item \textsuperscript{55} Id. at 89.
\end{itemize}
scribed the situation: "There was a realization in Abuja that Nigeria and its logistically handicapped peacekeepers could not continue to do most of the spending and dying in Sierra Leone while the international community simply sat on its hands." The operation reportedly cost Nigeria $1 million per day, although it was also reported that the former Abacha government used Sierra Leonean expenses improperly.

*Nigeria Backs Away, And the UN Picks Up The Reins*

With Kabbah successfully restored to Freetown, and the Nigerians posturing to leave, the government was forced to resume negotiations with the RUF. A cease-fire agreement was signed on May 18, 1999, which gave the government the opportunity to enter into peace negotiations with the RUF-AFRC in the Togolese capital, Lomé. The Lomé Accord took six weeks to negotiate, and involved a number of international intermediaries: the United States sent Jessie Jackson; the UN sent a Special Representative, Francis Okelo; and several regional heads of state played crucial roles, including Charles Taylor of Liberia and Gnassingbe Eyadema of Togo. The government and RUF-AFRC finalized the Lomé agreement on July 7, 1999.

In addition to another general amnesty provision, the agreement formally lifted the death sentence over Sankoh [related to his arms trafficking in Nigeria], called for the RUF to be transformed into a political party, provided for cabinet posts for the RUF in a government of national unity, gave Sankoh the vice presidency as well as the chairmanship of a Commission for the Management of Strategic Resources, and called for the establishment of a Council of Elders and Religious Leaders to mediate political disputes. The AFRC’s Johnny Paul Koromah was later appointed chairman of the Commission for the Consolidation of Peace to monitor implementation of the agreement.

To enforce the agreement, the UN was asked to contribute troops to a disarmament and elections-monitoring mission. ECOWAS, for its part, would direct a joint implementation committee to oversee compliance with the agreement, as well as the repatriation and resettlement of 500,000 Sierra Leonean refugees from Guinea and Liberia.

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56 ADEBAJO, *supra* note 10, at 97.
57 Id. at 99.
58 Id. At the time of the Lomé agreement, there were one million internally displaced Sierra Leoneans.
A month after the Lomé Accord, on August 19, 1999, Nigeria’s President Obasanjo notified the UN Secretary-General, Kofi Annan, that Nigeria would withdraw 2,000 of its peacekeepers from Sierra Leone every month. Faced with an impending security vacuum, Annan recommended that the Security Council establish a peace-enforcement mission in Sierra Leone under Chapter VII of the UN Charter. In a UN Security Council Resolution of October 22, 1999, the Council agreed to terminate the formerly small UNOMSIL and establish a larger UN Mission in Sierra Leone (UNAMSIL) to take over ECOMOG’s duties, under an Indian UN Force Commander, General Vijay Jetley. Nigeria, which had wanted to head the military wing of UNAMSIL, was instead given authority over the political wing. The 6,000-strong UNAMSIL was established at a cost of $476 million, and included contingents from Nigeria, India, Jordan, Kenya, Bangladesh, Guinea, Ghana and Zambia.

As with every other public security force deployed in Sierra Leone, UNAMSIL had its share of problems. There was confusion about the force’s mandate and rules of engagement, some units lacked proper training and equipment, and the Nigerian head of the Mission’s political wing did not have a good relationship with the Mission’s Indian military commander. Despite the Security Council’s decision to increase UNAMSIL’s force strength to 11,000 troops, the peacekeepers’ lack of unity and organization made them a target for rebel attacks. By May 5, 2000, the RUF had kidnapped and commandeered the arms and equipment of over 500 UN peacekeepers (the majority were Zambians). Despite the hostage crisis, the United States, Britain and France refused to support a UN rapid reaction force to stabilize the situation. As Nigeria withdrew its last remaining ECOMOG forces, it looked as if UNAMSIL were destined to lose its grip on security.

60 The Secretary-General named Nigerian Oluyemi Adeniji as his Special Representative in Sierra Leone.
61 ADEBAO, supra note 10, at 101. The Indians alleged that Adeniji was too cozy with Foday Sankoh, the RUF leader, and colluded with the rebels to profit from the illicit diamond trade.
62 RUF believed to be holding “at least” 318 UN peacekeepers, BRIT. BROADCASTING CORP., May 5, 2000.
63 Nigeria reports US, UK, France said to be refusing to send troops to Sierra Leone, BRIT. BROADCASTING CORP., May 5, 2000. See also Norman Kempster & Marjorie Miller, U.S. Rejects Call for Sierra Leone Deployment, L.A. TIMES, May 9, 2000, at A4.
Britain Bolsters UNAMSIL on its Own Terms

As RUF forces once again menaced Freetown, on May 8, 2000, upon President Kabbah’s request, Britain sent in 700 troops from the 1st Battalion, Parachute Regiment, to secure the airport. Its mission, initially, was to assist in the evacuation of EU and other nationals from the capital, but within days it became clear that Britain would also stay to provide a backbone from which UNAMSIL could regroup. The United States offered only to provide logistical support, to help fly in more (Bangladeshi) UN peacekeepers.

The British mission was widely seen as successful, as the RUF once again retreated from the capital. The question then became how long the British would stay, and on what terms. By the end of May, President Kabbah was publicly pleading to Prime Minister Tony Blair to maintain a presence in Sierra Leone. Despite rhetoric in Parliament warning of Britain being "sucked in" to the conflict, the British stayed on, and began advocating a stronger UN presence, while nevertheless refusing to work within UNAMSIL’s command structure. No longer there to evacuate nationals, Britain began a mission to "revamp in emergency while teaching by example." Accordingly, Britain started training the government’s army, the SLA.

But no force new to Sierra Leone ever got away scot-free: On August 25, 2000, an RUF faction, called the "West Side Boys," captured 11 British soldiers and one Sierra Leonean soldier east of Freetown. Five soldiers were released in negotiations, but when talks stalled on September 9, a British rescue operation recovered only six. The last soldier, Lance Bombardier Brad Tinnion, was killed in the rescue. In the West Side Boys’ headquarters, the British found $38 million worth of rebel diamonds.

Although Britain stabilized the security situation in and around Freetown, UNAMSIL was still left with the problem of securing the coun-

64 Sarah Schaefer, Parliament: Sierra Leone: Troops "Must Not Become Peacekeepers," THE INDEP., May 9, 2000, at 8.
68 Ed O'Loughlin, UK Troops Expand Role in Sierra Leone War, THE INDEP., Nov. 13, 2000, at 14. Tinnion was the first, and only, British fatality.
69 CAMPBELL, supra note 11, at 95.
tryste, including the diamond mining areas. Moreover, the British arrival did nothing to improve the situation between UNAMSIL's military and political chiefs. In September, a report Jetley wrote accusing the political arm of UNAMSIL with RUF collusion in illicit diamond exports was leaked to the press. The resulting tension led to the withdrawal of all 3,000 Indian troops in October, 2000. Jordon took the opportunity to withdraw its two battalions at the same time, with the complaint, shared by India, that no first world country demonstrated a willingness to operate under UN command. Faced with the withdrawal of the UN's most professional troops, Prime Minister Blair reportedly appealed to every major European government to provide troops to UNAMSIL, but only Slovakia offered even logistical support. Other governments claimed that they were too heavily committed to peacekeeping in Kosovo, Bosnia, Georgia or Ethiopia.

In May 2000, the government, UN, and the RUF met in Abuja, Nigeria, and developed a plan to implement the demobilization and peace promised at Lomé. A year later, the parties met in Abuja again, and at this meeting the RUF agreed to fully disarm. UNAMSIL remains in Sierra Leone as of this writing, with a force strength of 11,000 peacekeepers.

POST-CONFLICT SIERRA LEONE: DUAL-TRACK HUMAN RIGHTS INSTITUTIONS

Sierra Leone's lengthy peace process moved on two tracks: the first track was a Truth and Reconciliation Commission, established by the Lomé agreement, and the second track was the later-developed Special Court. The country recently completed its experience with the Truth and Reconciliation Commission (TRC), which recorded testimony from about 6,000 Sierra Leoneans. While some analysts expected problems with this

70 O'Loughlin, supra note 68.
dual-track system, it appears that the TRC successfully operated as a complement to the Special Court.\textsuperscript{76}

\textit{The Special Court's Establishment}

As noted in the later history of the Sierra Leonean war, despite the agreement at Lomé, the RUF continued hostilities against the government. Therefore, the need was recognized to curtail the blanket amnesty granted to the RUF in the Lomé agreement since this provision had rested on the fulfillment of disarmament and cessation of hostilities. Moreover, at Lomé, the UN Secretary-General’s Special Representative included a handwritten note stating that, “the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law.”\textsuperscript{77}

In accordance with this position that customary international law prohibits the granting of amnesty for grave breaches of international humanitarian law, on June 12, 2000, Sierra Leone’s President Kabbah requested that the UN Secretary-General establish a part-international, part-municipal court to address gross human rights violations committed during the civil war. This letter gave rise to Security Council Resolution 1315, in which the Council recognized the need to establish a court for Sierra Leone.\textsuperscript{78} On February 16, 2002, the UN and Sierra Leonean government entered into an agreement for the Special Court’s establishment. The Sierra Leonean Parliament ratified the agreement in March 2002.\textsuperscript{79} Therefore, unlike the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court is a \textit{sui generis} treaty body established through this joint agreement.

The Special Court’s structure resembles that of other international criminal tribunals in that it has a Trial Chamber, an Appeals Chamber, an Office of the Prosecutor, and a Registry. The judges of the Special Court are a mixture of appointees from Sierra Leone, the UN Secretary General

\textsuperscript{76} \textit{Id. See also} Jennifer L. Poole, \textit{Post Conflict Justice in Sierra Leone, in Post-Conflict Justice} 563, 591 (M. Cherif Bassiouni, ed., 2002) (“Sierra Leone is fortunate to have these two concurrent accountability mechanisms.”).


Sierra Leone appointed British citizen Geoffrey Robertson and Sierra Leonean Gelaga King to the Appeals Chamber, and Rosolu John Bankole Thompson to the Trial Chamber. Thompson was then elected Presiding Judge of the Trial Chamber on Dec. 2, 2002.


Aside from Charles Taylor, the remaining indictees, all charged with crimes against humanity, war crimes and other violations of international criminal law, are: From the RUF, Foday Sankoh, Issa Sesay, Sam “Mosquito” Bockarie, Morris Kallon and Augustine Gbao; from the Armed Forces Revolutionary Council (AFRC) and its splinter group, the West Side Boys, Johnny Paul Koroma, Alex Tamba Brima and Ibrahim “Bazzy” Kamara; from the Civil Defence Forces (CDF), Chief Sam Hinga Norman, Moninina Fofana and Allieu Kondewa.
Charles Taylor is currently in the custody of the Special Court for Sierra Leone.\textsuperscript{83} The Special Court "has asked the Netherlands to host the trial of Mr. Taylor at the International Criminal Court."\textsuperscript{86}

Finally, the Special Court has endured some criticism of its judges. First, while many of the Court’s judges are African, most Trial Chamber panels include at least one non-African judge. This has led to accusations of unfairness from those undergoing prosecution.\textsuperscript{87} Second, the Appeals Chamber, upon motion from three RUF defendants, ruled that Justice Geoffrey Robertson may not sit on any case involving these defendants because of anti-RUF statements he published in a book in 2000.\textsuperscript{88}

\textbf{CONCLUSIONS: THE PROBLEM OF LOCAL ENGAGEMENT}

At first blush, the low-profile Special Court appears to be a minor institution that will bring about the prosecution of a hodgepodge of serious offenders in this massive tragedy. Since it is impossible to do individual justice in this case, any deterrent effect created by the Special Court may be offset by the large number of offenders who will escape punishment entirely. However, a closer look at the nature of the conflict reveals that the Special Court’s role in capacity-building, and expanding the rule of law, makes the institution more than just an apology for a long-neglected crisis. The argument here is that the conflict in Sierra Leone was based, at bottom, on a problem of international criminal law enforcement, and particularly, the government’s inability to crack down on the illicit diamond trade. One implication of this argument is that unlike other political conflicts, in Sierra Leone, the rebels could not be appeased or satisfied by the kinds of things traditionally used to bring about a peace agreement. One example is the often-used leverage of power-sharing in government. In Sierra Leone, history had demonstrated that it was largely a liability to be in government. In a bush camp, a rebel leader can shoot anyone who challenges him, and this changes once one’s rivals know one’s address. Next, the offering of amnesty at a peace table is only meaningful if the government, or the community fostering the agreement, is willing and able to prosecute in lieu of amnesty. In Sierra Leone, the threat of prosecution was simply not credible to the heads of the factions actually in control of terri-

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\item \textsuperscript{83} \textit{Dutch trial seeks ex-Liberia head}, Brit. Broadcasting Corp., Apr. 24, 2006.
\item \textsuperscript{86} Id.
\item \textsuperscript{87} \textit{Sierra Leone War Crimes Suspect Protests White Judge}, U.N. Wire, Sept. 24, 2003, \textit{at} http://www.pict-pcti.org/news_archive/03/03Sep/Sierra_Leone_092403.htm.
\item \textsuperscript{88} See Geoffrey Robertson, \textit{Crimes Against Humanity: The Struggle for Global Justice} (1999).
\end{itemize}
tory and economic resources – at least not until the British intervened, and rallied the international community for a genuinely effective UNAMSIL. And finally, in Sierra Leone, no public affirmation of the revolutionary movement’s grievances would have had any effect because the movement had no tangible grievances with the government. The government sitting across the peace table never specifically oppressed the rebels as a group prior to the war. Rather, from the rebels’ perspective, what the government really wanted was to regain control of diamond mining areas that it didn’t have the strength to capture on its own.

The difficulty of conflicts rooted in lax criminal law enforcement is that they can only be fully addressed in the context of nation-building. For this reason, the capacity-building efforts of the Special Court are not only appropriate, but also long overdue. The presence of the Special Court in a multi-million dollar courtroom facility in Freetown is likely to go a long way in developing the recognition for the rule of law, at least in the capital. Similarly, the Special Court continues to make efforts to inform a large illiterate population about its work, which may increase citizens’ understanding of criminal law enforcement generally. And lastly, although many of the Special Court’s staff persons are from other parts of the world, a good number of attorneys, assistance and support staff members are native Sierra Leoneans. This therefore leaves open the possibility that the jurisprudence developed at the Special Court will “bleed into” the national legal system.

It is proper to see the Special Court’s benefits in this light, and give the TRC some credit for bringing about actual closure to the war among the population. Sierra Leone’s TRC was well supported by civil society groups, and incorporated a number of innovations into its work to encourage and protect, for example, women’s rights in the reconciliation process. Like the Special Court, the TRC had difficulty raising awareness about its process in rural Sierra Leone, but initial reports suggest that the process included a fair number of victims, as well as a smaller number of perpetrators.

In conclusion, although Sierra Leone’s hybrid court faces a number of challenges, at least as an institution, it appears to be an appropriate and necessary court for the criminal prosecution of the former conflict’s leaders. While its work may be incidental to a broader program of reconciliation embodied in the TRC, its establishment demonstrates the international community’s support for a stable Sierra Leonean government over the long-term.