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Edited by Kirsten Ainley
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We are grateful to Eleanor Davey-Corrigan, our editor at Palgrave Macmillan, and her team for their enthusiasm for this project. We would also like to thank the audience at the 'Ten Years On: Assessing Transitional Justice in Sierra Leone' panel at the International Studies Association 2014 Annual Convention, where some of the chapters of the book were presented, for their insightful comments, in particular those of our discussant, Rosemary Nagy. A special thank you goes to Kristine Behm, Simon Charters, Ade Daramy, Simone Datzberger, Magdalena Delgado, Simone Fehr, Laura Martin, Maanya Tandon and Lee-Lon Wong for their research and other assistance.

Perhaps our greatest debt is to the people of Sierra Leone, from whom we have learned the most about the successes, failures and lessons of transitional justice in the country during the various periods each of the editors has spent there. The manuscript for this book was finalized as Sierra Leone faced the appalling challenge of combatting the Ebola virus, which has, at the time of writing, already claimed the lives of thousands of Sierra Leoneans. It is so very unfair that a country showing signs of emerging successfully from an epidemic of violence, however much of this success can be credited to its transitional justice programme, is now faced with an epidemic of disease. We dedicate this book to all those who are facing the threat of Ebola, and hope that the

international attention being paid once again to Sierra Leone can be harnessed to support the establishment of a public health infrastructure that can adequately protect its population in the future.

Kirsten Ainley
Rebekka Friedman
Chris Mahony

London and Washington, November 2014

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List of Abbreviations

ACC-SL	Sierra Leonean Anti-Corruption Commission
AFRC	Armed Forces Revolutionary Council
CDF	Civilian Defence Forces
DDR	Disarmament, Demobilisation and Reintegration
GoSL	Government of Sierra Leone
ICC	International Criminal Court
ICJ	International Criminal Justice
ICL	International Criminal Law
ICT	International Criminal Tribunal
IHL	International Humanitarian Law
NPWJ	No Peace Without Justice
OTP	Office of the Prosecutor
RSCSL	Residual Special Court for Sierra Leone
RUF	Revolutionary United Front
SCSL	Special Court for Sierra Leone
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission
UN	United Nations
UNSC	United Nations Security Council
UNSG	United Nations Secretary General

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Transitional Justice in Sierra Leone: Theory, History and Evaluation

Kirsten Ainley, Rebekka Friedman and *Chris Mahony*

The Sierra Leonean civil war was exceptionally brutal; during the conflict, in this small country with just over 6 million inhabitants, an estimated 70,000 people lost their lives and 2.6 million were displaced.[1] The war became known for widespread atrocities, including forced recruitment of child soldiers and extensive incidents of rape, sexual slavery and amputations of limbs. In addition to the outward manifestations of violence, the conflict left less tangible but still pervasive legacies. Incidents of localised violence caused deep rifts within many communities, and, in politically marginalised areas, state violence reinforced the mistrust of political institutions and government structures. As many combatants were disenfranchised youth, the conflict featured a high degree of violence targeted against specific authority figures, made relations between generations more fraught and tore apart the social fabric.

Since the end of the war in 2002, Sierra Leone has become the site of sustained and multifaceted transitional justice (TJ) and peace-building efforts. The Sierra Leonean Truth and Reconciliation Commission (TRC) was set up as part of the 1999 Lomé Peace Agreement, which provided for a TRC alongside a general amnesty. Just over a year after the Agreement was signed, the then President of Sierra Leone, Tejan Kabbah, wrote to the United Nations Security Council (UNSC) on 12 July 2000, requesting an *ad hoc* tribunal to be set up in the country. The Security Council passed Resolution 1315, stipulating that the UN Secretary-General (UNSG) should negotiate an agreement with the Kabbah administration for an 'independent special court'. The Special Court for Sierra Leone (SCSL) was established in January 2002. At the same time, Sierra Leonean communities and civil society organisations around the country drew upon a range of informal and traditional

mechanisms, including community-level restorative justice processes and customary law, to advance community reconciliation and combatant reintegration.

Many observers, particularly external practitioners, see Sierra Leone as a successful case of transitional justice that offers valuable lessons for other countries emerging from violence. Sierra Leone's TJ mechanisms have set important precedents. The SCSL was the first 'hybrid' international criminal tribunal, administered jointly by the UN and the government of Sierra Leone but answerable to neither in its judicial functions. The Court's founding, via a treaty between the Sierra Leone government and the UN, departed from the UNSC-established international tribunals for the former Yugoslavia and Rwanda, and from the Special Panels in East Timor, which were established by the UN Transitional Administration in East Timor (itself established by the UNSC). The SCSL was unique in its foundations and also broke legal ground in its jurisprudence. In addition, it is commended for its extensive and innovative outreach programme. The TRC, in turn, is unique as the first commission to have separate proceedings for youth under the auspices of the United Nations Children's Fund (UNICEF), and for its extensive focus on gender and the widespread incidents of sexual and gender-based violence (SGBV) committed in the conflict. Finally, the Court and the TRC set precedents in working alongside each other as the first case in which an internationalised tribunal and a TRC were established in parallel.[2]

As the chapters in this book highlight, however, this series of unique or innovative aspects of transitional justice in Sierra Leone should not automatically lead to a judgement that the TJ programme was a success. Such a judgement requires examination of the mechanisms' normative, legal and political contexts and contributions. TJ mechanisms in Sierra Leone were established in an impoverished and unstable post-conflict environment, often in line with the wishes of powerful external actors. They frequently operated without clear long-term strategies and at times without sufficient guarantees of funding. They also had to negotiate external and internal political pressures. This book takes these often-competing constraints and interests into account, in order to examine the establishment, politics, goals and effects of Sierra Leone's TJ programme as a whole.

Theorising Transitional Justice in Sierra Leone

Over a decade since the end of the war, Sierra Leone has become the focus of an active and polarised TJ literature that illuminates many

controversies within TJ theory and practice more broadly. Many early observers, often scholar-practitioners, were optimistic in their assessments of the Sierra Leonean experience. They tended to focus on the 'justice' element of transitional justice and to favour a strong criminal justice response to atrocities. Their assessments centred on the precedents the Sierra Leonean case set and how it related to previous TJ programmes.[3] This orientation can still be seen in the legal literature on the SCSL. In a recent collection, Jalloh et al. offer an analysis of the global legal legacy of the SCSL, in particular, its practices and jurisprudence, as well as its potential impact on wider norms for international and domestic criminal law and procedures.[4] Jalloh notes that the SCSL was confronted with novel legal issues, and that it served as the first international criminal court to deliver convictions for the recruitment of children, to prosecute attacks against UN peacekeepers, to prosecute forced marriage as a crime against humanity and to try and convict a former head of state (ex-President of Liberia, Charles Taylor) for the commission of crimes in another state.[5] This literature puts little emphasis on 'truth-telling', and even less on socio-economic programmes, such as reparations, as necessary components of transitional justice.

Analysts of both the SCSL and the TRC have sought to determine their impact by measuring public perceptions, usually through survey data and public opinion polls. These studies focus on measuring popular awareness and perceptions of transitional justice, with high awareness and positive perceptions assumed to demonstrate legitimacy of the TJ programme.[6] This literature includes the SCSL's own legacy report, the 2012 survey conducted by the NGO No Peace Without Justice, for which more than 2,800 people in Sierra Leone and Liberia were interviewed, and which generated broadly positive findings.[7]

However, a critical qualitative literature has emerged alongside the more favourable assessments of Sierra Leonean transitional justice, taking issue with what it characterises as a legalistic, formulaic and externally driven TJ regime. Redirecting attention internally, ethnographic researchers have argued that the emphasis on local ownership and partnership in recent policy discourse remains superficial, and that transitional justice in fragile states, such as Sierra Leone, lacks meaningful engagement with local institutions and local traditions.[8] Rosalind Shaw, for example, maintains that speaking of the war in public in Sierra Leone undermines established processes for healing and reconciliation at the village and familial levels.[9] Tim Kelsall examines the importance of culture in transitional justice. In his work on the SCSL and the TRC, he argues that globalised transitional justice failed to meaningfully engage

Sierra Leonean culture and largely excluded the TJ programmes' primary stakeholders.[10] The results of surveys such as those discussed above mask the deleterious effects of the imposition of a 'one-size-fits-all' model of transitional justice that pays little attention to local context.

Evaluations of transitional justice in Sierra Leone feed into wider debates in the field. As TJ practices have become consolidated, more work has been done to develop a theory or theories of transitional justice.[11] Context-based research has been an important counterweight to universalising tendencies in the literature. The type of micro-level research carried out by Shaw and Kelsall, cited above, which is informed by a rich historical understanding, has redirected attention to stakeholders. Taking stakeholders seriously means ascertaining the needs and priorities of individual victims or war-affected communities, and represents a shift away from the 'one-size-fits-all' model. This literature critiques the top-down nature of global TJ practice, its often-legalistic character and its emphasis on liberal state-building and the rule of law over social and economic rights, psycho-spiritual healing and restorative justice. Interpretive accounts place a high value on local norms and cultures and call for a more self-critical and self-aware TJ praxis.[12] They also highlight the concern that transitional justice has become too globalised too quickly – that the TJ community has ignored unresolved issues and is insufficiently sensitive to contextual particularities.[13] Questions have also been raised about the relationship between transitional justice and peace-building, recalling earlier tensions in TJ literature between retributive and restorative justice, and between justice and peace.[14]

Underlying much TJ scholarship are strong (albeit often-unstated) normative commitments, including assumptions about what the correct goals of transitional justice should be. For instance, Brenda J. Hollis, in Chapter 2, argues that post-conflict programmes are unlikely to be successful if they do not include accountability mechanisms, as, in her view, accountability is a universal human need after war. Like many who write from a legal standpoint, she sees criminal justice as the most appropriate tool for providing this accountability. Those who take a more critical approach hold that the goals of transitional justice should not be predetermined or externally derived, but rather should emerge through attention to internal legitimacy and resonance. These diverging positions echo debates within critical peace-building around authority and legitimacy and distinctions between positive and negative peace.[15]

The polarised literature on transitional justice in Sierra Leone reflects tensions in the field more broadly. As Kirsten Ainley details in Chapter 12, there is no consensus on what TJ processes should achieve, at what level

they should take effect, who the stakeholders and audience of transitional justice should be and how the impact of TJ programmes should be assessed. While it is widely argued that transitional justice should be transformative, it is not sufficiently clear what this would entail.[16] The chapters in this book examine the contributions of TJ mechanisms to post-conflict transformation and continuity in Sierra Leone, in order to reflect upon both the specific case and the wider TJ project.

Evaluating success: Sierra Leone's post-conflict transition

The principal aim of this book is to critically evaluate the impact of transitional justice in Sierra Leone. Examining Sierra Leone's TJ processes from multidisciplinary and historically sensitive perspectives, the contributors – a mix of scholars and practitioners – focus on two central questions:

1. To what extent should Sierra Leone's TJ processes be considered a success?
2. What lessons does the Sierra Leonean TJ experience offer to other conflict and post-conflict situations?

To answer these questions, the chapters explore conceptions of success and consider important sub-questions, for instance, on the temporal dimension of transitional justice. Do TJ approaches present short-term solutions or do they work towards long-term peace, stability and development? Put another way, do TJ mechanisms address the visible legacies of conflict (victims, justice for atrocities and, in this case, the challenges involved in rehabilitating child soldiers) or the root causes and long-term economic, social and political drivers of conflict? Rama Mani distinguishes between rectificatory and reparatory justice, arguing that the subordination of the latter has been a particular shortcoming of global efforts to implement transitional justice in developing countries.[17] An important question in this book is whether TJ processes have prioritised the short-term and visible legacies of conflict and in doing so reinforced pre-war conflict structures. Paul Jackson, for instance, warns of customary law's reinforcement of traditional hierarchies and power structures that contributed to the social unrest that led to conflict.

Second, the book examines the relationship between TJ institutions. If transitional justice in Sierra Leone sets a precedent in its multi-track approach, to what extent have TJ approaches complemented one another? Rosalind Shaw and Tim Kelsall note a high degree of confusion

among Sierra Leoneans regarding the jurisdictional independence of the SCSL and the TRC.[18] They emphasise the challenges this posed to the TRC's objective to engage ex-combatants – an issue that Rebekka Friedman, in Chapter 4, argues is still a barrier to ex-combatant participation in community reconciliation processes. Mohamed Sesay, in Chapter 9, discusses the prioritisation of the rule-of-law promotion in Sierra Leonean transitional justice and the effects this had on disciplining local justice mechanisms into compliance with an international agenda rather than utilising their potential as conflict-resolution mechanisms. David Harris and Richard Lappin note the tendency, as illustrated by the Sierra Leonean case, of criminal proceedings to overpower truth-seeking and reconciliatory justice efforts.

Third, in evaluating transitional justice, the book suggests an important distinction between impact and success.[19] TJ processes can have multiple, conflicting and often unexpected consequences. These consequences render judgement of success or failure difficult and perhaps even meaningless. The authors in this book differ in their views on both the nature of TJ success and on the evidence that would demonstrate success. Brenda Hollis, and Wayne Jordash and Matthew Crowe have diametrically opposed views on the success of the SCSL as a legal institution. Kieran Mitton challenges judgements of success that do not recognise the fragile and pragmatic 'pact of accommodation' in Sierra Leone and suggests that cultural hierarchies are preventing deeper reconciliation. Valerie Oosterveld notes that despite the impact of TJ mechanisms on domestic law in the field of sexual and gender-based violence, such violence remains persistent, making claims to success problematic.

Finally, the book examines the broader domestic and international political contexts within which TJ mechanisms are designed and operate. Chris Mahony, in Chapter 5, sets out the interests of the actors who conceived and implemented transitional justice in Sierra Leone and traces the effects of the politics of the establishment of TJ institutions on their later functioning. Chris Mahony and Yasmin Sooka draw on their first-hand experience to argue that the politics of the TRC's establishment limited the Commission's ability to fully consider the role and responsibility of external actors in the conflict. David Harris and Richard Lappin examine the effects of the liberal narrative that they argue led to the favouring of judicial rather than political conflict resolution in Sierra Leone, tracking how politics affected justice and justice affected politics. And Friedman shows how activists in Sierra Leone resisted elements of the international TJ agenda, with local restorative justice projects filling a participatory void left by more culturally and often geographically

distant formal institutions. A key theme running through the chapters is the importance of politics as well as law and ethics in the establishment, operation and effects of TJ mechanisms. It is to the politics of the Sierra Leonean conflict and its antecedents that we now turn.

The historical antecedents of Sierra Leone's civil war

A full analysis of the antecedents to the civil war is not attempted here as a number of excellent scholarly works already provide rich and nuanced historical narratives.[20] The history sketched below focuses in particular on Sierra Leone's politics and international connections, as these are the most pertinent factors in evaluations of the post-conflict justice processes. Sierra Leone's modern history begins with its international links: the country was founded on the international slave trade. Between 1668 and 1807, more than 50,000 slaves were shipped to the Americas by British slave traders, via Bunce Island near Freetown, and Freetown itself was established as a home for freed slaves and London's 'black poor' in 1787.[21]

After the British established Sierra Leone as a colony, it became a locus of great power rivalry between English, Dutch and French commercial interests as they attacked one another's trading posts in the region.[22] After the 1793 British declaration of war, France bombarded Freetown in 1794. Britain then moved to formalise its sphere of influence by taking control of the colony from the Sierra Leone Company and declaring a protectorate over the territory of Sierra Leone outside the present-day western area.[23] These two territories, the protectorate and the colony, were unevenly developed, which fermented social divisions that would remain until the civil war. Particularly important was the British removal of local processes that could hold Chiefs accountable, as more direct governance was established in the protectorate. The British also demanded that the Chiefs implement unpopular measures including taxes, which prompted rebellion in 1898. The British administration hanged rebel Chiefs and supported compliant Chiefs, while increasing Chieftaincy power by establishing a dual legal system that provided Chiefs judicial capacity over matters of land and low-level crime.[24] Thus Chieftaincy power was enhanced and at the same time rendered less accountable to the governed population and more accountable to the local British administration.[25]

As the British colonial government opened up municipal and then nationwide political space, upward-looking ethno-regional patrimonial structures of power organised through Chieftaincy permeated political

organisation, marginalising those outside Chieftaincy lineage.[26] When Sierra Leone was granted independence in 1961, Freetown's educated Krio elites dominated national politics. The Chieftaincies dominated local politics. Sierra Leone epitomised what Mahmood Mamdani calls 'decentralized despotism' – a structure of Chieftaincy power brought about by indirect colonial rule and not dismantled after the state attained independence.[27] Post-1961 Sierra Leonean politics functioned through ethno-regionally aligned patrimonial channels. Leaders manipulated the state bureaucracy and resources to their benefit, and to the disadvantage of political opponents, maintaining what Frederick Cooper calls a 'Gatekeeper State'.[28] Post-independence governance was characterised by unstable transfers of power between the Sierra Leone People's Party (SLPP) and the All People's Congress Party (APC), via coups and counter-coups. Each party engaged in ethnicised power-building, via key appointments of ethno-regional clients to state institutions while increasingly consolidating constitutional power in the executive.

The economic situation in the country was also fragile. After significant but unsustainable economic growth during the 1970s, the APC President, Siaka Stevens, put down mounting labour unrest and the threat of nation-wide strikes using emergency powers to arrest labour leaders in 1979.[29] By 1980, the economy was still based on primary exports, making it vulnerable to price fluctuation, whilst the state's ability to capture tax from exports dwindled.[30] The TRC concluded that barely a single infrastructural project was carried out in a financially sound fashion.[31] Violent suppression of 1982 strikes alongside civil service salary reforms strained patron–client relationships 'essential to survival in a harsh and capricious agricultural environment', to the extent that Sierra Leonean youth perceived few options besides violent rebellion.[32] The 1982 election spurned violent Mende/SLPP unrest. Chiefs and personnel involved in the manipulation of marketing boards and other terms of trade were targeted by discontented youths.[33]

In 1983, the government was forced to devalue the Leone by 50 per cent, causing a balance of trade deficit, decreasing GDP and increasing commodity prices.[34] In 1985, Stevens handed power to Joseph Saidu Momoh. Rising dependence on rice imports due to the failing domestic agricultural sector severely harmed Momoh's ability to supply lines of patronage, particularly within the armed forces.[35] Increasingly accountable to external debt obligations, Momoh removed price and supply controls on rice.[36] A fluctuating currency rendered large-scale agricultural investment unviable and Sierra Leoneans reverted to subsistence farming.[37] The country's economic liberalisation and dependence on

commodity exports caused inflation, increased unemployment, particularly amongst young people, and increased inequality.[38] The state became weaker and the exclusion of multiple social groups, caused by decades of misrule under an autocratic and patrimonial one-party system, led to collapse and the start of the war in 1991.[39]

The Sierra Leonean conflict

The Sierra Leonean civil war was fought among a number of groups, with allegiances changing regularly. It began in March 1991, when an armed insurgency called the Revolutionary United Front (RUF), led by Foday Sankoh and originally composed primarily of Charles Taylor's Liberian National Patriotic Front (NPFL) personnel, entered eastern Sierra Leone from Liberia. Both the RUF and the NPFL leadership had received training in Libya and, according to Western intelligence, had tacit French support via the Ivory Coast, from where Taylor launched his Liberian rebellion.[40] The Sierra Leone Army (SLA) was tasked with putting down the insurgency, but the government failed to retain its loyalty. In 1992, a group of SLA soldiers, angry about their lack of wages and corruption within the APC government, conducted a coup, establishing the National Provisional Ruling Council (NPRC). Despite widespread NPRC human rights abuses, Western donors provided $324 million between 1992 and 1995, as the Council continued to fight the RUF.[41] In 1995, the RUF captured the NPRC's greatest source of domestic revenue, the Sierra Leone Ore and Metal Company (SIERMCO) and the Sierra Rutile mine, causing rapid deployment of a British mercenary force to support the SLA in their attempts at recapture.[42] It was at this point that the United Kingdom became seriously engaged in the conflict as a protector of its domestic patron against a perceived francophone agent – the RUF.

After the failure of British mercenaries to recapture SIERMCO, the Branch Heritage Group, a British firm, employed a South African–based mercenary company, Executive Outcomes (EO). EO was contracted to secure Freetown, the Sierra Rutile mine and diamond fields before engaging the RUF elsewhere.[43] In July 1995 EO's sister company and Branch Heritage Group subsidiary, Branch Energy, secured diamond-mining concessions of extractable value cited at $2 billion.[44] Sierra Leone's debt servicing at the time amounted to 75 per cent of annual exports.[45]

In 1996 NPRC adviser and SLPP stalwart Ahmed Tejan Kabbah won elections despite widespread irregularities reported in the SLPP's native south. President Kabbah began to support a southern-based anti-RUF paramilitary group called the Civil Defence Forces (CDF), and installed

its leader, Sam Hinga Norman, as Kabbah's deputy minister of defence. As the civil war reached military and political stalemate, Kabbah and the RUF signed the 1996 Abidjan Peace Agreement. The Agreement provided amnesty to the RUF and expelled Executive Outcomes in return for cessation of hostilities and disarmament.[46] However, the RUF, who increasingly cooperated with disillusioned groups of SLA, continued to procure arms in violation of the Peace Agreement. In March 1997, armed clashes ensued, and RUF leader, Foday Sankoh, was arrested and detained in Abuja, Nigeria.[47] Continued armed confrontation was driven by inadequate demobilisation, disarmament and reintegration (DDR) funding and the realignment alongside the RUF of northern APC politicians and an SLA that felt marginalised by Kabbah's engagement of the CDF.[48] The SLA's discontent prompted a coup in May 1997, bringing the Armed Forces Revolutionary Council (AFRC) led by Major Johnny Paul Koroma to power.[49] President Kabbah fled to Guinea. The RUF joined the AFRC in government after consultation with Sankoh, who was still in detention in Nigeria.[50]

The British government, with a degree of support from the United States, persuaded Nigeria to send Economic Community of West African States (ECOWAS) troops to restore Kabbah to power.[51] Tony Buckingham, a director of Branch Heritage, in coordination with the British government, secured the provision of the Sandline mercenary company to support the efforts of ECOWAS, the Kabbah government and the CDF to return Kabbah to power.[52] In October 1997, Koroma signed the Conakry Peace Agreement that committed the AFRC to restore constitutional government in exchange for amnesty.[53] But once again, the peace disintegrated. The AFRC attacked the Economic Community of West African States Monitoring Group (ECOMOG), causing Kabbah's government to plan a military assault on Freetown in collaboration with ECOMOG.[54] The Kabbah government resumed control of Freetown and restored its leadership in early 1998. However, the distrust between the parties drove episodes of violence in which all parties, particularly the AFRC and RUF, targeted civilians.[55] In particular, as the AFRC attacked Freetown once again in early 1999, numerous atrocities were committed and thousands of civilians murdered.

Eventually, with no prospect of a conclusive military victory for either party, Kabbah and Sankoh were driven to negotiate another peace agreement in Lomé, Togo, in July 1999. The Lomé Agreement provided amnesty to all parties to the conflict for crimes committed and established a power-sharing government and a TRC.[56] The UN Secretary General's representative to the negotiations appended a last-minute reservation stating that the UN did not regard the amnesty as applying to

genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.[57] Whether the appendage was made before or after the signing of the agreement remains unclear. Such an appendage had not been made to the Conakry agreement.

Despite the presence of UN peacekeepers, both parties to the Lomé agreement failed to adhere to their obligations. Kabbah's government arrested RUF personnel, placed Sankoh under house arrest and then directed an attack on Sankoh's house by the CDF and the SLA after RUF combatants took UN peacekeepers hostage.[58] These events, alongside the deployment of British troops to fight alongside the Kabbah government, changed the military balance dramatically against the RUF. They also coincided with a change in the Clinton administration's policy from one supporting Charles Taylor in Liberia (who remained a key sponsor of the RUF) to active opposition.[59]

Kabbah's regime, benefitting from the military assistance of the AFRC, CDF and British troops, gained an unassailable advantage over the RUF. Despite the prior establishment of the TRC and a general amnesty, Kabbah requested that the UNSC assist in bringing the RUF to justice for crimes against the people of Sierra Leone and for kidnapping peacekeepers.[60] In August 2000, the UNSC passed a resolution requesting the Secretary General negotiate an agreement with the government of Sierra Leone to establish an independent special court.[61] In March 2001, the UNSC passed Resolution 1343 under Chapter VII of the UN Charter, demanding that Liberia expel all RUF members and prohibit all RUF activity in its territory. The RUF was effectively defeated. In May 2001, a Cessation of Hostilities was signed, and in January 2002 Kabbah declared the war to be over. An agreement was reached between the Government of Sierra Leone and the UN in the same month to establish the SCSL to prosecute those who bore the greatest responsibility for crimes committed since the 1996 Abidjan Peace Agreement.[62]

The war killed tens of thousands of Sierra Leoneans, displaced millions and left upwards of 400,000 to survive the amputation of one or more limbs.[63] It also devastated the Sierra Leonean economy and infrastructure and destroyed any remaining trust Sierra Leoneans had in state institutions. Bringing about justice in the transition from conflict to peace was therefore a formidable task, and TJ mechanisms operated, at least at first, in a deeply inhospitable environment.

Overview of the book

This section outlines the contributions of the chapters that follow to the evaluation of the TJ programme in Sierra Leone. The book begins

with an assessment of the Special Court by its Prosecutor, and an assessment of the TRC by one of its commissioners. Further chapters examine the establishment, functioning and impact of the key TJ mechanisms in Sierra Leone – the Special Court, the TRC and local justice initiatives – and, crucially, the ways in which the mechanisms worked alongside one another. The contributors base their analyses on their own research or experience as practitioners within Sierra Leone, and all recognise the importance of domestic and international politics to the practices of transitional justice. The chapters offer a range of conclusions about the relative success of transitional justice in Sierra Leone, reflecting the aim of the book to provide a rich and critical analysis of the TJ programme and its lessons for other states.

In Chapter 2, Brenda J. Hollis, Prosecutor of the Residual Court of Sierra Leone, argues that the SCSL provided a critical form of accountability to Sierra Leoneans. She evaluates the SCSL in terms of how effectively and efficiently it achieved its judicial mandate, emphasising the fairness and impartiality of the Court, for instance, in its case selection criteria. Hollis also notes the Court's achievements in furthering international criminal jurisprudence, particularly in the area of sexual and gender-based violence. Finally, she argues that the Court contributed positively to post-conflict Sierra Leone by building domestic capacity and through its training of Sierra Leonean staff.

In Chapter 3, Chris Mahony and Yasmin Sooka use their experience working at the TRC to show how capacity constraints limited the potential of the Commission to fully pursue the truth. They commend the Commission for its detailed analysis of local incidents that shaped the conflict but argue that domestic and external political pressures and constraints prevented proper analysis of the actions of international actors. They also critique the Commission's reluctance to examine the effects of macroeconomic adjustments preceding the conflict. Perhaps most importantly, the chapter addresses the TRC's failure to make concrete recommendations relating to the reorganisation of power within Sierra Leone and between Sierra Leone and external actors.

In Chapter 4, Rebekka Friedman focuses on the contribution of restorative justice to peace-building and reconciliation. She argues that the TRC successfully promoted a broad understanding of restorative justice, linked to nation-building and democratisation, but that its limited influence in war-affected areas and the lack of implementation of its findings undermined the Commission's impact on political trust and solidarity. She contends that the community reconciliation project, Fambul Tok, more successfully created a sustainable and meaningful context for reconciliation by tying reconciliation to development and

linking reconciliation to cultural modes of reciprocity and communal work. Fambul Tok, established partly as a result of the TRC and its limitations, successfully filled gaps left by international transitional justice.

In Chapter 5, Chris Mahony considers the political and normative drivers of the Special Court. He traces decisions to establish a TRC, and later a Special Court, to a shift in US policy orientation procured by sophisticated British diplomacy in Sierra Leone and Washington, DC. Mahony points to the US policy shift, under British pressure, from supporting Charles Taylor and calling for power sharing, to supporting outright military victory for the British-backed government and regime change in Liberia. He traces the Court's constrained success in pursuing those 'bearing greatest responsibility' to foreign actors' desire to create the Court as part of a broader regime-change strategy in Liberia, and the Kabbah regime's entrenchment in Sierra Leone.

In Chapter 6, Wayne Jordash QC and Matthew R. Crowe contest assertions that the SCSL successfully completed trials in accordance with 'international standards of justice, fairness and due process of law'.[64] Through examination of the trial processes that convicted two sets of accused – one from the principal rebel group, the RUF, and one from the pro-government forces, the CDF – the authors contemplate the SCSL's legacy for international criminal law. Whilst the CDF accused enjoyed the application of internationally endorsed trial processes, these were absent from the RUF trials. Instead of conducting fair trials of each group, the RUF trial, they argue, was more akin to a modern morality play – condemning the RUF and lending the CDF legitimacy – than the principled creation of a legal institution.

In Chapter 7, Valerie Oosterveld examines the legacies of the TRC and the Special Court, with particular reference to their impact on Sierra Leonean laws on gender issues. The two TJ mechanisms are well known in the international legal community for their examination of sexual and gender-based violence in the Sierra Leonean civil war, such as the crime against humanity of sexual slavery and the phenomenon referred to as 'forced marriage'. She traces a direct effect of the TRC on domestic legislation, and suggests a nuanced connection between the SCSL and domestic law. However, she argues that domestic law reform has not made a significant impact on the high levels of SGBV existing post-conflict.

In Chapter 8, David Harris and Richard Lappin look at how justice affects politics and politics affects justice with regard to the Special Court and the TRC, and contrast the Sierra Leonean case with the primarily realpolitik approach to conflict resolution in neighbouring Liberia. They begin by critiquing the way that the Taylor trial leads observers to view

the civil war purely in terms of criminality, and show that this hides a whole terrain of political textures. They then appraise the liberal discourse underpinning the justice narrative in Sierra Leone, in particular the assumption that establishing retributive and purportedly apolitical courts is the best solution to conflicts.

In Chapter 9, Mohamed Sesay argues that the externally driven TJ agenda in Sierra Leone reinforced an international rule-of-law consensus. This placed undue premium not only on state capacity-building but also on compelling other forms of legal order to conform to the liberal-democratic ideal type. A consequence of the international agenda was the tendency to view traditional justice systems as requiring a technical institutional 'fix', similar to their formal-legal domestic counterparts. Sesay contends that the formalisation of customary justice practices undermines the social relevance of key conflict resolution mechanisms, and argues that the stigmatisation of informal institutions outside the state-recognised customary justice system missed chances to enhance the capacity of these mechanisms to settle disputes.

In Chapter 10, Paul Jackson examines the limited impact of the Special Court on local or traditional justice systems and argues that the Court has remained isolated from most Sierra Leoneans' experiences of justice. Relatively little domestic political buy-in to justice as a peace-building mechanism, coupled with the international community's control of the SCSL, led to a missed opportunity to use a broader range of justice mechanisms as part of the post-conflict programme. Most Sierra Leoneans access justice locally, and by staying remote from these local mechanisms, Jackson argues that the SCSL failed to fully address core issues and grievances that constituted key drivers of the conflict, and contributed to a continuation of pre-war political patterns in the countryside.

In Chapter 11, Kieran Mitton critically examines the apparent success of reconciliation and reintegration efforts in Sierra Leone. He draws attention to a tacitly agreed 'pact of accommodation' between former fighters and wider Sierra Leonean society. This pact emerged from a pragmatic focus on immediate welfare concerns over and above reflections on the past. This pact of accommodation incorporates a conscious re-branding of ex-combatants as 'youth' in society and a broad agreement to lay blame for the war beyond the agency of individual fighters. Mitton scrutinises the perceived value and utility of formal TJ mechanisms from this perspective, and considers whether a pragmatic approach to the past has led to a 'negative peace', in which many ex-combatants avoid reintegration and reconciliation altogether.

In Chapter 12, Kirsten Ainley reflects upon what 'success' means in analyses of transitional justice and examines the problems experienced in evaluating TJ programmes. She identifies the factors that are routinely claimed by scholars to demonstrate the success or failure of TJ mechanisms, such as outcomes, processes of establishment and functioning, and adherence to normative standards. She then examines five key challenges in evaluating transitional justice: possibility, causality, temporality, aggregation and generalisability. She concludes by outlining four tools that can assist in bringing about both the best forms of transitional justice in practice and the best evaluations of TJ programmes by scholars: deep engagement with contexts, mixed methods, reflexivity and political judgement.

In Chapter 13, the editors draw together the findings of the previous chapters to reflect on the book's two central questions. We consider the extent to which Sierra Leone's TJ processes should be considered successful, by examining standards of evaluation, institutional pluralism, outcomes and the role of transitional justice in achieving process goals. We set out the lessons of the Sierra Leonean TJ experience and critically assess the extent to which standards of evaluation prioritise international versus national stakeholders and interests. Finally, we highlight the importance for future TJ programmes of long-term planning and commitment, local partnership and the management of the inevitable politics and trade-offs of transitional justice.

Notes

1 M. Kaldor (2006) 'Case-Study; Sierra Leone. Evaluation of UNDP Assistance to Conflict-Affected Countries' (New York: United Nations Development Programme), p. 6.
2 W. Schabas (2003) 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25(4), 1035–1066.
3 W. Schabas (2012) 'Partners in the Search for Truth: The Truth Commission and the Special Court', *Studies in Transnational Legal Policy* 45, 155–170.
4 C. C. Jalloh (ed.) (2014) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (New York: Cambridge University Press), p. 5.
5 Jalloh, *The Sierra Leone Special Court and Its Legacy*, p. 4.
6 For instance, Post-conflict Reintegration Initiative for Development and Empowerment (2002) 'Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone', available at: http://www.rscsl.org/Documents/pride2002.pdf; Campaign for Good Governance (2003) survey, available at: http://www.rscsl.org/Documents/CGG_Survey.pdf

7 No Peace Without Justice (2012) 'Making Justice Count: Assessing the Impact and Legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia', available at: http://www.npwj.org/node/5599; See Hollis, and Jordash and Crowe, in this volume, for discussion of the survey.
8 See R. Shaw (2005) 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone', *Special Report*, United States Institute of Peace, p. 8.
9 R. Shaw (2002) *Memories of the Slave Trade: Ritual and the Historical Imagination in Sierra Leone* (Chicago: University of Chicago Press).
10 T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2), 361–391 and T. Kelsall (2009) *Culture Under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press).
11 For instance, S. Buckley-Zistel, T. Koloma Beck, C. Braun and F. Mieth (eds) (2013) *Transitional Justice Theories* (London: Routledge); P. de Greiff (2012) 'Theorising Transitional Justice', in M. S. Williams, R. Nagy and J. Elster (eds) *Transitional Justice* (New York: New York University Press), pp. 31–77; R. Teitel (2011) *Humanity's Law* (Oxford: Oxford University Press).
12 R. Shaw and L. Waldorf (eds) (2010) *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford, CA: Stanford University Press).
13 Shaw and Waldorf, *Localizing Transitional Justice*.
14 C. Sriram (2004) *Confronting Past Human Rights Violations: Justice vs. Peace in Times of Transition* (New York: Frank Cass). See also R. Kerr and E. Mobekk (2007) *Peace and Justice: Seeking Accountability after War* (London: Polity Press).
15 R. Mac Ginty (2011) *International Peacebuilding and Local Resistance. Rethinking Peace and Conflict* (Basingstoke: Palgrave Macmillan). See also O. P. Richmond (2009) 'Eirenism and a Post-Liberal Peace', *Review of International Studies* 35(3), 557–580.
16 See, for instance, P. Gready, J. Boesten, G. Crawford and P. Wilding (2010) 'Transformative Justice – A Concept Note', available at: http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf; P. Gready and S. Robins (2014) 'From Transitional to Transformative Justice: A New Agenda for Practice', *International Journal of Transitional Justice* 8(3), 339–361.
17 R. Mani (2007) *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge and Maldon, MA: Polity Press), p. 18.
18 Kelsall, 'Truth, Lies, Ritual'; and R. Shaw (2010) 'Linking Justice with Reintegration? Excombatants and the Sierra Leone Experiment', in Shaw and Waldorf (eds) *Localizing Transitional Justice*.
19 See E. Brahm (2007) 'Uncovering the Truth: Examining Truth Commissions Success and Impact', *International Studies Perspectives* 8, 28–29.
20 For instance, L. Gberie (2005) *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (London: Hurst); D. Harris (2013) *Sierra Leone: A Political History* (London: Hurst); M. D. Jackson (2004) *In Sierra Leone* (Durham: Duke University Press); W. Reno (1995) *Corruption and State Politics in Sierra Leone* (Cambridge: Cambridge University Press); P. Richards (1996) *Fighting for the Rainforest: War, Youth and Resources in Sierra Leone* (Oxford: International African Institute). The Sierra Leonean TRC report also offers an outstanding history of the domestic antecedents of the civil war and of the effects of the conflict on Sierra Leone.

21 K. Manson and J. Knight (2009) *Sierra Leone* (Chalfont St Peter: Bradt Travel Guides). See also Harris, *Sierra Leone*.
22 C. Fyfe (1962) *A Short History of Sierra Leone* (London: Longmans, Green and Co), p. 12.
23 Sierra Leonean TRC Report (2004) Vol. 3A, p. 8.
24 C. Mahony (2003) *Access to Justice for the Ordinary Citizen in Sierra Leone*, Paper presented at the National Democratic Institute Governance workshop, Freetown.
25 TRC Report, Vol. 3A, pp. 8–11.
26 TRC Report, Vol. 3A, pp. 12, 66.
27 M. Mamdani (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (London: Fountain, David Philip & James Currey).
28 F. Cooper (2002) *Africa Since 1940, The Past of the Present* (Cambridge: Cambridge University Press). See also W. Reno (1997) 'Privatizing War in Sierra Leone', *Current History* 96(610), 227–230.
29 Development Data Group, The World Bank (2008) http://data.worldbank.org/country/sierra-leone; TRC Report, Vol. 2, p. 60.
30 TRC Report, Vol. 2, pp. 46, 65, 79; D. Keen (2005) *Conflict and Collusion in Sierra Leone* (Oxford: James Curry), p. 25.
31 TRC Report, Vol. 2, p. 79.
32 TRC Report, Vol. 2, pp. 65, 69; Richards, *Fighting for the Rainforest*, pp. 40–41.
33 Keen, *Conflict and Collusion*, p. 33.
34 National Long-Term Perspective Studies (2008) 'Principles, Methodology and Application in Sierra Leone', available at: http://www.uniqueservers.net/vision2025/chapter2.doc
35 TRC Report, Vol. 3A, p. 79.
36 TRC Report, Vol. 3A, p. 79; P. Griffiths (2003) *The Economist's Tale* (London: Zed Books).
37 Keen, *Conflict and Collusion*, p. 26.
38 National Long-Term Perspective Studies, *Principles, Methodology and Application*; Quirk et al. (1987) *Floating Exchange Rates in Developing Countries: Experience with Auction and Interbank Markets* (Washington, DC: International Monetary Fund); J. Weeks (1992) *Development Strategy and the Economy of Sierra Leone* (New York: St. Martin's Press), p. 133; Keen, *Conflict and Collusion*, p. 26.
39 TRC Report, Vol. 2, pp. 12–14. Chris Mahony co-authored the TRC Report chapter 'The historical antecedents to the conflict'. See also Keen, *Conflict and Collusion*; I. Abdullah (2004) *Beyond Greed: Memo on the Sierra Leone Conflict*, Paper prepared for conference on The Economic Analysis of Conflict: Problems and Prospects, Washington, DC, 19–20 April.
40 *Prosecutor v Charles Taylor*, SCSL-2003-01-T, Transcript, 9 November 2009.
41 Keen, *Conflict and Collusion*, p. 160.
42 TRC Report, Vol. 3A, pp. 187, 197, 203; D. Francis (1999) 'Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?', *Third World Quarterly* 20(2), 319–338. Avant (2005) *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press), p. 85; A. Vines (1999) 'Gurkhas and the Private Security Business in Africa', in J. Cilliers and P. Mason (eds) *Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies* (Pretoria: Institute for Security Studies), p. 130.

43 EO deployed 150 to 200 men and a helicopter gunship; see P. Singer (2003) *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press), p. 104; Keen, *Conflict and Collusion*, p. 151; Francis, 'Mercenary Intervention', pp. 319–338; TRC Report, Vol. 3B, p. 68.
44 I. Douglas (1999) 'Fighting for Diamonds – Private Military Companies in Sierra Leone', in Cilliers and Mason (eds) *Peace, Profit or Plunder*, pp. 179–180.
45 Keen, *Conflict and Collusion*, p. 161.
46 Peace Agreement between the Government of Sierra Leone and the RUF, Abidjan, Ivory Coast, 30 November 1996.
47 C. Fithen (1999) 'Diamonds and War in Sierra Leone: Cultural Strategies for Commercial Adaptation to Endemic Low-intensity Conflict' (unpublished PhD thesis, Department of Anthropology, University College London), p. 41.
48 UN (1997) *Report of the Secretary General on Sierra Leone*, S/1997/80, 7; L. Gberie (1997) 'The May 25 Coup d'Etat in Sierra Leone: A Militariat Revolt?', *Africa Development* 22(3&4), p. 159.
49 Keen, *Conflict and Collusion*, pp. 197–201; TRC Report, Vol. 3A, pp. 234–236.
50 TRC Report, Vol. 3A, pp. 245–246.
51 Chris Mahony's interview with former Tunisian delegate to the United Nations Security Council, The Hague, 2009; Keen, *Conflict and Collusion*, p. 212.
52 TRC Report, Vol. 3B, pp. 74–75; T. Legg and R. Ibbs (1998) 'Report of the Sierra Leone Arms Investigation' (House of Commons, London: The Stationary Office Limited). Sandline was later found to have supplied weapons to Kabbah's allies in breach of an embargo established by UNSC resolution 1132.
53 Conakry Peace Plan, *Agreement between the Armed Forces Revolutionary Council and ECOWAS*, 23 October 1997.
54 Human Rights Watch (1999) Sierra Leone: Getting Away with Murder, Mutilation, Rape; TRC Report, Vol. 3A, p. 289.
55 TRC Report, Vol. 3A, pp. 296–329; Human Rights Watch, *Getting Away with Murder*.
56 'Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone of 7 July 1999, Lomé, UN Doc. S/1999/777', available at: http://www.sierra-leone.org/lomeaccord.html
57 UN (2000) *Eighth Report of Secretary-General on the United Nations Assistance Mission in Sierra Leone*, S/2000/751.
58 TRC Report, Vol. 3A, pp. 331–462.
59 T. Weiner (2000) 'G.O.P. Senator frees millions for U.N. mission in Sierra Leone', *New York Times*, 7 June. See Mahony's chapter in this volume for further discussion.
60 Letter from the President of Sierra Leone dated 12 June 2000 presented to the United Nations Security Council by Sierra Leone's Permanent Representative to the United Nations, S/2000/786, 9 August 2000.
61 UN Security Council Resolution 1315, 14 August 2000, S/RES/1315.
62 Special Court Agreement, 2002 (Ratification) Act.
63 C. Schocken (2002) 'The Special Court for Sierra Leone: Overview and Recommendations', *Berkeley Journal of International Law* 20, p. 436.
64 Resolution 1315 (2000) Adopted by the Security Council at its 4186th meeting on 14 August 2000, S/RES/1315.

2

Evaluating the Legacy of the Special Court for Sierra Leone[1]

Brenda J. Hollis[2]

The legacy of the Special Court for Sierra Leone (SCSL), including its contribution to Sierra Leone's transition from conflict to a post-conflict society, is a truly important topic in a country that has shown a great deal of strength of character and commitment to justice, and has moved forward successfully towards a peaceful future after a very difficult and lengthy conflict.

Before turning to the contribution the Special Court has made to this transition, it may be helpful to first look at the concept of transitional justice (TJ). There are those who divide TJ efforts into two broad categories or characterizations – restorative justice and retributive justice – with some arguing that restorative justice must be the focus. In my view these categories or characterizations are overly rigid and do not take into account the dynamics of the transition from catastrophic events such as crimes against humanity, war crimes and genocide to a peaceful, unified existence. There are divergent views about how accountability mechanisms, such as international criminal courts, fit into transitional justice. I am of the opinion that this transition from chaos to peace requires both programmes that address socio-economic and good governance needs and those that address the need for accountability for wrongs done and crimes committed during these catastrophic events. It is also my view that the programmes addressing accountability complement those addressing the socio-economic and good governance needs of war-torn societies, in that it is easier for people to live peacefully together when wrongs have been addressed and accountability determined at least at some level. I see accountability mechanisms as an indispensable option for any successful transition.

In relation to the contribution international criminal courts, such as the SCSL, have made to this transition, I believe that this contribution

must first and foremost be analysed in terms of how effectively and efficiently these courts have achieved their judicial mandate, which, as with any criminal justice mechanism, is their primary mandate. It is also my view that it is the primary stakeholders, the people of Sierra Leone, who are the final arbiters of how the SCSL has contributed to their successful transition to a post-conflict society.

The SCSL was established at the initiative of the government of Sierra Leone to bring some measure of justice to the victims of the crimes committed in Sierra Leone during the almost 11-year conflict in that country. In the following discussion, I will give my personal views about the work of the Court, and its legacy, including the Court's contribution to Sierra Leone's transition to a peaceful society.

How does the SCSL fit into the TJ scheme in Sierra Leone? First of all, the SCSL, like all of the international or hybrid criminal courts, was established as a criminal justice option to address serious violations of international humanitarian law in states that were either unable or unwilling to address these crimes in their national criminal justice systems. In the case of Sierra Leone, the state was unable to address these crimes in its national judicial system for reasons that I will discuss below.

As noted above, countries and societies emerging from conflict, crimes against humanity or genocide have many compelling and legitimate needs, which must all be met for those countries, societies and their individual members to move forward peacefully and productively. One need, most certainly, is economic: How to reinvigorate the economy of the country? How to provide individuals in that country with the ability and opportunity to rebuild their lives, to support themselves and their families, in light of the harm that may have been done to them during the conflicts?

Another need is to rebuild or reinforce the infrastructure of a country, ranging from re-establishing schools and hospitals to rebuilding or repairing the road networks throughout the country to rebuilding or establishing the communications capacity of the country, so that the country may function effectively to serve all of its people.

There is also a need for accountability – accountability and justice for crimes that were committed during these catastrophic events. When we look at this idea of accountability, we see it is a very human need, which must be met in order to move on with our lives and to be able to welcome back into the fold those who have wronged us. It is a need that, if not met, does not go away, but rather shows itself perhaps in future conflicts, or in a society's inability to move forward in a spirit of inclusiveness and respect for diversity and basic human rights.

For example, when I was a member of the Office of the Prosecutor (OTP) of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Serbs talked about the injustices done to them, beginning with the Battle of Kosovo, fought at Kosovo Polje in 1389 – injustices for which in their minds there had been no accountability. Some Serbs used this lack of accountability to justify their actions some 600 years later.

There are a number of options that are available, individually or collectively, to address this need for accountability. Certainly, investigations and trials at the national level are one option, if they are available. Truth and Reconciliation Commissions (TRCs) are another option. Traditional justice is another option, at least for lower levels of criminality. International criminal courts are yet another option to meet this need.

In the recent survey carried out in Sierra Leone by the NGO No Peace Without Justice, one of the questions asked to the people of Sierra Leone was 'What means must be used to have justice?'[3] Seventy-one per cent of the respondents said 'the national court system', which, unfortunately, for crimes committed during the conflict in Sierra Leone, was not available because of the pardon and blanket amnesty provisions included in the 1999 Lomé Peace Agreement.[4] Many Sierra Leoneans chose international criminal courts as the means to address the need for justice, 52 per cent choosing 'the SCSL'. A further 48 per cent indicated 'the International Criminal Court (ICC)' which, of course, because of its statutorily imposed limitations, would not have jurisdiction over the crimes committed during the conflict in Sierra Leone. Finally, 27 per cent of those questioned selected 'a TRC'.[5]

Where all of these options are available, they are not mutually exclusive options. Rather, they are options that can be used in combination – and very often need to be used in combination. Because even if we establish an international court – as was done in Sierra Leone, for Rwanda and for Yugoslavia – these courts, at best, deal with a very small number of perpetrators. They simply do not have the resources, the time or the capacity to deal with the tens of thousands, or even hundreds of thousands, of perpetrators, some of whom require a criminal justice response. For these reasons, the international criminal courts focus their efforts on those whose criminal misconduct has had the greatest negative impact on victims and the population of the affected country, in effect those who bear greatest responsibility for the crimes or those who are responsible for notorious crimes.

There are many perpetrators who will never face criminal prosecution in an international court. What impact does this have on society's ability

to move forward? What happens to those perpetrators who go back to their communities or flaunt their ill-gotten gains? To those who taunt the victims they have harmed? Some of these perpetrators, depending on the severity and magnitude of their crimes, can be dealt with by traditional justice means. Others whose actions do not require a criminal justice response can be dealt with by a TRC, if these perpetrators meet several requirements: they come forward and are very honest and comprehensive about what they did and to whom, show true remorse, ask that their victims and communities forgive them for their wrongs, ask the victims and communities to allow them back into the society, and commit themselves to lead peaceful, productive lives, which helps rebuild what they have sought to destroy.

But this still leaves many perpetrators whose actions require a criminal justice response. In my view, how to deal with these perpetrators is one of the greatest challenges facing countries emerging from these catastrophic events and the international community today. National judicial systems are a solution for dealing with the great majority of these perpetrators. But national justice systems are not always available to deliver this response, either due to a lack of political will or an actual inability to adequately address the crimes, leaving international criminal courts as the option to be exercised.[6] There are other reasons for choosing an international criminal court to investigate and try these crimes – this option allows the emerging country to focus its efforts and resources on the socio-economic and good governance needs of transition, promotes reconciliation as the governing faction is not taking criminal action against its former opponents and ensures that the accused persons and victims and witnesses are treated fairly and afforded the rights which are their due.

Looking at the post-conflict situation in Sierra Leone in particular, national prosecutions were not available even if the judicial system of Sierra Leone had the capacity to deal with these crimes and the government and people had the willingness to investigate and prosecute the international crimes committed in that country regardless of the groups to which the perpetrators belonged. That option was denied to the people of Sierra Leone by the blanket amnesty and pardon that was, in my opinion, forced on the government and people of Sierra Leone. The SCSL, therefore, became the criminal justice response for the international crimes committed during the conflict, at least in relation to those who bore the greatest responsibility for those crimes. It is in this context and within this framework that we should look at the work and the legacy of the SCSL.

So, what was the nature of the work of the SCSL? How well have we done our work? And what legacy might the SCSL leave, including its contribution to transitional justice in Sierra Leone?

The work of the SCSL has been, in a way, very simple and straightforward: to achieve the criminal justice mandate of the SCSL, which was to prosecute those who bear the greatest responsibility for the horrific crimes that were committed against the people of Sierra Leone during the conflict in that country.[7] In discussing the work of the court, it is helpful to go back and look in more detail at the origins of the SCSL – to put it into historical context.

In July 1999, the parties to the Sierra Leone conflict signed the Lomé Peace Agreement.[8] The Government of Sierra Leone signed the agreement, and the Revolutionary United Front (RUF) also signed including representing another faction with whom they had been aligned, the Armed Forces Revolutionary Council (AFRC). Incidentally, many members of the AFRC did not see themselves as represented by the RUF, which was one of the factors that caused problems with regard to the implementation of the peace agreement. Nevertheless, the peace agreement was signed in July 1999. Article 9 of that Agreement gave 'Corporal Foday Sankoh absolute and free pardon' and granted 'absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement'.[9] Regardless of whether you view this as an appropriate or inappropriate provision, as I noted above, the consequence was that the Government of Sierra Leone and the people of Sierra Leone were unable to pursue criminal prosecutions within the judicial system of Sierra Leone in relation to the horrific crimes committed prior to the signing of the Lomé agreement.[10]

When this agreement was signed, the representative for the United Nations noted reservations to it, namely that the UN would not recognize amnesty, immunity or pardon for those who had committed serious violations of international humanitarian law in Sierra Leone. These reservations left open the option of an international court to address these international crimes.

Despite the peace agreement and despite the amnesty blanket provisions, hostilities and crimes against civilians continued in Sierra Leone for another two and a half years and it was not until mid-January of 2002 that the President of Sierra Leone declared that the hostilities had ended in the country. In May 2000, rebel forces, predominantly the RUF, attacked and took captive several hundred UN peacekeepers along with their vehicles and other equipment. Although a few of these

peacekeepers died and some of them were injured, the majority did survive and were released. Importantly, some were not released in Sierra Leone; but in Liberia, and as Issa Sesay – one of the senior leaders of the RUF – told the court in the Taylor trial, Sesay made no effort to release these peacekeepers until he, Issa Sesay, met with Charles Taylor two or three weeks after their capture. After that meeting, Sesay said that he had to accept Taylor's 'proposal' to release the peacekeepers.

Shortly after the capture of the peacekeepers, in June 2000, President Ahmad Tejan Kabbah of Sierra Leone wrote a letter to the UN Secretary General requesting the UN assistance to establish an international court. It was his view that a court should be established to try Foday Sankoh and the senior members of the RUF for crimes against the people of Sierra Leone and for taking UN peacekeepers as hostages. In August 2000, by UN Security Council resolution, the Security Council requested the Secretary General to negotiate an agreement with Sierra Leone to establish an independent Special Court, and in January 2002, the UN and the government of Sierra Leone signed an agreement establishing the SCSL. The Court would be situated in Sierra Leone and have a mandate to 'prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996 [which was the date of the earlier Abidjan Peace Agreement], including those leaders who in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone'.[11] You will notice that the mandate of the SCSL was not to prosecute those who began the war in Sierra Leone or those who fought the war in Sierra Leone, but rather those who in the course of that conflict committed serious violations of international humanitarian law, that is, those who committed crimes against civilians or crimes against those combatants who were no longer in combat by virtue of being captured or by being injured. In March 2002, the legislature of Sierra Leone ratified this agreement and the SCSL came into being.

This is the background to the creation of the SCSL, and it is with this background and mandate in mind that the SCSL began to carry out its work. The OTP began operations in Sierra Leone a few months after the SCSL was created, in the summer of 2002. At that time we began our first operations, and we began our first missions in Sierra Leone in October of that same year. Throughout the next several months representatives from the OTP visited virtually all the districts in Sierra Leone, gathering evidence, identifying potential witnesses, bringing that evidence back and putting it in the framework of what we had to prove to establish

that the crimes within the jurisdiction of the Court had been committed. International courts have three categories of proof: proof of the underlying acts, such as rape, murders, mutilations; proof of the contextual elements, that is, those proof requirements that transform a domestic crime into one or more international crimes – crime/s against humanity, war crime/s or other serious violations of international humanitarian law; and proof of the various forms of individual criminal responsibility, that is, proof that a particular accused is criminally liable for the crimes being charged. When you are investigating – gathering and reviewing evidence – you are always looking at these categories of proof and asking whether you have sufficient admissible evidence to prove them. The investigation and analysis is akin to filling boxes, which you have to fill to the requisite level to be able to charge specific crimes against specific accused based on specific forms of individual criminal responsibility. For example, if the boxes are not sufficiently full of admissible evidence which would transform rape or murder or amputation into an international crime, the SCSL would not have jurisdiction, as we only had jurisdiction over international crimes. Similarly, if we had filled the boxes with sufficient evidence to prove the underlying acts and the transformative elements, but not to prove any of the forms of liability, we would not be able to prosecute the case. Ultimately, the decision of what crimes to charge and whom to charge based on what forms of liability is determined by how full these boxes are.

In assessing proof of forms of criminal liability, we had to operate within the language of the SCSL Statute, which gave us guidance to prosecute those who bore greatest responsibility for the crimes committed in Sierra Leone during the conflict. We interpreted that language as limiting the number of potential indictees to a relatively small number: not ten thousand, not a thousand, perhaps not even a hundred. We had many discussions in the OTP about how to interpret the qualifying phrase 'those who bear greatest responsibility'. Could it include lower-level commanders who were responsible for horrific crimes affecting a significant number of victims? Affecting a significant number of victims over a significant geographic area? Or should it be interpreted only to apply to the highest-level leaders and commanders? Ultimately, it was the Prosecutor of the SCSL who determined how the OTP would interpret this guidance. It was the Prosecutor's interpretation of that language, along with the evidence we gathered, that guided us to determine against whom we could charge the crimes we could prove. Interestingly, when the trials began, the Chambers of the SCSL were called upon to interpret this language as well. They interpreted it basically in the same

way as the OTP did: that this was guidance to the OTP, guidance to direct the discretion of the Prosecutor, and that it was meant to limit the category of the individuals who would be charged before the SCSL.

This process of analysis led us to indict 13 individuals, including leaders of the various factions within the country, and the then President of Liberia, Charles Taylor. We indicted eight individuals initially, and in March 2003 I took those eight indictments to London where the judges of the SCSL were holding a plenary session to review the rules of the Court. All eight indictments were approved and all but one – the indictment against Charles Taylor – were made public. Taylor's indictment was not made public until June 2003, when the OTP believed there was an opportunity to get custody of Taylor while he was in Ghana.

What happened to these 13 indictees? Sam Bockarie, a very senior and vicious leader of the RUF, was killed in Liberia before he could be taken into the custody of the Court. Major Johnny Paul Koroma, who was the chairman of the AFRC that had ousted the democratically elected government of Sierra Leone from 1997 to 1998, escaped arrest, and remains a fugitive from justice if he is alive. There is evidence that he was killed in Liberia under conditions that made it unlikely that his body would be found, and we have never located his remains. However, stories persist that he is alive.

The other 11 indictees were arrested and brought before the Court, ten of whom were arrested in Sierra Leone. The leader of the RUF, Foday Sankoh, was transferred from the custody of the government of Sierra Leone to the custody of the SCSL. Other leaders of the RUF were also taken into custody in Sierra Leone: Issa Sesay, Morris Kallon and Augustine Gbao. Three AFRC leaders were indicted and taken into custody: Alex Tamba Brima, who was second-in-command, and senior leaders Ibrahim (Brima) Bazzy Kamara and Santigie Borbor Kanu.

The OTP also charged three leaders of the Civil Defence Forces of Sierra Leone (CDF) with responsibility for international crimes: Sam Hinga Norman, Allieu Kondewa and Moinina Fofana, who were also taken into custody. The indictment of the leaders of the CDF caused quite a lot of discussion within Sierra Leone. Many citizens viewed the CDF as the saviours of the country, as those who had fought to reinstate the democratically elected government. However, we indicted these individuals because, in pursuing this goal, they were responsible for war crimes and crimes against humanity.

Of the ten individuals we took into custody initially, Foday Sankoh died before the trial began – he was in very poor health when he was transferred and died before his trial. The first trials began in 2004.

Chief Hinga Norman died before his trial was complete, that is, before judgment was delivered in the CDF case. The remaining eight accused leaders of the CDF, RUF and AFRC were tried and convicted and their convictions upheld in whole or in part on appeal. Their sentences were upheld or increased on appeal, now ranging from 15 to 52 years in prison. The last appeal in those cases was concluded in October 2009.

The remaining indictee, Charles Taylor, stepped down as President of Liberia in August 2003 and went to Nigeria. The Special Court did not get custody of him until three years later, in March 2006, when Nigeria handed him over to Liberia and Liberia immediately transferred him to the SCSL. In April 2012, he was convicted of all 11 charges against him based on two forms of liability: planning, and aiding and abetting the crimes. In May 2012, he was sentenced to 50 years' imprisonment. In September 2013, the Appeals Chamber upheld the convictions and sentence.

With that judgment, the work of the SCSL was completed. The SCSL has now ceased to exist and a residual Special Court, the RSCSL, has taken its place. The RSCSL has many caretaker duties: it is responsible for preserving, maintaining and managing the archives of the Court; for the enforcement of sentences of those who have been convicted; and for responding to any request from those prisoners for review of their convictions; and to respond to state requests for information. Very importantly, it is also responsible for ensuring the continued protection of witnesses. Moreover, it has the same power as the SCSL to hold in contempt anyone who attempts to interfere with witnesses.

Assessment of the legacy of the SCSL, including its contribution to transitional justice in Sierra Leone, must address how fairly it carried out its judicial mandate. How fairly it has done its work can be assessed in several ways. Has it been fair to those persons who have been accused of crimes? Has it complied with the fundamental rights of each accused as set out in the SCSL Statute? For example, were they given a fair hearing? Has there been a fair determination of their guilt? Did the accused have the ability to challenge the jurisdiction of the SCSL? Was the indictment adequate? Were they allowed to raise all the good faith issues they wanted to raise? Did they have enough time to prepare to meet the case against them, and put on their own defence? Were they able to cross-examine witnesses against them and bring witnesses on their behalf?

A second important aspect of fairness of the SCSL is whether the SCSL fairly treated witnesses including victims who have appeared before it. Did the Court take appropriate and adequate action to protect those whose security was put at risk because they came forward to testify

either for the prosecution or for the defence? If the witnesses had medical or other support issues that needed to be addressed so that they could testify, did the SCSL assist them in resolving those medical and support needs? Did the Court ensure that witnesses were treated with respect and dignity? This is important to a fair proceeding because while witnesses can be asked very difficult questions and their honesty questioned, they must always be treated with respect and dignity.

The arbiters of fairness to the accused and to witnesses were the judges of the SCSL. Meeting this judicial obligation required that they be impartial, independent and fair in their assessment of the evidence, and in their treatment of the accused and witnesses. The judges chosen to meet these obligations at the SCSL were a truly international mix. Trial judges came from many different countries including Sierra Leone, Canada, Cameroon, Samoa, Ireland and Uganda. At the appeal level, there were two judges from Sierra Leone, one judge from Nigeria, one from Austria and one from the US. Two former judges in the Appeals Chamber, Geoffrey Robertson and Judge Raja N. Fernando, were from the UK and Sri Lanka respectively. So, there was a truly international judiciary, including judges from Sierra Leone in particular, and Africa in general, to ensure the fairness of the work of the Court.

The fairness with which it has carried out its mandate has been questioned because of whom the Prosecutor did or did not indict. Some individuals have questioned why some, such as Hinga Norman, were indicted, while others, such as President Kabbah, were not indicted: 'Why did you indict Hinga Norman who saved Sierra Leone?'; 'You indicted Charles Taylor in Liberia; why did you not indict President Kabbah?; General Muammar Gaddafi in Libya?'; 'Why did you not indict Blaise Compaoré in Burkina Faso?'. These are fair questions. The answer, based on my experience at this Court, is this: we could only go where the evidence took us. The evidence supported the indictment against Hinga Norman; it supported his responsibility for international crimes committed by his CDF. Fighting for the reinstatement of the elected government is not justification or excuse for crimes against humanity, war crimes and other serious violations of international humanitarian law.

The evidence did not, however, in our assessment, support further indictments. The evidence that we gathered did not lead us to conclude that we had a sufficient basis to indict President Kabbah, Gaddafi or Compaoré. Being the head of state does not make you responsible for crimes. The evidence has to sufficiently fill all the boxes to prove guilt based on at least one form of criminal liability. You have to link the leader to the direct perpetrator based on one of these forms of liability

and you have to do that beyond a reasonable doubt. In relation to President Kabbah, even Hinga Norman indicated that he was not taking orders from Kabbah, that he was not directly linked to him. Our evidence simply did not support an indictment against Kabbah, so we did not indict him.

In relation to Gaddafi, our evidence was that he was involved with the leaders of the RUF in the very early years, before they attacked Sierra Leone. Indeed, they trained and honed their skills in Libya. Our evidence also indicated that many of those RUF who trained in Libya died in Liberia fighting alongside the forces of Charles Taylor. Gaddafi also provided initial supplies for those who came into Liberia. Those RUF who survived fighting for Charles Taylor in Liberia came into Sierra Leone via Liberia with Charles Taylor's forces. During the indictment period – that is, 30 November 1996 onwards – our evidence established that Gaddafi's role was mainly through Charles Taylor. Through Gaddafi's support, it was Charles Taylor who was able to get arms and ammunition and other supplies, some of which Taylor sent on to Sierra Leone.

The same was true of President Compaoré of Burkina Faso. He lodged and gave additional training to some of these rebels who later went into Sierra Leone and Liberia along with members of Taylor's group, the National Patriotic Front of Liberia (NPFL). Burkina Faso remained involved during the indictment period, again through Charles Taylor, by providing arms and ammunition to Charles Taylor, a significant amount of which was then sent on to Sierra Leone. Again, the evidence that we had for the indictment period led directly to Charles Taylor and much more remotely to these two leaders. Our assessment was that we did not have sufficient evidence to indict them.

In relation to the contribution the SCSL has made to transitional justice in Sierra Leone, it is instructive to look at the two surveys conducted in Sierra Leone: one in 2003 and one in 2012. The 2003 survey posed questions to about 1,200 Sierra Leoneans, including whether the Special Court was necessary. About 62 per cent of those questioned answered yes.[12] The more recent survey carried out by the NGO No Peace Without Justice, which I have referenced above, was published in September 2012 as 'Making Justice Count'. The survey was funded by the European Commission and the SCSL.[13]

The 2012 survey carried out a comprehensive and independent evaluation of the SCSL's legacy in Sierra Leone, including its contribution to transitional justice. A total of 2,800 people were interviewed across all 12 districts in Sierra Leone and also 5 counties in Liberia. Of these

respondents, 1,500 were Sierra Leoneans, and it is their feedback that I focus on below. The respondents were chosen from a variety of target groups, including those often left out of these surveys, such as women, young people and persons with various disabilities. The report's methodology has yet to be vigorously and independently reviewed but some of the responses gathered give an indication, at least, of how the primary stakeholders in this process have viewed the work of the Court. When asked 'What was the SCSL established to achieve?', 52.7 per cent of Sierra Leoneans said it was established to prosecute perpetrators of crimes committed during the war.[14] Another 29 per cent said it was established to bring justice, and 23 per cent said it was established to bring peace.[15] When asked 'Do you think the SCSL has accomplished what it set out to achieve?', 77 per cent of Sierra Leonean respondents said 'yes'.[16] The survey also asked 'Do you believe the SCSL has done a good job of bringing those responsible for the atrocities committed to justice?' and 88 per cent answered 'yes'.[17] They were also asked 'Can the SCSL be trusted to bring justice?' Again, 86 per cent of the Sierra Leonean respondents said 'yes'.[18] Then they were asked 'Do you think the SCSL has brought those who bear the greatest responsibility to trial?' and 85 per cent of respondents said 'yes'.[19]

As I mentioned above, in my view, the principal legacy of the SCSL, its major contribution to transitional justice in Sierra Leone and its primary success will be that it delivered its mandate: to prosecute those who bore the greatest responsibility for the crimes in Sierra Leone. I say this because the SCSL is a criminal court; nothing more, nothing less. It was not mandated to and could not cure the socio-economic woes of Sierra Leoneans, who still suffer today. I visited areas throughout Sierra Leone where the devastation inflicted during the conflict remains untouched: burned homes; roofs still missing; war widows struggling to survive and raise their children; war orphans without help to survive and to go to school; people who have no hands who have to find a way to support themselves and their families with dignity. There is still so much work to be done, work to address needs beyond the mandate of the SCSL. I wish the SCSL had been given the mandate and resources to address these most legitimate and urgent needs of victims and survivors, but it was not given such a broad mandate.

In carrying out its judicial mandate, the SCSL has reinforced some very important principles of transitional justice, be it characterized as restorative or retributive. In particular, the Court reinforced that each human being has fundamental rights, no matter what gender or how poor or privileged he or she is. Those rights include respect for the

physical, mental and emotional integrity of the person and the right to be treated fairly and with respect and dignity. Equally important is the principle that no one is above the law. Even heads of state who are responsible for grave crimes are not above the law; with power and authority come responsibility and accountability. It also embodied the principle that the rule of law, not the power of the gun, can and must be used to determine accountability for grave crimes, in a way that is fair to accused persons and witnesses. And finally it reinforced the critical principle that determination of accountability must be guided and carried out by an independent, impartial and fair judiciary bringing to bear the highest standards of criminal due process.

In achieving its primary mandate, the SCSL has engaged in other activities that will, in my view, leave important legacies for Sierra Leone. We have, as have all the international courts, added to the body of international jurisprudence. We were the first court to try individuals who were recruiting, enlisting or using child soldiers, those who were responsible for the crime of forced marriage and for attacks on peacekeepers. This legacy extends beyond Sierra Leone; it will be used by other international criminal courts. For example, in its first case, the International Criminal Court (ICC) used the jurisprudence we developed for prosecution for enlistment of child soldiers.

Sexual violence was a pervasive part of the conflict in Sierra Leone. The SCSL, as was the case for the other ad hoc courts, created a rule of evidence that acknowledged the inherently coercive environment in which sexual violence occurred, for example, where victims are captured, held captive, perhaps in rape camps or houses, as forced sexual partners. In these situations, consent is not a defence. These ad hoc courts have an evidentiary rule that acknowledges this. The rule states, in summary, that consent cannot be inferred by reason of any words or conduct of a victim (including her or his silence and including her or his prior or subsequent sexual conduct) in situations where force is used or threatened or a coercive environment undermines the victim's ability to give voluntary and genuine consent.[20] What happens to those women who say 'no' in these situations? Either they are killed or they continue to be the victims of multiple, vicious rapes. As one of the witnesses explained in the Charles Taylor case, women felt fortunate if they were chosen to be the sex slave of just one man, because if they were not, they were like a football that was kicked around to anybody at any time, depending on the whims of their captors. Therefore, consent takes on an entirely different meaning in the inherently coercive environment in which these crimes were committed.

To the extent that its resources and mandate allowed, the SCSL also contributed to transitional justice by engaging in capacity-building in Sierra Leone. First and foremost, throughout its life, the SCSL employed a significant number of Sierra Leoneans at all levels of the work of the Court. Sierra Leoneans contributed significantly to the work of all three organs of the Court, including at the leadership level. For example, the two Sierra Leonean judges in the Appeals Chamber have each acted as President of the SCSL. The former Acting Prosecutor and Deputy Prosecutor, Joseph F. Kamara, is now the Chairman of the Sierra Leone Anti-Corruption Commission (ACC-SL). A former attorney in the appeals section of the OTP, Abdul Tejan-Cole, is a former Chairman of the ACC-SL. Mohamed Bangura, a practising attorney from Sierra Leone, was a senior member of my office and of the Charles Taylor prosecution team and now holds the position of Prosecution Legal Advisor/Evidence Officer in the RSCSL. Many Sierra Leonean police officers worked in my office from the very beginning of the SCSL, and without them we could not have carried out our investigations in Sierra Leone. The Sierra Leonean Registrar, Binta Mansaray, created the most successful outreach programme of any of the international courts.[21] Finally, the Principal Defender, Claire Carlton-Hanciles, is a Sierra Leonean attorney, who joined the Special Court in 2003 as Legal Officer/Duty Counsel in the Defence Office. These individuals have expanded their knowledge base and their skills, which they may now use to the benefit of Sierra Leone as their country moves forward.

The OTP has also conducted training with Sierra Leonean police who appear in magistrates courts in Sierra Leone, teaching them the basics of litigation, elements of proof, how to conduct cases, fairness to the accused, disclosure to the accused and so on.

The OTP was also very involved in another – very exciting – creation and hopefully an extremely productive legacy of the SCSL: the creation of the Sierra Leone Legal Information Institute (Sierra LII).[22] This is an electronic database that will make available all of the laws that affect the people of Sierra Leone. Many judicial decisions, including the judgments of the SCSL, are already on the website, as will be, in time, all of the public records of the SCSL. We are negotiating for the public records of the TRC, the reports of the Sierra Leonean Human Rights Commission and the reports of the ACC-SL to also be available on the website.

In conclusion, people begin wars. People commit crimes. People prevent or end wars. What we can hope for is that TJ mechanisms, including criminal justice options for accountability and justice, will give people the right tools to prevent future conflict and move forward from the conflict that they have endured. As I have discussed above, the work

of the SCSL has been to implement for the people of Sierra Leone one of the mechanisms by which accountability can be determined. As I have emphasized above, accountability itself is just one need among the many needs that must be addressed in Sierra Leone. But it is a need that must be addressed for true healing and peaceful forward progress. The No Peace Without Justice survey asked people 'Do you think the SCSL has had an impact on the development of other peace-building mechanisms in your country?' and 72 per cent of Sierra Leoneans said 'yes'.[23] The survey asked the people of Sierra Leone 'Has the SCSL contributed to greater respect for human rights and the rule of law?' and 35 per cent of respondents said that it did so by bringing justice to those who committed crimes, while 12 per cent said it did so by serving as a deterrent, and 9 per cent said it did so by setting benchmarks.[24] In my view, in carrying out its judicial mandate, the SCSL has contributed in many ways to Sierra Leone's transition from chaos to peace and its move toward a more secure future.

Notes

1 This chapter is an edited transcript of a keynote lecture Prosecutor Hollis delivered to academics and practitioners at a conference at the London School of Economics on 12 December 2012. The conference and the lecture took stock of Sierra Leone's post-conflict transition and the success of transitional justice on the tenth anniversary since the end of Sierra Leone's civil war. A report of the conference is available here: http://tinyurl.com/sierraleoneconf2012report

2 The Prosecutor of the Residual SCSL. The Prosecutor of the SCSL from February 2010 until its transition to a residual mechanism in 2013, Principal Trial Attorney for the SCSL OTP from 2007 to 2010 and consultant to the SCSL OTP 2002–2003 and 2006.

3 No Peace Without Justice (NPWJ) (2012) 'Making Justice Count: Assessing the Impact and Legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia', available at: http://www.npwj.org/node/5599

4 'Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone of 7 July 1999, Lomé, UN Doc. S/1999/777', available at: http://www.sierra-leone.org/lomeaccord.html

5 NPWJ, 'Making Justice Count', p. 15. The report also finds that only a very small number of interviewees would support amnesty (2.10 per cent overall), and that almost no interviewees (0.18 per cent overall) believed that 'nothing can be done to achieve justice'.

6 The judicial system in Sierra Leone is still recovering since the war. There are currently around 400 Sierra Leonean attorneys in Sierra Leone – many lawyers fled and never came back. The lack of professionals is a barrier to elevating the standards of the courts, meaning that capacity-building and training are some of the most important challenges ahead. The Paralegal Training Programme is promising here as paralegals can perform many of the same functions as lawyers and can bring important issues to the fore.

7 See the 'Report of the Secretary General on the Establishment of a Special Court in Sierra Leone (4 October 2000)', available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2000/915
8 Lomé Peace Agreement.
9 Lomé Peace Agreement, Article IX. For more on amnesties and international criminal law, see N. Roht-Arriaza (1995) 'Special Problems of the Duty to Prosecute: Derogation Amnesties, Statutes of Limitations, and Superficial Orders', in N. Roht-Arriaza (ed.) *Impunity and Human Rights in International Law and Practice* (Oxford: Oxford University Press); J. Gavron (2002) 'Amnesties in the Light of Development in International Law and the Establishment of the International Criminal Court', *International and Comparative Law Quarterly* 51, 91–117; and S. Williams (2005) 'Amnesties and International Law: The Experience of the Special Court for Sierra Leone', *Human Rights Law Review* 5(2), 271–309.
10 International law supersedes domestic law for international crimes. While the Lomé Peace Agreement ruled out domestic prosecution, it did not apply to the SCSL.
11 'The Agreement for and Statute of the Special Court for Sierra Leone, 16 January 2002', available at: http://www.rscsl.org/Documents/scsl-statute.pdf
12 Campaign for Good Governance Survey (2003) available at: http://www.rscsl.org/Documents/CGG_Survey.pdf
13 Available at: http://www.npwj.org/node/5599
14 NPWJ, 'Making Justice Count', p. 27.
15 NPWJ, 'Making Justice Count', p. 27. See also pp. 20–21.
16 NPWJ, 'Making Justice Count', p. 27.
17 NPWJ, 'Making Justice Count', p. 49.
18 NPWJ, 'Making Justice Count', p. 49. See also p. 27 of the report.
19 NPWJ, 'Making Justice Count', p. 50.
20 Rules of Procedure and Evidence, available at: https://www1.umn.edu/humanrts/instree/SCSL/Rules-of-proced-SCSL.pdf. See also C. Fournet (2012) 'The Adjudication of Sex Crimes Under International Criminal Law: What Does Gender Have to Do with It?', in L. Yarwood (ed.) (2013) *Women and Transitional Justice: The Experience of Women as Participants* (London and New York: Routledge).
21 According to the SCSL legacy project, nearly half of Sierra Leoneans indicated that they had attended an SCSL outreach event, NPWJ, 'Making Justice Count', p. 32.
22 Available at: http://www.sierralii.org
23 NPWJ, 'Making Justice Count', p. 51. See also pp. 20–21.
24 NPWJ, 'Making Justice Count', p. 50. See also pp. 15–19.

3

The Truth about the Truth: Insider Reflections on the Sierra Leonean Truth and Reconciliation Commission

Chris Mahony and *Yasmin Sooka*[1]

The literature on Sierra Leone's Truth and Reconciliation Commission (TRC) considers a variety of issues, including the breadth and authenticity of participation, the relationship of the Commission to the Special Court and the extent to which the Commission provided for healing, reconciliation and accountability.[2] However, there has been little scholarly consideration of the integrity of the Commission's historical narrative and its findings from the perspective of the Commission's practitioners. In particular, there needs to be more focus on the nature of the 'truth' that should be sought. The South African TRC conceded that the testimony and other forms of evidence collected constituted a 'more extensive and more complex' truth than any one commission could hope to adequately process.[3] This chapter considers the Sierra Leonean TRC's efforts to provide a historical narrative describing the causes of the conflict and the conflict itself, under more constraints than the South African Commission.

This chapter places the TRC's accomplishments in political context by tracing the scarcity of resources and political support, the ill-defined and broad mandate and the key concerns in the post-conflict environment in which the Commission was established. The chapter discusses the importance of the nature of the conflict's conclusion and the shift in British and American transitional justice (TJ) preferences to explain the constraints that prevented the TRC from accessing deeper truths. We provide a critical appraisal of our own and our colleagues' efforts within the Commission.

The first section of the chapter considers the intended nature of the TRC during the Lomé Peace negotiations, and under the Lomé Peace

Agreement. We then identify the shift in concentration after the US change in position towards Sierra Leone's conflict and the political economy of a Commission driven primarily by external donors and only one party to the conflict. In the second section we examine the selection of key Commission personnel and the financial constraints under which the Commission found itself. The third section of the chapter considers the Commission's interpretation of its mandate and its resource allocation. It critiques explanations within the 'Historical Antecedents to the Conflict' chapter of the TRC report, identifying the chapter's omission of significant events impacting on the economy of Sierra Leone in the 1980s. The section also identifies enormous variance in the quality of the data used, ranging from the very high quality of domestic-focused data within the 'Military and Political History of the Conflict' chapter to the much weaker sections of the report considering the role of external actors. The section also addresses the Commission's findings and recommendations. Some of the findings the Commission provided were particularly sensitive, and some findings originally included in the report were later omitted. The fourth and concluding section considers whether the Commission was successful in administering transitional justice, in particular the extent to which, given the context of the Commission's establishment and function, the Commission provided a 'shared truth', or historical narrative that enabled peace, healing, accountability and reconciliation. The conclusion weighs the normative advance of particular issues and the historical truths relating to pivotal events identified by rigorous investigative work against the constrained capacity to identify and address the broader forces that prompted and perpetuated the conflict – the extent to which a truth of sufficient integrity was established to facilitate broad societal reconciliation.

The making of Sierra Leone's TRC

Mahony, in this book, argues that the opposing and disengaged positions of the British, French and American governments prolonged the Sierra Leone conflict. British and American disagreement, driven by their respective support for opposing parties to the conflict, lent insufficient political support to the Lomé Peace Agreement. A peace agreement that provided for power sharing with the Revolutionary United Front threatened British interests in a number of ways. For instance, the UK was keen to retain diamond-mining concessions for Anthony Buckingham's Branch Heritage Group and to retain other benefits of preferential commercial access to Sierra Leone. British realist self-interest

led its reluctance to support a negotiated end to the conflict that reduced the power of the Kabbah government, which controlled the mining concessions and commercial access.

The negotiating positions of the respective parties at Lomé were affected by President Kabbah's declining military strength within Sierra Leone. Kabbah depended in large part on Nigerian military support. The emergence of President Obasanjo, who allegedly coordinated the prolonged peace process with Liberia's President Charles Taylor, signalled a horizon for Nigerian military support.[4] Kabbah, sensing impending withdrawal of Nigerian forces, appealed for other Economic Community of West African States (ECOWAS) to provide military support to his government.[5] The vast majority of Francophone West African states, other than Guinea, oriented themselves towards the French position of direct or indirect support of Taylor and the Revolutionary United Front (RUF).[6] Kabbah's weakening position meant he allowed Sankoh to meet RUF members in Lomé, Togo, without insisting that they accept the legitimacy of the Kabbah government. In May 1999, in Accra, Ghana, Jesse Jackson and US Ambassador to Sierra Leone, Joseph Melrose, had Kabbah accompany them to Lomé to sign a ceasefire agreement without opportunity for ministerial consultation.[7] Direct American diplomacy marginalized British influence and enabled a forum in Lomé. America's robust diplomacy and Sankoh's exclusion of the Armed Forces Revolutionary Council (AFRC) leadership from Lomé negotiations drove Johnny Paul Koroma, who was in RUF custody, and senior AFRC actors towards cooperation with the British and Kabbah governments, as well as re-establishing the Sierra Leone Army's (SLA's) allegiance to Kabbah. Sankoh held a strong position at Lomé as a consequence of Kabbah's weak military position in Sierra Leone and the diplomatic support of a Francophone ally in Togo. Subtle Togolese support of RUF positions in Lomé was exaggerated by the marriage of Sankoh's daughter to Togolese President Eyadema's son.[8]

Matters relating to amnesty, a ceasefire, humanitarian operations, socio-economic issues, human rights, disarmament and demobilization, and the institution of a new army were agreed relatively quickly at Lomé.[9] Officers from the Office of the High Commissioner for Human Rights (OHCHR) had pressed for inclusion of a truth commission as a form of accountability that accommodated amnesty even for high-level perpetrators. Article 6(2) of the Lomé Agreement describes the TRC as one of several 'structures for national reconciliation and the consolidation of peace' and tasks the Commission to 'address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators

of human rights violations to tell their story, [and] get a clear picture of the past in order to facilitate genuine healing and reconciliation'.[10]

The Peace Agreement did not specify a mandate for the Commission, and included few details as to its composition – elements the Commission itself struggled with in determining where to focus its work, as discussed below.[11] Within two weeks of the Lomé Agreement, personnel from the United Nations Office of the High Commissioner for Human Rights visited Sierra Leone to begin consultations on the TRC's design, submitting the proposed legislation. Article XXVI required that the Commission's membership was to be drawn from 'a cross-section of Sierra Leonean society with the participation and some technical support of the International Community'.[12]

However, the politics of the establishment of the TRC were complex. Kabbah had made Koroma chairman of the Commission for the Consolidation of Peace (CCP), responsible for carrying out various requirements of the Lomé Accord including disarmament, demobilization, resettlement, reconstruction and the establishment of a TRC.[13] Koroma's appointment alienated the CCP from the RUF high command due to disintegrating relations between the former allies.[14] The CCP, therefore, was not predisposed towards ensuring accommodation of RUF interests (such as an examination of what caused them to take up arms in the first place) and representation within the Commission.[15] The Kabbah government was not particularly engaged in the establishment of the TRC post Lomé. Koroma and the CCP did not have the resources to engage as only a driver, a sub-accountant and a messenger staffed them.[16] The United Nations Office of the High Commissioner for Human Rights led the process of establishing the TRC by providing the 'technical support' that the Lomé Agreement indicated should be a supporting function only. The OHCHR's role in designing the Commission was much more significant than that of any of the external state actors including the US and the UK who were more interested in supporting the Court.[17] Civil society in Sierra Leone felt that the OHCHR did not consult sufficiently and did not take their views into account in the TRC's design compared to, for example, the South African experience.[18]

On 23 February 2000, after President Kabbah had consulted with the US Ambassador for War Crimes, David Scheffer, the Sierra Leonean Parliament approved the Truth and Reconciliation Commission Act, establishing a TRC to be funded by governmental and international non-governmental agencies.[19] The Commission's four local commissioners were to be selected by the President from a list drafted by a

panel including the President, AFRC and RUF representatives, civil society actors and other interested parties.[20] The UN High Commissioner for Human Rights would select the three international commissioners. The breadth of participation in personnel appointments was, however, diluted after the US changed its policy towards the region. By June 2000, RUF combatants had seized peacekeepers, the SLA and Civil Defence Forces (CDF) had attacked Foday Sankoh's house and British forces had intervened. The US position, under pressure from Republican Judd Gregg, switched from supporting Charles Taylor and the RUF to opposing them.[21] The new US policy viewed Lomé as dead, the TRC as attached to Lomé and the RUF and Charles Taylor as adversaries.[22] It suggests that the US preferred a war crimes court that would assist and reinforce a military outcome, rather than a truth commission. As a consequence, the Commission was only able to access total funding of between $6 million and $8 million, compared to around $250 million for the Special Court and an annual budget of $18 million for the South African TRC between 1996 and 2002.[23] The change in US policy on the conflict resulted in diminished support for and ambivalence towards the TRC, which was no longer important in the scheme of things. International actors had to tolerate it, given the TRC was established in law prior to the US shift in position in June 2000.

The Commission was supposed to begin its work within two weeks of the July 1999 signing at Lomé. It did not appoint its commissioners until July 2001. Bishop George Biguzzi of Italy was recommended to Chair the TRC by the OHCHR. Biguzzi had taught in the northern town of Makeni at a secondary school in the 1970s. Biguzzi returned to Sierra Leone in 1987 to become Makeni's Catholic Bishop. The change in the domestic political dynamic after the RUF was delegitimized in May/June 2000 gave the Kabbah government near total control over local commissioner selection. Another implication of the lack of domestic or international political support for the Commission congruent to a shift in preference, and funding, towards the Special Court was that national commissioners found decisions confronting the Sierra Leone People's Party (SLPP) interests extremely difficult. Such decisions were easier for the international commissioners who would in the end return to their own countries.

Despite the TRC's enabling statute calling for RUF and civil society input into the selection of Commissioners, a rather opaque process occurred. By the end of the conflict, the two parties were located along ethno-regional political lines. The RUF were primarily located in the All People's Congress Party-dominated east and north while the CDF were

dominant in the SLPP-dominated south. SLPP stalwart, Bishop Joseph Humper, was elected TRC Chairman instead of northern-based Bishop Biguzzi.[24] After the election of the Commissioners, international consultants arrived in Sierra Leone to establish the Commission. However, they departed after encountering political obstacles to the Commission's establishment. The Interim Secretary – an SLPP appointee – appointed SLPP loyalists to key TRC posts despite vociferous objections of the international consultants. In addition, she did not consult with them on the budget or the strategic plan and overrode their decisions. The Interim Secretary had also alienated many of the UN Agencies and the civil society, making it impossible for the internationals to carry out their mandates. The Commission, therefore, did not become operational until 15 November 2001.[25]

The Commission's mandate and the allocation of scarce resources

The Commission's design established a broad mandate for the TRC to investigate and report on the causes of the conflict and the abuses that occurred, both domestic and foreign, during the war. Article 6 of the empowering TRC Act 2000 sets forth the Commission's broad objectives:

> [T]o create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered . . . to investigate and report on the causes, nature and extent of the violations . . . to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of, whether those violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual, and the role of both internal and external factors in the conflict . . . to work to help restore the human dignity of victims and promote reconciliation . . . giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict.

External government actors that were engaged in the conflict played a peripheral role in the TRC's design. The TRC, therefore, enjoyed greater

discretion to investigate external actors' behaviour. The US and UK governments' roles in designing the SCSL, by comparison, likely led to the exclusion of peacekeepers and external military supporters of the Kabbah government from the Court's mandate.[26]

It was not until March 2002, after a two-year delay, that the Sierra Leone TRC fully began its work. It was granted a three-month preparatory period that would not constitute part of the stipulated one-year lifespan of the Commission, and given the option to extend its own lifespan for a subsequent six months. After a short period of function, international commissioners suspected SLPP appointees of providing information to Kabbah's government. The Kabbah government, already disengaged from the Commission, did not support it financially, resulting in its main support coming from OHCHR. The need to be seen to be independent drove the commissioners to hire an external director of investigations and other external investigations personnel who would collaborate with independent local staff members. The intention was that this collaboration would lead to an intimate and thoroughly vetted historical narrative about critical domestic military and political dimensions to the conflict and its causes. Despite the diligence of the investigative personnel, they were provided extremely sparse time and resources to discharge their mandate.

Another consequence of the TRC's status as a (literally) poor cousin to the Court was the amount of expertise the Commission could afford.[27] The Commission initially employed two West African experts to assist as consultants. However, the quality of data they provided was inadequate and could not be relied upon. As in most Commissions, the drafting of the report requires a particular set of skills, which many Commission personnel did not have. This increased the burden on the investigation team. The Commission was compelled, under budgetary constraints, to hire personnel of inadequate pedigree to complete critical tasks. For example, the commission used a 21-year-old foreign student interning at a local civil society organization to write its draft recommendations on governance and contribute to the 'Historical Antecedents to the Conflict' chapter. The intern (Chris Mahony – one of the co-authors of this chapter) had not studied West African or Sierra Leonean history and had not completed an undergraduate degree. His sole qualification was having authored papers on corruption in post-conflict Sierra Leone and on access to justice. A number of recommendations addressing the critical issues of good governance, management of the economy and the impact of external actors on the economy of Sierra Leone were not included in the report.

The domestic focus of the report

Despite little enthusiasm for the TRC from key international actors, foreign governments maintained a keen interest in the Commission's work and investigations. It was not uncommon for the US Ambassador and the British High Commissioner, for example, to request private meetings with TRC commissioners in which they would ask candid questions about where investigations were going. Many of the commissioners, while critical of the international community as a whole, were reluctant to criticize the contemporary US or British governments specifically. Rather than pursue inquiries about interference in Sierra Leone's internal affairs, the Commission, presuming altruistic intent in contrast to British historical engagement with Sierra Leone, found that the British government did not interfere enough.[28] Insufficient capacity constituted the primary constraint on Commission efforts to investigate external actors. The Commission did not explore specific governments' conflict-related behaviour anywhere near as rigorously as it did the domestic political dynamics of the conflict.

The TRC's depiction of external actors is a consequence, primarily, of a lack of capacity to identify the sophisticated machinations characterizing external engagement prior to and during the conflict. The failure to identify reported incidents such as the partisan contestation of US policy towards the region in mid-2000 indicates the effect of sparse resources. The report's section on external actors prior to the conflict focuses, quite sparsely, on regional actors including Libya, Burkina Faso, Liberia, Nigeria and Guinea. However, the Commission was not as engaged in identifying and investigating the roles of Britain, France and the US in supporting parties to the conflict.[29] In its analysis of external actors in the conflict, the Commission does identify the role of the British Company J&S Franklin who sub-contracted Ghurkhas Security Group to the Sierra Leone government, and Anthony Buckingham's Branch Energy for its role in facilitating mercenary support for the government against the RUF.[30] The British parliament publicly documented British government complicity in assisting Buckingham as well as Buckingham's role, including as an adviser to the British government.[31] Despite the availability of the British parliamentary report, the TRC did not pursue lines of inquiry that explored the British government's role as seriously as it did local and regional actors. The British report (The Legg Report) documented the continued role of Buckingham in facilitating mercenary contracts with the Sierra Leone government, as well as the British government's continued support for that behaviour,

despite it violating UN sanctions and British law.[32] The TRC report acknowledges Sandline's close connection to Buckingham's Branch Heritage Group, but does not go further than acknowledging the role of the British High Commissioner by identifying the knowledge and engagement of the British Foreign and Commonwealth Office. The Legg Report indicated that criminal conduct occurred on the part of the companies involved and perhaps on the part of British government officials. It cited Anthony Buckingham's visit to the Foreign and Commonwealth Office on 10 December 1997 in which he found favour for his plan to provide weapons to the Kabbah government, despite the criminality of doing so.[33] In May 1998, HM Customs and Excise announced the Attorney General would not pursue prosecutions, despite acknowledging likely criminal conduct by Buckingham because prosecution was not in the public interest.[34]

The commissioners were divided on the issue of calling President Kabbah to a public hearing. Kabbah appeared before the Commission but was extremely reluctant to answer questions regarding his government's policies and actions during the war. An already strained hearing did not interrogate Kabbah on the extent to which he knew of senior British government complicity in arms provision or the extent to which he may have been acting under British pressure when taking key decisions as President.[35] When in power during the conflict, Kabbah was enormously dependent on British government military and political support. The Commission's report also refrained from addressing publicly available evidence of US influence on the conflict.[36] The Commission failed to call either the British or American Ambassador to appear before it and question them, indicating timidity towards those key external actors. Examples of instances amongst many in which the President's testimony would have illuminated British or American direction of government of Sierra Leone policy include the location of command control during the RUF's May 2000 attack on Freetown, and how the decision to formally request a Special Court for Sierra Leone was taken. These two incidents, for example, would have assisted clarification of any British role in undermining the Lomé Peace Agreement or an American role in dictating the form transitional justice would take.

At times, the Commission ascribed constructive intent to western engagement without a basis for doing so. For example, western assistance for the 1996 elections was described in terms of efforts to enable 'stability' without consideration of states' interests in financing elections, or critique of the elections themselves, in which fraud, particularly in Kabbah's native south was rampant.[37] Despite documentation of clear

incidents of fraud in a 1996 publication, the Commission's constrained capacity caused lines of inquiry such as who organized the fraud, how and with what, if any, external support to be missed.

Constrained resources, particularly a lack of multi-disciplinary expertise, also undermined the report's 'Historical Antecedents to the Conflict' chapter. For instance, the Commission did not enjoy the requisite resources to employ an economist. The primary author of the chapter, a linguistics professor and political scientist, enjoyed an intimate knowledge of Sierra Leonean history. One of the great successes of the report was to trace much of the discontent expressed by combatants to patrimonial structures of power established under British colonial rule, removing sources of Chiefs' accountability to those they governed.[38] Shifting the accountability of Chiefs from Sierra Leoneans to colonial administrators entrenched ethno-regionally organized, upward-looking patron–client relations that later permeated party politics.[39] The structure of power within the Sierra Leonean state enabled corruption and concentration of power in the executive.

After the economic boom during the 1970s, Sierra Leone's dependence on commodity exports was exposed as commodity prices fell, the state failed to capture the revenue of diamonds, which were increasingly being sold on the black market, and international financial institutions imposed economic liberalization along with devaluations and then floatation of the Leone. These macroeconomic adjustments caused hyperinflation and banking reluctance to accept Leones, which drove real estate speculation that benefitted elites, while accelerating capital flight and decimating the middle class as real salaries plummeted.[40] As economic conditions worsened, Sierra Leone's government was compelled to reduce its spending in critical sectors of the economy. By the start of Sierra Leone's conflict in 1991, social spending was just 15 per cent of what it had been a decade earlier, inflation had reached three digits, a typical monthly salary was commensurate to the value of a bag of rice (in part because the World Bank had demanded removal of price controls) and life expectancy was less than 40 years.[41] The economic situation created a dangerously high number of young people unable to assert economic independence and therefore unable to shake off the status of 'youth' with all its negative connotations of dependency.[42] The 'Historical Antecedents to the Conflict' chapter failed to include externally imposed Bretton Woods orthodoxies on Sierra Leone during the 1980s alongside a number of forces that brought Sierra Leone to the point of conflict. Recommendations that had initially been included, for instance, that international financial institutions attach similar

stringent and detailed transparency and accountability conditionality to their loans as they do in relation to technical specifications of economic adjustment, were later removed. The 'Historical Antecedents to the Conflict' chapter did not trace the impact of structural adjustment to patrimonial power structures that weakened the autonomy of Sierra Leonean policy makers while enabling policy autonomy for its patrons – what Robert Wade calls '[t]he invisible hand of American empire'.[43] The Commission did not address the framework of economic rules under which Sierra Leone functioned. Sierra Leone, in the period preceding the conflict, had experienced many of the adjustments Wade cites in identifying the interests of a superpower at the expense of weak states: de-linking of currency from the gold standard and attaching it to the US dollar, and removing barriers to capital flows, as well as barriers to external commercial actors. A declining government role in the economy, including in healthcare, alongside floatation of the currency and the opening up of Sierra Leone to capital flows, locked Sierra Leone into an 'invisible hand' political economy – one where debtor states like Sierra Leone are vulnerable to falls in their own currency because their foreign debt burden (denominated in US dollars) goes up when their currency falls, rendering them vulnerable to creditors (often large economies) that can influence foreign exchange markets.[44]

Despite these omissions, the Commission robustly challenged sensitive issues such as the widely held view that the RUF was the only party to blame for the failure of the Lomé Peace Agreement's implementation. Within the 'Military and Political History of the Conflict' chapter lay enormously impressive work by a small team of independent local and external personnel, who went well beyond their prescribed roles to interrogate critical episodes within the conflict. Persuading SLPP-aligned commissioners to adopt positions supported by the evidence but confronting SLPP interests required overwhelming evidence for which the investigators can be congratulated. For instance, some commissioners were uncomfortable with attributing responsibility to the Kabbah government for causing the Lomé Peace Agreement to fail. The evidence supporting a narrative that the RUF's May 2000 seizure of peacekeepers was driven by continued pressure on the RUF to disarm without Lomé-promised benefits for doing so was overwhelming. Similarly, the evidence that the Kabbah government organized or acquiesced to a planned attack on Foday Sankoh's house under the guise of a protest was overwhelmingly supported by corroborated testimony provided by eyewitnesses.[45] In relation to these events, the investigative team did not have the capacity and, as a consequence of these issues not emerging, the

inclination to closely examine the political manoeuvring, particularly in London and Washington, DC, that shaped the international response to the mid-2000 instability.[46] The constrained capacity of the Commission to investigate those actors skewed the report's investigations and findings disproportionately in the direction of addressing domestic actors.

Chieftaincy and patrimonial politics

The Commission was also constrained as to its investigative capacity relating to Chieftaincy. Investigators were required to gain the consent of local chiefs before conducting investigations in any part of the country. Chieftaincy consent diminished investigators' ability to anonymously contact and interview witnesses across Sierra Leone. Diminished interviewee anonymity, in turn, diluted the Commission's capacity to procure authentic testimony relating to the effects of Chieftaincy power. In spite of this, testimony received by the Commission, particularly from Sierra Leonean youth, made it clear that the issue of Chieftaincy was perceived to be a source of intergenerational inequity and discontent. Many Chiefs refused to appear before the Commission.[47] Some domestic commissioners were especially hesitant about seriously addressing the Chieftaincy issue. Other commissioners, as a result, were not able to go as far as they felt the evidence demanded in citing Chieftaincy and patrimonial power structures as causing and enabling the conflict. As the hearings unfolded, evidence emerged on how historically both the colonial authorities and successive governments politicized the Chiefs' role as they relied on Chiefs to implement colonial government policies and collect taxes.[48] A compromise was reached with the national commissioners, resulting in a recommendation that a national dialogue take place on the role played by Chiefs during the conflict.[49] The cumulative consequence for the report of these Commission restraints was that Sierra Leone's patrimonial power structures were not attributed the responsibility the evidence suggested would be appropriate. The report's failure to reflect the available evidence on this issue also impacted the Commission's recommendations and the nature of reconciliation.

The Commission cited an obligation to 'not reinvent the wheel' in reference to its decision to use the very power structures that fermented conflict to enable reconciliation.[50] The Commission adopted this position by interpreting the Commission's mandate to base reconciliation on 'the country's own culture, tradition, and values' as a preference to use traditional authorities such as Chiefs and religious elders to legitimize reconciliation.[51] Tim Kelsall cites the use of traditional elders at the

conclusion of hearings as enabling reconciliation and diffusing tensions over contested truths about crimes that almost broke into violence.[52] However, these processes also required youths to re-subordinate themselves to the very power structures they cite as the source of their discontent and against which they rebelled. Simultaneously, those Chiefs that refrained from testifying before the Commission also refrained from accepting specifically, or in general terms, any culpability for fostering the discontent that caused the conflict. The exclusion of direct Chieftaincy accountability at the TRC's local hearings was reinforced by the role of Chieftaincy and religious elders in accepting and authenticating former combatants' public requests for forgiveness and acceptance back into the society against which they rebelled.

In his opening remarks, the lead commissioner at the hearings, Bishop Humper, made the telling of 'truth' a prerequisite to 'healing'.[53] While Kelsall observes that the perpetrator testimony did not advance healing, he neglects the widespread reluctance of elites to also accept blame.[54] Moments of localized healing, where they occurred, may have facilitated healing in the short term. However, it is unclear whether they also achieved broader reconciliation, particularly between those that benefit from the structures of power that enabled the conflict and those that rebelled against it. These questions are particularly pertinent where those submitting public apologies and requesting forgiveness do so after suffering total military defeat at the hands of forces seeking to re-impose the structures of power against which they fought in the first place.

Patrimonial power politics also rendered Sierra Leone's government increasingly vulnerable to external pressure as the role of the state in the economy declined, rendering the government budget increasingly dependent on external support. Servicing external debt obligations gradually shifted government accountability from the population to external creditors.[55] Findings and recommendations on governance relating to the role of external creditors, including the international financial institutions that Chris Mahony drafted when working for the Commission, were excluded from the final report. The Commission's reluctance to attribute responsibility to these actors proportionate to the available evidence diminished the pressure on those actors to be forthcoming in accepting a share of responsibility for the conflict.

Attribution of responsibility based on a deeper analysis of the conflict would demand broader reform and reconciliation. The TRC process pursued reconciliation at the individual and local level. Its political and financial constraints prevented the kind of national political reconciliation cited as similarly absent in post-conflict Rwanda by Mahmood

Mamdani.[56] National reconciliation required good faith participation by the political victors of the conflict – the SLPP. That reconciliation required leadership which transcended ethno-regionalism by pursuing a reorganization of political power that reached out to and empowered the marginalized groups that had rebelled. Instead, those groups were placated with reintegration programmes or positions within the armed forces while their leaders were apprehended and placed on trial. Similarly, political reconciliation between Sierra Leone and external actors required candid dialogue about the role those actors played leading up to war, during the conflict and in the immediate post-conflict environment. To achieve that level of candour, Sierra Leone's TRC required robust political independence and resources so as to enjoy the requisite capability to fully explore the causes of the conflict – the truth. By avoiding structural issues such as power relations between the Sierra Leonean government and external state and non-state actors, or Chiefs and the people, the TRC focused on the symptoms of the systemic problem, rather than on the problem itself.

Recommendations and reparations

An evaluation of the success of the Commission should also take into account how its findings and recommendations were dealt with by the government. The experiences of most truth commissions in Africa have been undermined by government failure to implement recommendations, particularly in respect of reparations.[57] The final report of Sierra Leone's TRC provided a historical record of the wartime violations, examined the causes and made more than 220 recommendations of redress for victims as well as measures to prevent future conflict.[58] The report divided the recommendations into four categories according to their perceived urgency and necessity of implementation.[59] To date, in response to the recommendations, the government of Sierra Leone has established institutions such as the Human Rights Commission, National Electoral Commission and Political Party Registration Commission to protect and promote human rights and good governance.[60] The government has also enacted legislation for the protection of women and children.[61] It has adopted codes of conduct for judicial officials.[62] It has also established institutions to support vulnerable groups such as youth, conflict victims and those affected by HIV/AIDS.[63]

One of the recommendations most eagerly awaited by Sierra Leoneans was that a reparations scheme should be established. In fact, Sierra Leone's reparations programme was finally launched in January 2009;

seven years after the war ended and nearly five years after the TRC issued its report. The National Commission for Social Action (NaCSA), the agency implementing the reparations programme, has registered and verified 27,992 victims across the country in all categories including children, amputees and others wounded in the fighting, war widows and victims of sexual violence.[64] In December 2009 the Trust Fund for Victims was launched, and in March 2010 President Koroma issued a public apology to all women for the violations they suffered during the conflict.[65] During the Year One Project, NaCSA offered an interim relief package that provided support to 20,000 beneficiaries.[66] Each received 300,000 Leones (approximately $100). In addition to that, 200 victims of sexual violence were given medical support for various ailments including fistula surgery and treatment for sexually transmitted diseases.[67] The government also instituted an emergency medical assistance scheme to support the more than 49 victims who still suffer the consequences of bullet wounds and other injuries sustained during the war.[68] NaCSA – through various service providers – has also completed symbolic and memorialization events in 40 of Sierra Leone's 149 chiefdoms.[69] However, the reparations programme has been funded largely through contributions from the Peace-building Commission, UN Women and other donors. By the end of 2014, a lack of funds brought the Year Two implementation plans to a standstill.[70] The government's inability to fund the second year of the programme signals further the impact of constrained resources for pursuing reconciliation. It is instructive to note that Chiefs, and British and other foreign governments that have benefitted from Sierra Leone's resources, often at the expense of Sierra Leoneans, do not donate to the reparations scheme. A report calling on those actors to contribute to reparations while citing their role in the conflict may well have procured greater reparation funding for victims. To this end, the goals of reconciliation, peace and healing are connected to truth – an honest truth about all that happened and why.

Conclusion: truth and its consequences for the success of transitional justice

Priscilla Hayner indicates that '[t]he expressed intent of most truth commissions is to lessen the likelihood of human rights atrocities reoccurring in the future'.[71] By this logic, the key question for Sierra Leone's Commission must be this: has it lessened the likelihood of human rights atrocities in Sierra Leone? If diminishing their likelihood in the short term is acceptable, then Sierra Leone may be considered a success.

However, the concentration of power in the hands of a few by a system that renders power more accountable to actors above than below causes the state to reduce its provision of basic goods and services. The effects of this are being observed at present in Sierra Leone's inadequate resource and health care distribution to contain the Ebola outbreak. This failure may well reinforce the widespread distrust of the government among the marginalized groups from which so many combatants emerged. Success, from such a perspective, would be a difficult case to make.

On the positive side, despite being unwilling and unable to address structural issues, the Commission, with only a small group of dedicated staff, was able to reach out and build an inclusive participatory platform for stakeholders in Sierra Leone, often reaching marginalized groups. These efforts allowed the Commission to achieve expressivist justice for victims by shaping public perceptions of particular behaviour, especially crimes perpetrated against historically marginalized groups such as youths and women.[72] The Commission applied itself seriously to its mandate of addressing the special experiences of women who had suffered sexual violence and children impacted by the conflict. The Commission successfully partnered with United Nations Development Fund for Women (UNIFEM) to provide women's organizations and the Commission's own staff with training on witness protection psychosocial practices relating to victims of rape and sexual violence.[73] The Commission gave agency back to women victims of sexual violence by giving them the choice to testify in public, on camera or behind screens.[74] The Commission also adopted a number of gender-sensitive measures at TRC hearings including provision of trauma counselling and support.[75] Similarly, the Commission partnered with the United Nations Fund for Children (UNICEF) and Child Protection Agencies to provide child witness protection and avoid secondary victimization.[76]

This said, the Commission's goal of promoting healing and reconciliation was often at odds with the issue of accountability. Even at the level of localized reconciliation, many Sierra Leoneans were compelled by socio-economic circumstance to live side by side with their perpetrators. Many Sierra Leoneans, therefore, adopted a survivalist approach of 'forgiving and forgetting'. Rosaline Shaw suggests that this was not about an erasure of memory but rather a coping strategy for dealing with the past.[77] Shaw terms this 'directed social forgetting', which is part of a broader process of containing and 'unmaking' the violent past, with the expectation that it will lead to a 'cool heart' allowing people to move on.[78] On reflection, this is probably a response to impunity, and arises from the recognition that victims are often powerless to hold perpetrators accountable. Sierra Leoneans cite a range of abuses about

which they feel powerless including but not limited to those covered by international humanitarian law. Shaw's limited framework must also consider the coping strategies of those sent back into a society where one's status is determined by land ownership, marriage and one's graduation from 'youth' status. Many Sierra Leoneans from marginalized groups have been required to 'cope' in a society in which hope for social and economic advance remains scarce, constraining authentic localized efforts at authentic reconciliation.

Sierra Leone's TRC went a lot further than expected in its search for the truth. It provided more in-depth recommendations than many other truth commissions before it. However, its failure to hold an inquiry on the role of transnational actors in the conflict and subsequently the economy resulted in a diminished truth and did not provide the authoritative narrative that Sierra Leoneans expected and deserved. A rigorous inquiry would have resulted in findings and recommendations with the potential to disarm predatory transnational interests, resulting in economic transformation and equitable power and resource redistribution at both local and national levels. Economic transformation is desperately needed to address marginalized social groups' grievances, especially youth, and to facilitate genuine reconciliation. Perceptions of the government of Sierra Leone's response to the Ebola crisis signal yet again the ethno-regional lines along which societal harms are felt and played out politically.[79] Yet the Commission's approach went beyond many other commissions that focus more singularly on the abuses themselves. Sierra Leone's TRC indicates the constrained nature of transition that truth commissions prompt when they have insufficient capacity to fully grapple with all the structural issues, both domestic and transnational, that enable mass crimes. Perhaps it is time to demand more from these mechanisms – deeper truths, broader reconciliation and empirically informed recommendations that drive transformative transition by genuinely addressing all structural drivers of mass atrocity.

Notes

1 Dr Chris Mahony authored the TRC's recommendations on governance, and co-authored the chapter on the 'Historical Antecedents to the Conflict'. Yasmin Sooka was appointed by the Secretary General of the United Nations as one of the TRC's international commissioners. The authors would like to thank Lee-Lon Wong and Maanya Tandon of Auckland University's New Zealand Centre for Human Rights Law, Policy and Practice, and Stephanie Burgenmeier of the United Nations Office of the High Commissioner for Human Rights for their invaluable research assistance, and Kirsten Ainley and Rebekka Friedman for their comments on the chapter.

2 For example, see T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2), 361–391; W. Schabas (2003) 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25, 1035.
3 Report of the South African Truth and Reconciliation Commission (1998) Vol. 1, Chapter 1, p. 2.
4 *Prosecutor v Charles Taylor*, SCSL-2003-01-T, Transcript, 9 November 2009, p. 31461.
5 Sierra Leone Web February 1999 (Sierraleoneweb.org); TRC Report, Vol. 3A, p. 331.
6 Mahony's interview with Tunisian delegate to the United Nations Security Council, The Hague, 2009.
7 K. Timmerman (July 2003) 'Jesse, Liberia and Blood Diamonds', Frontpagemag.com; I. Rashid (2000) 'Paying the Price: The Sierra Leone Peace Process', *Conciliation Resources*; D. Keen (2005) *Conflict and Collusion in Sierra Leone* (Oxford: James Curry), p. 251.
8 Rashid, 'Paying the Price'.
9 Rashid, 'Paying the Price'.
10 Article XXVI, Lomé Peace Agreement.
11 Sierra Leone Truth and Reconciliation Commission (TRC) (2004) *TRC Report* (Accra: GPL Press), Vol. 1, pp. 23–24.
12 TRC Report, Vol. 1, pp. 23–24.
13 TRC Report, Vol. 1, p. 346.
14 TRC Report, Vol. 1, p. 345.
15 Rashid, 'Paying the Price'; TRC Report, Vol. 3A, pp. 331–338.
16 TRC Report, Vol. 3A, p. 346.
17 See Mahony in this book.
18 The proposed law establishing the TRC in South Africa in 1995 was preceded by consultations with stakeholders including victims and civil society which took place over one year before the law was passed.
19 Truth and Reconciliation Commission Act, 2000.
20 TRC Act (2000) 'Memorandum of Objects and Reasons Appended to the Act: Procedure for the Selection of Nominees for Appointment to the Commission'.
21 See Mahony in this book.
22 See Mahony in this book.
23 See TRC Report, Vol. 1, Chapter 11 and Ainley in this book for calculations of the total cost of the SCSL.
24 Sierra Express Media (2014) 'Bishop Humper reveals $50,000 peace project for SLPP', available at: http://www.sierraexpressmedia.com/?p=69420
25 The Commission mistakenly cites 1999 instead of 2001: TRC Report, Vol. 3A, p. 346.
26 The Statute of the Special Court excludes jurisdiction over external military support to the Kabbah government and jurisdiction over peacekeepers. See Mahony in this book.
27 The TRC was largely dependent on the UNOHCHR, UNDP and the UN Peacekeeping Mission for funding rather than enjoying state financial support.
28 TRC Report, Vol. 2, pp. 84, 88.

29 TRC Report, Vol. 3B, pp. 58–66. See Mahony in this book for a summary of the support provided by the British, French and US governments to various parties to the conflict.
30 TRC Report, Vol. 3B, pp. 66–68.
31 T. Legg and R. Ibbs (1998) 'Report of the Sierra Leone Arms Investigation', House of Commons (London: The Stationary Office Limited), 27 July 1998.
32 Legg and Ibbs, 'Report', p. 23.
33 Legg and Ibbs, 'Report', p. 26.
34 Legg and Ibbs, 'Report', p. 2.
35 Contractual agreement between the government of Sierra Leone and Executive Outcomes, latest renewal of the contract signed on 1 July 1997, information provided to the Commission by President Kabbah in his supplementary written testimony, Freetown, 12 August 2003.
36 See Mahony in this book for an examination of the US role in shaping the conflict's conclusion. Compare to TRC Report, Vol. 3B, pp. 55–83.
37 Southern irregularities included 345 per cent turnout in Pujehun, 155 per cent in Bonthe, 139 per cent in Kailahun, 117 per cent in Kenema and 90 per cent in Bo: J. Kandeh (1998) 'Transition without Rupture: Sierra Leone's Transfer Election of 1996', *African Studies Review* 41(2), 98, 105.
38 TRC Report, Vol. 3A, pp. 7–8.
39 TRC Report, Vol. 3A, pp. 7–8.
40 United Nations Development Program (2008) 'National Long-Term Perspective Studies: Principles, Methodology and Application in Sierra Leone', Conference Paper, Freetown Sierra Leone; P. Quirk, B. Christensen, K. Huh and T. Sasaki (1987) *Floating Exchange Rates in Developing Countries: Experience with Auction and Interbank Markets* (Washington: International Monetary Fund); J. Weeks (1992) *Development Strategy and the Economy of Sierra Leone* (New York: St. Martin's Press), p. 133; Keen, *Conflict and Collusion*, p. 26.
41 Keen, *Conflict and Collusion*, p. 27; TRC Report, Vol. 3A, p. 79.
42 Keen, *Conflict and Collusion*, p. 35.
43 R. Wade (2003) 'The Invisible Hand of American Empire', *Ethics & International Affairs* 17(2), 77–88.
44 Wade. 'Invisible Hand', p. 78.
45 TRC Report, Vol. 3A.
46 See Mahony in this book.
47 TRC Report, Vol. 2, p. 19.
48 Statement on the formal recognition of Paramount chiefs, by President Kabbah at Kenema, Bo, Makeni and Port Loko, from 26 to 30 January 2003. www.sierra-leone.org
49 TRC Report, Vol. 2, p. 63.
50 TRC Report, Vol. 2, p. 19.
51 TRC Report, Vol. 2, p. 19.
52 T. Kelsall (2009) *Culture under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press), p. 377.
53 Kelsall, Culture, p. 366.
54 Kelsall, Culture, pp. 366–367.
55 Keen, *Conflict and Collusion*.
56 Mahmood Mamdani (1999) *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press).

57 International Center for Transitional Justice (2014) 'Challenging the Conventional, Can Truth Commissions Strengthen Peacebuilding?', available at: http://www.ictj.org/sites/default/files/ICTJ-Report-KAF-TruthComm Peace-2014.pdf
58 TRC Report, Vol. 2.
59 TRC Report, Vol. 2.
60 Submission to Universal Periodic Review, Human Rights Council, 11th Session, A//HRC/WG.6/11/SLE/1.
61 See Oosterveld in this book for discussion of the 'gender laws'.
62 Oosterveld in this book.
63 Oosterveld in this book. It has also enacted other laws including those on corruption, prosecutions and disclosures of state officials. See the recommendations matrix: http://www.sierraleonetrc.org/index.php/resources/recommendations-matrix
64 Summary prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (c) of the annex to Human Rights Council Resolution 5/1, 11th Session, Human Rights Council, A//HRC/WG.6/11/SLE/3.
65 OHCHR, 'Summary'.
66 OHCHR, 'Summary'.
67 ICTJ, 'Submission to Sierra Leone's Universal Periodic Review', Human Rights Council, 11th Session, 2010.
68 Report of the Peacebuilding Commission, Peacebuilding Fund Programme, February 2011.
69 Events have included conducting religious and traditional rites, erecting tombstones, memorials and monuments, and carrying out community processes of remembrance, commemoration, reburials and feasting ceremonies.
70 See ICTJ, 'Submission'.
71 P. Hayner (1994) 'Fifteen Truth Commissions – 1974–1994: A Comparative Study', *Human Rights Quarterly* 16(4), 609.
72 See Oosterveld in this book.
73 TRC Report, Vol. 3B.
74 B. K. Doherty (2004) 'Searching for Answers: Sierra Leone's Truth & Reconciliation Commission', *African Studies Quarterly* 8(1), 47.
75 TRC Report, Vol. 3B.
76 TRC Report, Vol. 3B.
77 R. Shaw (2007) 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *International Journal of Transitional Justice* 1, 183–207; L. Stovel (2008) '"There's No Bad Bush to Throw Away a Bad Child": "Tradition"-Inspired Reintegration in Post-War Sierra Leone', *Journal of Modern African Studies* 46(2), 305–324.
78 Shaw, 'Memory Frictions', pp. 194–196.
79 Africa Confidential, The Ebola Bonanza, Vol. 56 N0. 4, 20 February 2015.

4

Restorative Justice in Sierra Leone: Promises and Limitations

Rebekka Friedman[1]

Ten years since the end of its 11-year civil war, Sierra Leone has become an important case study for students and practitioners of transitional justice (TJ). The parallel establishment of the Special Court for Sierra Leone (SCSL) and a Truth and Reconciliation Commission (TRC) brought new attention to the merits of restorative and retributive approaches operating simultaneously. While William Schabas argues that Sierra Leone is a successful model of the 'two-track approach', Sierra Leone has also become the focus of a large critical literature, which questions the legitimacy of external practices and ideas.[2] Growing concerns in Sierra Leone that international transitional justice undermined internal restorative justice and communal structures have generated intense debates over what a comprehensive TJ process should entail. These debates tie into a politics of legitimacy between international and national justice mechanisms. Members of Sierra Leonean civil society – including members of the TRC – have argued that the international influence on TJ practices has sidelined local culture, civil society and authority structures. While traditional practices of reintegration preceded the TRC in some communities, criticisms of the TRC also led to the rise of new actors and grassroots TJ processes within the country.

This chapter responds to the book's central question of whether Sierra Leone's TJ processes should be considered a success by assessing the objectives and outcomes of restorative justice processes. It argues that the TRC promoted a broad understanding of restorative justice, linked to civic nation-building and democratization.[3] While the TRC sought to generate political trust and solidarity, the lack of follow-up, particularly in reparatory justice, augmented suspicion of the commission and heightened resentment.

The chapter also examines the community-based reconciliation project, Fambul Tok, stemming from the organization, Forum of Conscience, arguing that local restorative justice processes plugged into an expectations crisis, resulting from a loss of momentum after the TRC's completion. While Fambul Tok generated legitimacy through its community-driven and capacity-building approach – particularly important in Sierra Leone, where transitional justice was heavily politicized – community restorative justice processes continue to navigate a delicate balance between restoring traditional support structures and reinforcing hierarchies that underpin conflict.

The chapter presents a dynamic, interdependent and historically contingent picture of transitional justice in Sierra Leone, in which the TRC, the SCSL and local communal restorative processes defined themselves in reference to each other. While the TRC sharpened its identity as a non-punitive institution in contrast to the SCSL, Fambul Tok sought to fill a void left by the TRC, offering a platform as a more authentic and grassroots alternative to international transitional justice. The chapter draws out lessons for other conflict and post-conflict situations, stressing the importance of follow-up in any restorative process, and recommending a holistic, long-term, multifaceted approach, linking transitional justice to peace-building as the most appropriate TJ policy in future post-conflict states.[4]

The TRC as restorative justice

> At the TRC, there's no finger-pointing. It is not about more guilty or less guilty; it's not about scapegoating.[5]

From its inception, the Sierra Leonean TRC was conceived as a mechanism of restorative justice, tied to democratization, peace-building and the reintegration of ex-combatants. Efforts to establish a restorative process preceded the end of the war. The Sierra Leonean TRC was set up as part of the Lomé Peace Accords, signed on 7 July 1999, which called for a TRC in exchange for a general amnesty promised during the ceasefire. During the war, members of Sierra Leonean civil society, particularly the Inter-Religious Council, were active in calling for a peace process.[6] They emphasized the twin goals of accountability, especially for the victims of the war, as well as peace – linked to some form of reconciliation and reintegration of ex-combatants. The TRC took a non-punitive orientation, which became more entrenched over time.

While the international community eventually became heavily involved in directing the TRC, its original impetus was internal. Sierra Leonean civil society played a role in campaigning for and setting up a TRC. Many had been active in calling for a peace process, notably the Inter-Religious Council, taking part in UN negotiations leading up to the TRC's establishment. This was a prolonged process that involved key actors travelling upcountry to negotiate terms with Revolutionary United Front (RUF) militants, as well as visits to captured RUF leader Foday Sankoh in prison, as early as the first half of 1999, before the Lomé Accords.[7]

As was the case in South Africa, the decision to set up a TRC was largely pragmatic. Eleven years of war left the country in a state of severe poverty and underdevelopment. The war had caused large-scale displacement, destroyed the judicial system and much of the country's infrastructure and agriculture. The country also faced a unique challenge of how to address the large population of disarmed youth, many of whom had started fighting as young as eight years old, and had, by the end of the war, spent most of their lives fighting. Notwithstanding the magnitude of violence and atrocities, the social climate in Sierra Leone was relatively favourable to reconciliation. Almost all ex-combatants were from marginalized social backgrounds. As a result, officials tended to agree with the view of the war eventually taken by the TRC: that it was a social and political crisis, rather than an intergroup conflict, arguably an environment conducive to reconciliation.[8] In a context where ethnic groups have long engaged with restorative justice practices, reconciliation was presented as a hopeful and pragmatic way forward, and intrinsically Sierra Leonean.[9]

Together, these factors influenced the TRC's self-conception and approach. The TRC's mandate encompassed several broad goals, including producing a report on human rights violations, providing a forum for victims and perpetrators, and recommending policies to facilitate democratization and reconciliation, and to prevent future violence/conflict. The commissioners took a restorative (rather than punitive) orientation, tied to three key aims: the reintegration of ex-combatants; democratization; and fostering awareness. From its inception, the TRC was committed to the reintegration of ex-combatants into society, which included extensive outreach to ex-fighters. Article 9 of the Lomé Accords granted 'absolute and free pardon' to General Foday Sankoh, as well as amnesty to all combatants. It also recognized the RUF as a political actor, and pledged that within 30 days of the agreement, the Sierra

Leonean government would take all 'necessary legal steps' to let the RUF register as a political party.

The establishment of the SCSL further entrenched the TRC's non-punitive orientation. The TRC – and key members of civil society – were concerned that trials would pose a threat to peace and impinge upon Sierra Leonean culture and conflict resolution mechanisms.[10] Proponents of criminal prosecution and members of the SCSL frequently criticized the TRC as offering an inadequate approach, inconsistent with international legal norms and obligations (though the commissioners had no obligation to uphold international legal norms). During the high-profile (and highly controversial) SCSL trial of Civil Defence Forces (CDF) leader Chief Samuel Hinga Norman, Norman requested to speak in front of the TRC. The SCSL refused. In a controversial decision, the SCSL made arrangements for Norman to give a confidential statement to the TRC, but both Norman and the TRC refused, arguing that Norman should give public testimony without fear of self-incrimination.[11]

Popular fears that testimony at the TRC would lead to prosecution at the SCSL created severe barriers to public participation. While both the TRC and the SCSL shared an interest in popular participation, public confusion became a significant challenge to the TRC, which had fewer resources and required much more public engagement to meet its mandate.[12] Rifts emerged between staff over the international influence in the process.[13] The TRC's final report confirms its disillusionment with the experience, stating that the TRC had been established as an 'alternative' to criminal justice and that the SCSL's creation negated (or invalidated) the Lomé amnesty provisions. It faulted the international community for signalling to 'combatants in future wars that peace agreements containing amnesty clauses ought not to be trusted', thus undermining the 'legitimacy of such national and regional peace initiatives'.[14]

The two-track approach also led the TRC to take a stronger stance on confidentiality. Despite a series of early efforts by the UN and civil society to negotiate a complementary relationship, both bodies eventually abandoned talks and tackled the challenge largely by establishing and defining their own institutional differentiation and spheres of influence.[15] The TRC stated that it could not rule out that in the future the SCSL would try to seize TRC information from its archives, and that international actors would give primacy to the Court. For TRC officials, this persistent tension, and the risk of Court activities undermining the TRC, led to a strong stance against the assignation of individual guilt. While the TRC Statute never formally stated that self-incriminating

evidence would not be used at the SCSL, strict confidentiality became its de facto policy.[16] The net result was a division of labour where the TRC focused on generating popular participation and in-depth historical analysis of thematic issues, such as gender and youth, while the SCSL focused on the assignation of criminal guilt and accountability. The tension also led to a hierarchical discourse of guilt, with the SCSL focusing on 'those who bear the greatest responsibility' and the TRC encompassing society more broadly (victims, witnesses and perpetrators).[17] This differentiation, as argued in the next section, strongly influenced the TRC's narrative stance and approach to testimony, creating clashes over the questions of individual commitment and responsibility.[18]

The Commission's second key objective was promoting democratic participation and civic nation-building. The TRC took a non-punitive orientation and contributed to transitional justice and post-conflict reconstruction through its work as an instrument of democratization and social (rather than criminal) justice. The TRC tied testimony to a broader civic conception of participation.[19] TRC officials presented the commission to Sierra Leoneans as a people's forum, giving them a voice and the opportunity to articulate their recommendations for post-conflict reconstruction for the new government. It emphasized that it would represent *all* members of society, including victims, witnesses and perpetrators. As explained by TRC statement taker, Josephine Thompson-Shaw:

> Immediately after the war, some people were saying there's no need for a TRC. President Kabbah said 'let us forgive and forget; let us move on with our lives'. But we had to sensitize the people – 'it's not just moving on with our lives; we must make sure this doesn't happen again. . . . We must make sure that you and I, all of us, have a say in the future of the country'.[20]

The TRC called for reparations in the areas of housing, skills training, health care, education and agricultural assistance, as well as symbolic reparations, such as reburials, memorials and remembrance ceremonies. It also suggested community service for ex-combatants (as well as for current military forces), for example, rebuilding schools and hospitals, to prove themselves and 'win the hearts and minds' of the civilian population. Additionally, the Commission called for judicial and institutional reforms through its chapter on recommendations.[21]

In promoting the normalization of politics, the TRC put emphasis on giving a voice to previously marginalized groups, particularly women

and youth. For Sierra Leonean UNICEF official, Michael Charley, in reference to the UNICEF-administered Youth TRC hearings:

> One of the key incentives for the children was not actually about direct benefits coming to them but that the children knew that they would eventually make recommendations that would lead to reparations, that would increase their education, that would enhance their communities and remove their potential for conflict. . . . From the onset of the campaign it was made clear that it was not about direct physical benefits but about the community and moving forward.[22]

The Commission's final goal was to promote awareness about the conflict. The commission advanced a pedagogical methodology, seeking to use hearings and report dissemination to raise awareness and generate solidarity for victims of the conflict among those less affected by the war. Commissioners sought to maximize public outreach through an emphasis on 'sensitization'. Sensitization involved explaining the TRC's purpose to the public and training local representatives in village municipalities. The TRC held hearings throughout the country, segments of which it aired on the radio and television. Because of the large number of children involved in the war, the TRC set up separate TRC proceedings under the auspices of UNICEF for youth. It recommended a variety of skills training and education programmes tied to Disarmament, Demobilization and Reconciliation (DDR) procedures for ex-combatants, particularly child soldiers.

Evaluating the TRC: academic research

Much of the academic literature on the Sierra Leonean TRC has focused on the micro level. Drawing on a growing ethnographic literature concerned with the impact of transitional justice, a number of scholars have argued that the emphasis on local ownership and partnership in global TJ policy remains superficial, and that transitional justice in fragile states has lacked meaningful engagement with local traditions.[23] Drawing on her extensive earlier anthropological research on communal coping mechanisms, developed in response to social disruption caused by the transatlantic slave trade, Rosalind Shaw argues that speaking of the war in public in Sierra Leone undermined established processes for healing and reconciliation at the village and familial levels.[24] Shaw notes alternative practices of 'social forgetting', where people are remade into 'new social persons' and make a tacit understanding not to discuss the past.[25]

Other ethnographic studies have come to similar conclusions. In his evaluation of a week of TRC district hearings in Tonkolili, northern Sierra Leone, Tim Kelsall reports that in the hearings he attended, all perpetrators apologized to the audience for participating in armed groups with records of human rights abuses. However, only one individual admitted individual responsibility, and none 'seemed genuinely contrite'.[26] Kelsall describes the legalistic formal nature of proceedings; in his view, the most meaningful part of the TRC hearings was at the end of the week, when the TRC incorporated a traditional ritual-based reconciliation ceremony.[27] More recent research has reinforced these findings. Chris Coulter finds that talking about war experiences was shameful for women and a source of stigmatization.[28] Maintaining that practices of healing and reconciliation are socially and culturally constituted, Gearoid Millar similarly argues that truth-telling and Western conceptions of agency do not translate into the Sierra Leonean context, finding more favourable views of the TRC among local elites, in contrast to ordinary people, who found it to be a nuisance and disturbance.[29]

The ethnographic literature on Sierra Leone has raised important concerns about relevance, ownership and legacy. The scholarship has brought welcome attention to the long-term contribution of transitional justice and to culture and legitimacy. As elaborated later in the chapter, in Sierra Leone, in particular, the neglect of local culture and the sidelining of civil society and authorities has fundamentally politicized transitional justice, generating an ongoing politics of legitimacy between the international and national, and macro and micro levels.

At the same time, while directing useful attention to the micro level and ultimate stakeholders of transitional justice – victims, perpetrators and war-affected communities – there is a tendency in the literature to disengage with the practices of transitional justice. As will be elaborated shortly, by and large, the TRC was concentrated at the national level, tying its work to democratization, reintegration and raising national awareness. Yet existing literature has focused mainly on the TRC's ability to generate individual healing and interpersonal reconciliation. A more multifaceted picture emerges when evaluating the Commission according to its own broader self-understanding and procedures, and focusing on its contribution in the broader civic sphere. While the TRC generated significant criticism within Sierra Leone, popular criticisms often reflected the Commission's self-conception and procedures, where unmet expectations generated by the Commission caused considerable disillusionment and loss of momentum. In particular, insufficient follow-up and implementation of the TRC's recommendations, and a

lack of ownership, particularly in the sphere of reintegration, severely weakened the Commission over time, undermining its contribution and leading to a serious legitimacy crisis and popular disenchantment.

Revisiting the TRC: ownership, momentum and a crisis of expectations

Sierra Leone's 11-year civil war left devastating legacies for the infrastructure and social fabric of the country. The conflict's chaotic nature meant that insurgents, military forces and civilian defence made frequent but short-lived and unstable alliances and committed atrocities against civilians. In a context of highly personalized violence in which ex-insurgents were often encouraged to commit violent acts against individuals they knew, and where many children spent a good part of their youth fighting, the war not only destroyed societal relations but also damaged interpersonal relations and trust at the micro level. In Kailahun, where the war began and ended, a long history of state marginalization and neglect further reinforced lack of trust in authority structures and collective action, severely undermining any sense of political agency or civic trust.

In rural areas, the war took a particularly devastating social-psychological toll. The war worsened generational gaps, straining traditional social and familial authority structures and generational relationships.[30] Eleven years of conflict left a large population of migrant youth throughout the country, many of whom were not willing to return to a subordinate status.[31] Those who did not become combatants were often displaced and lost their families during the war. In war-affected areas, such as Kailahun, families were often separated, and fled to Freetown, Guinea or Liberia. Rupture of family bonds and social ties fused reconciliation with the restoration of communal traditions and authority structures, but also intergenerational repair.

The TRC set itself the challenging task of contributing to peace and accountability through a non-punitive, educational process, which promoted democracy and social justice. Popular participation in the TRC largely reflected the TRC's civic self-conception. The TRC collected more than 8,000 statements from victims, perpetrators and witnesses. Statement takers reported that victims' testimonies were often general rather than specific to the individual, focusing on their community's experiences and needs. According to Thompson-Shaw, this was especially the case for women: 'Only one or two times the stories were personal, like rape or murder of family. But mostly the stories were

general – I had to run away, the war came on this day, we all suffered, and so on.'[32]

She argues that women were reluctant to speak until they were offered the opportunity to make recommendations, and in these cases, recommendations tended to be social rather than personal:

> They would tell us, 'I want them to build schools', 'I want them to build a hospital', 'I want education for my children'. Sometimes, they would say, 'I want money to start my business', but usually they don't ask for anything personal, but for social amenities for the children and the community.[33]

Michael Charley, commenting on his experience at the children's TRC hearings, shared a similar finding – for youth participants, testimony was a way to have a voice and make demands. Most children made recommendations that they thought would benefit their communities or country.[34]

Individual narratives also disproportionately focused on explanation rather than responsibility – a theme picked up by some of the ethnographic literature.[35] Ex-combatant testimonies tended to concentrate on their reasons for fighting or joining the RUF. When asked why they participated or why they thought others participated, ex-combatants presented testimony as a chance to explain or clarify their actions – often linked to returning to former communities and reacceptance. In a project conducted by the Sierra Leone NGO Pride, with help from the International Center for Transitional Justice, ex-combatants offered the following reasons for testifying at the TRC: 'I hope to be free from people when I say the truth', 'The TRC will give us a chance to explain why we fought', 'the truth will help families and victims forgive us' and 'it will let our families accept us in good faith'.[36] As per the report, 72 per cent of ex-RUF soldiers interviewed stated that they had been forced to join the movement and many alleged that they were given substances and forced to commit abuses against people they knew.[37]

The Commission's definition of reconciliation aligned with its focus on democratization. The TRC's process of defining reconciliation was slow and was even criticized by commissioners as incomplete.[38] Citing the mantra 'Reconciliation is a process, not an event', the TRC eventually, however, emphasized a *national* conception of reconciliation. While the TRC expressed the hope in the *Foreword* of its report that a truth-seeking process would 'facilitate healing and reconciliation' by providing a 'forum for both the victims and perpetrators' and would generate

a 'clear picture of the past', the final report argues that these processes were ultimately beyond the TRC's mandate.[39] The report distinguishes individual healing from national reconciliation, arguing that healing and accountability benefit national reconciliation, yet are separate and distinct processes. The TRC defined reconciliation as a long-term process that would 'take time and will need to continue even beyond the present generation'.[40]

The report's tripartite conception of reconciliation distinguishes between the national, community and individual levels. Individual reconciliation requires victims and perpetrators to meet; however, it does not require the expression of remorse by the perpetrator or forgiveness from the victim.[41] While community reconciliation occurs in the long term between the community and the perpetrator and requires community acceptance and the support of chiefs, national reconciliation 'begins by creating the conditions for an immediate cessation of the armed conflict and the return of the country to peace'. It is based on 'the improvement of the socio-economic living conditions of the people; good governance; strong and functional oversight institutions; and the implementation of a reparations programme' and is dependent on government support and implementation of the TRC's recommendations.[42] The TRC made provisions for the continuation of reconciliation work after its closure, notably through the establishment of District Reconciliation Committees in 2003 in partnership with the Inter-Religious Council.

Conversations with TRC officials further reinforced this long-term broader view of reconciliation. While NGOs and academics have often critiqued the TRC's lack of impact on communal reconciliation, pointing out that many ex-combatants have yet to return to their former communities or that victims and perpetrators do not converse in villages, TRC staff maintained that despite these obstacles individuals can still achieve 'internal' reconciliation.[43] If combatants have found a home in a new community because they feel more accepted there or because they are afraid of retribution or judgment upon returning home, reconciliation can also be an internal healing process, consisting of the individuals finding peace within themselves and their surroundings, and cannot be measured by the restoration of a pre-existing status quo.[44]

In contrast to ethnographic accounts, focusing on the Commission's impact on the micro level, the TRC's methodology also reflects its emphasis on national rather than interpersonal reconciliation and healing. While the TRC promoted the idea that it would help individuals heal by giving them the chance to 'clear their minds and blow their chests', the Commission also noted that the psychological impact of

TRCs was uncertain.[45] The Commission took measures to mitigate the possibility of re-traumatization, such as confidential statement taking, employing psychologists for participants and holding focus groups for sensitive issues, particularly sexual violence.

As elaborated above, the TRC's link to democratization became symbolic in contrast to the war – a period defined by the suspension of civil liberties. Commissioners promoted the TRC as a return to peaceful politics. The Commission's self-conception and procedures strongly influenced general popular opinions. While the Commission's emphasis on democratization may have had some appeal among those who hoped that their views and interests would be better incorporated into government policy, the delay in releasing its findings severely undermined its legitimacy. This concern was identified as early as 2005 when the TRC Working Group Report warned of a 'bumpy start' to the 'follow-up phase'. The report described widespread popular frustration over the TRC's delay in making the report available, where copies of the report had only arrived in August 2005.[46] It warned that individuals felt 'betrayed' by the delay, calling it an 'anti-climax' and raising concern that the government was 'doctoring the report'.[47]

Public disenchantment was particularly acute over the slow follow-up in implementing the TRC's recommendations. The TRC was set up as an official body with the ability to issue recommendations among affected populations. Therefore, the absence of follow-up reinforced a larger perception of government neglect and indifference, the very factors many would highlight as causes of the war. Grievances were particularly high with regard to reparatory justice. At Grafton War-Wounded Camp, amputees who had testified at the TRC stated that they had participated in good faith and revealed intimate stories with little result.[48] As Chair of the Sierra Leone Amputees and War Wounded Association, Alhaji Jusu Jaka noted that for amputees who testified at TRC hearings, the lack of reparations was a bitter pill to swallow: 'We were expecting immediately after the recommendation report, the government would implement it but nothing has come.'[49] Implementation of the TRC's recommendations was perceived as a failed test of government and societal commitment that ultimately sent a message to vulnerable populations that neither their needs nor their voices were a priority.

These popular criticisms have unleashed a blame game among different actors. A number of government ministers criticized the TRC as short-sighted, faulting it for rushing to complete its mandate without sufficient public involvement and engagement, for its 'lack of a follow-up strategy', for failing to secure sufficient funding, and for making promises and raising hopes, without long-term planning.[50] TRC officials

have commonly argued that insufficient internal government support stifled the Commission's public impact and irreversibly delegitimized the process. Funding problems were also a major barrier to facilitating greater public engagement.[51] While in some cases, the government did implement programmes that reflected the TRC's recommendations, for example, its 'mainstreaming youth initiative', it did not give the TRC public credit for its post-conflict reforms or link these to the TRC's recommendations.

While many of these criticisms reveal longer-standing tensions in a highly politicized post-conflict landscape, tensions between actors have led to further popular disillusionment with the TRC. Where the TRC represented a form of political agency in the immediate post-conflict period, slow progress in making the report available and the lack of follow-up in its recommendations severely hampered the impact of its work. Criticisms of the TRC reflect the commission's own self-understanding. As the TRC was tied to civic participation and the generation of civic trust, the lack of follow-up undermined democratization, sending a message that individuals' voices were not heard, and reinforcing communities' political marginalization from the state. In a backdrop of severe devastation and government neglect, the TRC's ambitious participatory recommendations programme may have struck a chord with many participants, particularly in the early stages of its work. Over time, however, the TRC's high profile and participatory character generated an intense expectations crisis, which, for many participants, undermined its positive contributions.

While internal and external commentators have criticized the TRC's lack of local ownership, less has been written about parallel and later efforts by local civil society and organizations to step into the void created by the TRC. The next section discusses the Sierra Leonean community-based reconciliation project channelled through Fambul Tok. While Fambul Tok carried forward the TRC's agenda of reconciliation, it also represented an alternative to the Commission's more centralized and formal proceedings, distancing itself from international transitional justice and emphasizing a locally led and capacity-building grassroots approach.

Civil society, Fambul Tok and community restorative justice

Since its establishment, the Sierra Leonean TRC had a shifting and often tense relationship with civil society. On the one hand, members of civil society, particularly in Freetown, played a role in campaigning for

the TRC, pushing for a restorative process as part of a ceasefire agreement. While the use of community restorative justice to reintegrate ex-combatants had preceded the TRC, the post-TRC period saw a surge of NGO activity and activism, focusing on peace-building and youth integration, especially in war-affected areas. Many were tied to the Commission and saw themselves to be continuing its work. At the same time, the TRC also had unintended consequences as a catalyst for opposition. Criticisms of the TRC – and of the international character of Sierra Leone's TJ process– mobilized sectors against the TRC which led to alternative movements and campaigns to reinstate ownership in transitional justice.

This complex relationship manifested itself during the initial planning period. In August 1999, the TRC Working Group was created as a coalition of human rights NGOs, professional groups and development organizations under the direction of the National Forum for Human Rights (NFHR). Forum of Conscience was the focal point of the group, whose purpose was to 'involve Sierra Leonean civil society in the TRC process and to ensure that civil society's concerns would be addressed in the design of the TRC Act and in the ways in which the Commission was going to undertake its task'.[52] While meetings were stalled by the resumption of violence after the Lomé Accords, the NFHR and the UNAMSIL Human Rights Section subsequently met again in the early 2000s, receiving funding from the Office of the High Commissioner for Human Rights in Geneva to conduct sensitization and public education on the TRC. Tensions quickly surfaced between the Working Group and the TRC. The TRC argued that the public was inadequately 'sensitized' to its work, blaming this in part on the poor management of the Working Group.[53] Key members of the Working Group, notably, Sierra Leonean human rights activist and head/founder of Forum for Conscience, John Caulker, expressed concern about international influence over the TRC, the sidelining of civil society, and the Commission's limited popular engagement, especially in rural areas.[54] Over time, Caulker became increasingly critical of the TRC's management and policies, citing the lack of 'partnership' with communal authorities, and insufficient engagement with local culture as barriers to genuine reconciliation.[55]

Local–international tensions became particularly heated over the TRC's contribution to reconciliation. In 2007, Caulker founded Fambul Tok ('family talk' in Krio). He believed that the TRC had not gone far enough in reaching people in rural war-affected areas and in engaging with Sierra Leonean traditions. Fambul Tok serves as an umbrella organization working in five districts to encourage conciliatory dialogue and help communities to find and revive different restorative practices.[56] Emphasizing local ownership and communal traditions, Fambul Tok

ceremonies work through a decentralized system of local authorities and representatives.

For Fambul Tok, social repair is at the heart of reconciliation. Before working with a village, Fambul Tok officials engage in an extended period of consultation with local authorities and stake holders. One of the defining characteristics of Fambul Tok's restorative justice approach is its emphasis on follow-up, reflecting the organization's position that reconciliation *is not a one-time event, but a process*. After participating in ceremonies, individuals follow testimony with actions by engaging in, for example, communal farming and building roads in the case of Bomaru. This is particularly noteworthy in the case of ex-combatants, who testify at Fambul Tok ceremonies knowing they will not benefit financially. As put by Fambul Tok staff, when ex-combatants are able to follow testimony with action that indicates goodwill and commitment, for example, rebuilding the homes of victims, their contribution is often viewed as more authentic than 'one-off' testimony at TRC hearings.[57]

Although Fambul Tok distanced itself from the TRC – emphasizing its more localized approach against the centralized Commission – important normative and discursive parallels remain between the grassroots and formal efforts. Like the TRC, Fambul Tok took a similar pragmatic view towards youth, carrying forward the TRC's non-punitive orientation by emphasizing reintegration and reconciliation. Individuals came forward to acknowledge their wrongdoings and ask for forgiveness. However, as was also the case at the TRC, Fambul Tok participants were apprehensive that openly speaking about the war would generate self-incriminating evidence and lead to Special Court prosecutions. For Kailahun district chief and Fambul Tok representative, Maada Alpha Ndolleh, 'sensitizing' people to participate in Fambul Tok reconciliation ceremonies was an exercise in confidence building and reassurance that testifying would not put them at risk.[58] To pave the way for other community members to participate, Ndolleh described his own testimony at the first Fambul Tok bonfire testimony in Kailahun, admitting that during the war he had stolen from his niece and her husband out of hunger. He publicly apologized and embraced her family.[59]

Fambul Tok and the TRC also shared a conception of testimony as clarification – where testimony intended to heal interpersonal relationships by discussing how individuals were drawn into the war. This process simultaneously furthered the individual's integration, and added social value by addressing grievances and contributing to deeper interpersonal understanding. One ex-RUF combatant in Kailahun town, who testified at a Fambul Tok ceremony, shared his view: 'It's good for me to

say something about myself and my activities so other people's minds will be clear about my actions and it's also good for the next man, as maybe I'm taking him as something bad or good, but now his position can be clear.'[60] Where often avoiding personal guilt and complicity, ex-combatant narratives at both the TRC and Fambul Tok ceremonies tended to focus on the loss of agency, emphasizing the factors that forced individuals to take part in conflict, including for many, abduction or loss of family support and homes.[61] In the process, individual agency was renegotiated away from the individual towards the collective, attributed to forces beyond the individual's control. Similar to hearings in front of the TRC, testimonies at Fambul Tok were woven into unifying narratives, serving an equalizing function for ex-combatants' re-identification as civilians.

Despite these overlapping similarities, there are key differences between the TRC and Fambul Tok. By articulating and institutionalizing a link between reconciliation, poverty reduction and development into its practices, Fambul Tok, more than the TRC, emphasized the importance of a locally led approach – engaging the community so that the justice process could revitalize local culture and social bonds.[62] Reconciliation, Fambul Tok argued, should facilitate social repair and empathy across generations, healing communities on their own terms. The intimate link between culture and identity was juxtaposed against internationally influenced transitional justice as more legitimate and, as a result, more impactful.[63]

This discourse was especially potent in areas marginalized by the TRC – and by the state. In Kailahun district, near the Liberian border, where the RUF first entered Sierra Leone, the TRC – and international transitional justice in general – was criticized as a short-term mechanism with little direct value for post-war reconstruction. The experience of the TRC (or rather lack thereof) reinforced for local communal leaders the need for a long-term bottom-up and capacity-building approach, tied to sustainable peace-building. NGO workers and local authorities noted that the TRC brought attention to important issues, notably child soldiers.[64] However, they also cited the short-term orientation of post-TRC reintegration efforts, for example, the United Nations Development Programme (UNDP) or Red Cross technical skills training for ex-RUF, for creating a large number of technical labourers that failed to find gainful employment.[65]

Rather than stall reconciliation efforts, however, frustration with poor youth integration and community-based reconciliation led to a reassessment – or indeed, further kindled concern – among local civil

society about the importance of local ownership and community-led peace-building and reconciliation. Challenges faced by the TRC, coupled with criticisms of the international influence over transitional justice, have lent support to local efforts, reinforcing a broader emphasis to turn inward among civil society and communal leaders, and to utilize Sierra Leonean restorative justice traditions and structures.

While community-based restorative justice played an important role in restoring a sense of normalcy and starting a process of social repair in remote war-affected areas, the impact and objectives of communal restorative justice require further scrutiny. Fambul Tok has attempted to reconfigure traditional hierarchies by including women and youth in reconciliation ceremonies and, in some cases, encouraging women to testify against authority figures.[66] Despite this, its emphasis on appointing and working through local authorities and revitalizing local traditions needs to be weighed against the risk of reinstituting pre-war patrimonial hierarchies and power structures.

Ultimately though, local structures and traditions cannot be completely ignored. They have played an important role in empowering those with knowledge and background in religious and cultural belief systems – elders and community leaders – many of whom had been targets of youth resentment during the war. Unlike the TRC, which became constrained through its management, short time frame and its ambitious mandate and proceedings, Fambul Tok created a sustainable and meaningful process through concrete follow-up and community ownership. At present, however, it remains to be seen whether communal restorative justice can play a transformative role in facilitating greater social mobility and empowerment, necessary for long-term community integration and repair.

Conclusions

This chapter argued that the TRC had an important – although underappreciated – normative impact in Sierra Leone. By putting interest in reconciliation into the public sphere, the TRC played a key role in mobilizing civil society campaigns, particularly in peace-building, reconciliation and youth integration. The chapter also maintained that the relationship between the TRC and community reconciliation efforts, though at times in tension, was more intertwined than is often assumed, arguing that the TRC created a space for alternative processes to take form. Fambul Tok and local community actors often distanced themselves from the more centralized and internationally influenced TRC,

constructing a narrative as a locally led and bottom-up capacity-building alternative. In doing so, civil society groups also advanced core components of the TRC's work.

As a site of multiple and often competing mechanisms, transitional justice in Sierra Leone has been highly politicized. Tensions remain between international and local practitioners and between community leaders and elites at the local and national levels. Existing literature has often played into the politicization of transitional justice, reinforcing a tendency to dichotomize local/traditional versus international/formal approaches. In much of this literature, the TRC is evaluated according to its ability to contribute to micro-level goals – notably individual healing and interpersonal reconciliation – rather than democratization and national reconciliation. While there tends to be a strong emphasis in the more ethnographically oriented literature on authenticity as a standard of legitimacy and success, authenticity is complex and difficult to define in practice. Sierra Leonean historian Joe A. D. Alie stresses the fluid and dynamic nature of culture.[67] While traditions of restorative justice have been practised and can be found among ethnic groups throughout West Africa, transitional justice in Sierra Leone has a unique dimension. As Shaw argues, centuries of warfare and raiding, resulting from the transatlantic slave trade and colonial rule, led to the development of innovative mechanisms throughout the country for coping with 'reintegrating combatants, reworking relationships and rebuilding moral communities'.[68] While Sierra Leone has a rich heritage of both retributive and restorative justice practices, they were often abandoned or inadequately passed on, particularly between youth and authority figures in the lead up to the war. The RUF's systematic killing of individuals who carried this knowledge – elders and chiefs – and its intentional desecration of traditional sites and shrines during the war destroyed the social fabric and the ability for authority figures to pass on traditions. While community-level restorative justice, notably Fambul Tok, drew on pre-existing traditions in the context of a highly destructive war, many of these traditions had to be revitalized and reintroduced to their target audience. The study of Fambul Tok reveals a complicated picture, in which legitimacy and authenticity become politicized elements of transitional justice, particularly between international and domestic actors, and national and community elites.

The Sierra Leonean case also presents important lessons for transitional justice elsewhere. In Sierra Leone, it reveals the fragile nature of transitional justice, where TJ processes raise hopes and expectations, but lose momentum and legitimacy over time. Whether one focuses on the

micro or macro level, transitional justice needs to be conducted with a clear long-term and holistic orientation from the outset. Without careful planning and communication (particularly about expectations), TJ processes run the risk of engendering suspicion, marginalization and the disengagement of actors whose commitment is needed for long-term success. The experience of the TRC also highlights the risk of institutional overstretch. Where TJ mechanisms have increasingly expanded their mandates, inadequate attention has been paid to tensions between the objectives and methods of transitional justice. The increasingly ambitious mandates of TJ mechanisms, particularly truth commissions, generate disappointment where they fail to deliver. They also risk undermining perhaps the broader first-order objectives of formalized mechanisms; in the case of truth commissions, these are the provision of voice and the generation of a thorough historical record.

Finally, more critical attention should be paid to the links between transitional justice, development and capacity-building. Transitional justice in Sierra Leone showed both the perils and potential of transitional justice rooted in development and the generation of future opportunity. On the one hand, as was the case of the TRC, incentivizing participation through individual benefit created an overly instrumental understanding of transitional justice, undermining its more normative and community-restoring functions. On the other hand, by linking local processes of restoration and everyday practices of cultivated reciprocity and care, grassroots reconciliation processes, supported by Fambul Tok, were able to bolster ownership and legitimacy, making them sustainable and self-generating over time.

Notes

1 I would like to thank Kirsten Ainley, Chris Mahony, Chris Brown, Laura Martin and Kristine Behm for their helpful comments on this chapter, and the research behind it.

2 W. Schabas (2003) 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25(4): 1035–1066.

3 Although the Lomé Peace Accord mandated a truth commission to 'address impunity, break the cycle of violence, provide a forum for both victims and the perpetrators of human rights violations to tell their story, and to get a clear picture of the past in order to facilitate genuine healing and reconciliation', the chapter will argue that TRC proceedings focused more on national reconciliation. Peace Agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone of 7 July 1999, Lomé, UN Doc. S/1999/777.

4 The chapter draws on four months of interviews and archival research conducted in Freetown, Grafton and Kailahun, Sierra Leone, in 2009. Interviews targeted a broad range of TRC staff, civil society, government officials and direct stakeholders in war-affected communities, including victims, ex-combatants, women, youth, elders, teachers and community leaders.
5 Bishop Joseph Humper, Head of Sierra Leone's Inter-Religious Council and Chairman of the TRC, personal interview, Freetown, Sierra Leone, 28 July 2009.
6 At the same time, important sections of Sierra Leonean civil society were opposed. The Human Rights Committee, an umbrella group of NGOs, preferred a 'Truth, Justice, and Reconciliation Commission', which could recommend prosecutions for the worst offenders. For more on this, see R. Shaw (2005) 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone', Special Report (Washington, DC: United States Institute of Peace), p. 4.
7 Humper, personal interview.
8 Although the TRC notes clear ethno-regional and ethno-political fissures along which the parties to the conflict oriented, particularly towards the end of the conflict. See the Sierra Leonean TRC Report (2004) Witness to Truth, Volume Two, Chapter 1, Executive Summary.
9 TRC Report.
10 TRC Report, Vol. 2, Chapter 1.
11 SCSL President Geoffrey Robertson later offered a compromise that Norman could give a written sworn affidavit testimony to the TRC and answer questions from the TRC in writing. See SCSL (2009) Decision on the Request by the TRC of Sierra Leone to Conduct a Public Hearing with the Accused, 29 October.
12 A number of TRC commissioners and civil society organizations argued that the international community favoured and bestowed more authority on the SCSL, maintaining that the Kabbah administration had been pressured to request an SCSL and that a South African (amnesty) model would have been better. The Sierra Leone TRC Working Group reveals tensions between international and Sierra Leonean civil society members on both issues. The Sierra Leone Working Group on Truth and Reconciliation (2006) 'Searching for Truth and Justice in Sierra Leone: An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission', available at: www.fambultok.org/TRCStudy-FinalVersion.pdf', p. 7.
13 See also Abraham John, Executive Secretary of the Human Rights Commission, personal interview, Freetown, Sierra Leone, 6 August 2009, and John Caulker, personal interview, July 2009.
14 TRC Report, Vol. 2, Chapter 1.
15 W. Schabas (2004) 'Conjoined Twins of Transitional Justice: The Sierra Leone Truth and Reconciliation Commission and the Special Court', *Journal of International Criminal Justice* 2(4): 1082–1099. Priscilla B. Hayner and Paul van Zyl, together with the US Institute of Peace and International Human Rights Law Group, the Office of the High Commissioner for Human Rights, and UNAMSIL proposed a number of workshops to 'work out the relationship' and institutionalize a set of guidelines.
16 Schabas, 'Conjoined Twins', p. 1048.
17 While the minimum age of offenders at the SCSL was 15 years, UN and SCSL officials repeatedly publicly expressed the view that prosecuting child

offenders was not in the Special Court's jurisdiction and that the TRC was better placed to deal with youth perpetrators. See, for example, David Crane's interview with the UN Office for the Coordination of Humanitarian Affairs (25 September 2012), IRIN, available at: http://www.irinnews.org/InDepthMain.aspx?InDepthId=31&ReportId=70568

18 Although the TRC examined the role of senior actors like Foday Sankoh, President Kabbah, Samuel Hinga Norman and Charles Taylor, it made clear throughout its report and proceedings that its role was not to judge the legitimacy of the RUF. TRC officials also took this position. Humper argued that the purpose of the TRC was not to 'scapegoat' or 'cast blame'. Personal interview.

19 TRC Report, Chapter 1, p. 25.

20 Josephine Thompson-Shaw, personal interview. Freetown, Sierra Leone, 10 August 2009.

21 The enabling legislation required the government to 'faithfully and timeously implement the recommendations of the report' but also recognized that 'resources' would limit the government. TRC Report, Vol. 2, p. 118.

22 Michael Charley, UNICEF Youth Programme Officer, who also worked on the Children's TRC, personal interview, Freetown, Sierra Leone, 24 July 2009.

23 See in particular, T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2): 361–391; Shaw, 'Rethinking'; C. Coulter (2009) *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone* (Ithaca: Cornell University Press); G. Millar (2012) '"Ah Lef Ma Case Fo God": Faith and Agency in Sierra Leone's Postwar Reconciliation', *Peace and Conflict: Journal of Peace Psychology* 18(2): 131–143; and G. Millar (2010) 'Assessing Local Experiences of Truth-telling in Sierra Leone: Getting to "Why" Through a Qualitative Case Study Analysis', *The International Journal of Transitional Justice* 4(3): 477–496.

24 R. Shaw (2002) *Memories of the Slave Trade: Ritual and the Historical Imagination in Sierra Leone* (Chicago: University of Chicago Press).

25 Shaw, 'Rethinking'.

26 Kelsall, 'Truth, Lies, Ritual', p. 372.

27 Kelsall, 'Truth, Lies, Ritual'. In his later work on the Special Court, Kelsall further develops his analysis of the role of culture, arguing that the Court failed to engage with Sierra Leonean understandings of agency and accountability. He argues for a more integrated, dialogical TJ approach in post-conflict societies. Kelsall (2013) *Culture under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press).

28 Coulter, *Bush Wives*, p. 180.

29 Millar, 'Ah Lef Ma Case Fo God', pp. 135, 139. See also Millar, 'Assessing Local Experiences'.

30 See also Mahony and Sooka in this book.

31 See, for example, K. Peters (2011) *War and the Crisis of Youth in Sierra Leone* (Cambridge: Cambridge University Press) and P. Richards (2005) 'To Fight or To Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone)', *African Affairs* 104(417): 571–590.

32 Thompson-Shaw, personal interview.

33 Charley, personal interview.

34 Charley, personal interview.

35 R. Shaw (2010) 'Linking Justice with Reintegration? Ex-combatants and the Sierra Leone Experiment', in R. Shaw and L. Waldorf (eds) *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford, CA: Stanford University Press), pp. 11–132. See also C. Bolten (2012) '"We Have Been Sensitized": Ex-Combatants, Marginalization, and Youth in Postwar Sierra Leone', *American Anthropologist* 114(3): 496–508.
36 Post-conflict Reintegration Initiative for Development and Empowerment (PRIDE) in partnership with the ICTJ (2002) 'Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone', p. 12, available at: https://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Combatants-TRC-2002-English.pdf
37 PRIDE, 'Ex-Combatant Views'.
38 TRC researcher, Howard Varney, argues that the TRC was still 'debating what reconciliation should mean until right at the end of the TRC. No programme on reconciliation was developed until October 2003 – right at the end. . . . It was too little too late.' Sierra Leone Working Group, 'Searching', p. 9.
39 TRC Report, Vol. 1, p. 24.
40 TRC Report, Vol. 1, p. 15.
41 TRC Report, Vol. 2, Chapter 1.
42 The TRC stated that given its short lifespan, it could only explore reconciliation through 'sensitization' and high-profile 'events', including reconciliation and memorial ceremonies, and workshops with civil society to discuss drivers and preconditions for reconciliation.
43 TRC Report. See also Humper, personal interview.
44 Importantly, healing was conceived as a personal process that individuals must obtain in their own time. The role of a TRC is to create a 'space' for these processes so that the individual can feel at home anywhere in the country. Humper, personal interview.
45 TRC Report, Vol. 1, Chapter 1.
46 Sierra Leone Working Group, 'Searching'.
47 Sierra Leone Working Group, 'Searching'.
48 Grafton group interview, Grafton War-Wounded Camp, Grafton, Sierra Leone, 7 July 2009.
49 Alhaji Jusu Jaka, Chair of Sierra Leone Amputees and War-Wounded Association, personal interview, Freetown, Sierra Leone, 7 August 2009.
50 For example, Dr Lansana Nyalley, Deputy Minister of Education, Youth and Sports, personal interview, Freetown, Sierra Leone, 16 August 2009, and Abdullah Mustapha, Director General, Central Intelligence and Security Unit Office of the President, National Security Secretariat, personal interview, Freetown, Sierra Leone, 15 August 2009.
51 See also B. Dougherty (2004) 'Searching for Answers: Sierra Leone's Truth and Reconciliation Commission', *African Studies Quarterly* 8(1): 39–56.
52 TRC Report, Chapter 5.
53 TRC Report, Chapter 5.
54 Caulker, personal interview.
55 Caulker, personal interview. See also Sierra Leone Working Group 'Searching'.
56 Since 2008, there have been more than 60 reconciliation ceremonies in communities across the country and 30 communal farms established as part of its follow-up activities.

57 Pel Koroma, personal interview, Freetown, Sierra Leone, 18 August 2009.
58 Maada Alpha Ndolleh, Fambul Tok Chairman and Kailahun District Chief, Kailahun, personal interview, Sierra Leone, 12 July 2009.
59 Ndolleh, personal interview.
60 Former RUF from Kailahun, personal interview, Kailahun, Sierra Leone, 13 July 2009.
61 Shaw 'Linking Justice' describes a complex discourse construction of collective suffering and victimhood. She notes that combatants who wished to reintegrate also needed to 'locate themselves as "victims" or "civilians"', p. 125.
62 To this end, Fambul Tok ceremonies were conducted using local traditions and customs and varied across villages.
63 Caulker, personal interview.
64 For example, Masiver Bilahai, Kailahun secondary school principal and youth worker, personal interview, Kailahun, Sierra Leone, 14 July 2009.
65 As put by a former RUF member, who now works as a motorcycle taxi driver, 'how many carpenters do we need in one village?' Former RUF combatant from Kailahun, personal interview, Kailahun, Sierra Leone, 12 July 2009.
66 Ndolleh, personal interview.
67 J. A. D. Alie (2008) 'Reconciliation and Traditional Justice: Tradition based Practices of the Kpaa Mende in Sierra Leone', *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (International Institute for Democracy and Electoral Assistance), pp. 123–146.
68 Shaw, *Memories*.

5

A Political Tool? The Politics of Case Selection at the Special Court for Sierra Leone

Chris Mahony[1]

The establishment of a truth and reconciliation commission (TRC) and a war crimes court (the Special Court for Sierra Leone or SCSL) in Sierra Leone has been described as a transitional justice (TJ) model that advances both justice and reconciliation.[2] Whether these institutions have been a 'success' has been highly contested within Sierra Leone and among external TJ observers. This chapter focuses on the politics informing the most prominent process in Sierra Leone: the Special Court.[3] The chapter claims that the independence or otherwise of SCSL case selection is a key indicator of success. It considers the interests of the actors who designed the Court and traces the manifestation of those interests in key elements of institutional design and function. Its findings support a more realist explanation of the Court's creation and function than the normative aspirations espoused by the Court and repeated by other observers 'that no one was beyond the court's reach'.[4] I argue that the politics of the Court's creation compromised its capacity to independently pursue its mandate – to pursue those most responsible for crimes. This was a Court, I argue, designed to assist other US and British instruments of regime change strategy in Liberia and regime protection in Sierra Leone.

I begin by examining how US policy towards Sierra Leone and neighbouring Liberia determined Sierra Leone's TJ processes. I also examine Britain's role in shaping US policy. I argue that a shift in US support from the Revolutionary United Front (RUF) to the British-backed Kabbah government caused a shift in preference from a legally established truth commission to a war crimes court and a military solution. The British government was instrumental in securing this policy shift, seeking to shape partisan politics in Washington, DC, as well as Sierra Leone's domestic security and political dynamics. Within Sierra Leone,

they constructed a narrative attributing sole blame for the 1999 Lomé Peace Agreement's breakdown to the RUF. The British also sought to strengthen the Kabbah government's military position by procuring West African military support, providing military support and coordination themselves, antagonizing RUF combatants, and shifting the allegiance of the Sierra Leone army towards the Sierra Leonean government. Most importantly, the British government used US Republican control of UN funding to compel the Clinton administration to shift support from Charles Taylor and the RUF to the Kabbah government.

This chapter notes that Sierra Leone experienced two separate conclusions to the conflict and two separate TJ processes. The first was the 1999 Lomé Peace Agreement, which established a power-sharing government, provided amnesty for crimes, and established a TRC. The second was a conclusive military victory for one party to the conflict, imposing peace as well as a criminal process that gave amnesty to many elements of the victorious party. I argue in this chapter that Sierra Leone's TJ processes, in particular the SCSL, were selected and designed based on their expediency to external political actors, rather than their TJ merits. I further argue that the expediency of the Court compromised its independence and its ability to succeed in prosecuting those bearing greatest responsibility. The SCSL, its financial supporters, the UN Security Council, and much of the literature emphasize the 'compliance pull' of recognizing and acting against international crimes.[5] Changes in the local, regional, and international security and political landscapes reshaped TJ goals and altered calculations about amnesty and justice. There were a limited number of states in a position to influence these shifts, but those that were had considerable power. Sierra Leone's TRC and the SCSL, in particular, can be understood, like domestic institutions, as bureaucracies vulnerable to state manipulation.[6]

The US, the UK, and the Lomé Peace Accord

The US–Liberian relationship has a complex history. The US government, after 1997, had engaged the RUF's Liberian supporter, Charles Taylor. Taylor had won 75 per cent of the vote in Liberia's July 1997 presidential election, causing alarm for Kabbah and his British supporters in Freetown. This was somewhat out of character as the US had previously viewed Taylor and his Liberian National Patriotic Front (NPFL) insurgency as a conduit of French encroachment into the US sphere of influence in West Africa. However, George H. W. Bush's administration decided that Liberia no longer constituted the US 'special sphere'

or protectorate.[7] This view was reinforced by Taylor's 1998 visit to Paris to declare Liberian plans for privatization and for French business to spearhead that process.[8]

Taylor received an official red carpet state welcome from President Chirac in Paris where the French foreign ministry stated its willingness to participate in Liberia's reconstruction and to develop a French-speaking environment. Taylor's strong 1997 election victory and consolidation of support from previous political and military interlocutors caused the US government to see Liberia's move to the French sphere as a fait accompli and of little geopolitical significance.[9] The marginal nature of US commercial interests in Liberia allowed Taylor to placate US irritation by addressing US security and strategic concerns.[10] Despite the emerging US support of Taylor, the US accommodated British-led sanctions on Taylor's then ally, the Armed Forces Revolutionary Council (AFRC/RUF) Junta, in Freetown while Russia, France, and China blocked the use of force or the threat of force against the RUF citing issues of state sovereignty.[11] At the time, China and France were the largest recipients of Liberian timber. France received 37 per cent of Liberia's official exports in 1999.[12] Britain pressured Nigeria to lead Economic Community of West African States (ECOWAS) sanctions against the AFRC and send troops under ECOWAS auspices to reinstate Kabbah in violation of the ECOWAS Protocol on Non-Aggression.

On 1 June 1997 Kabbah stated, over the British-funded 98.1FM radio station, that any person remaining in Freetown would be treated as a collaborator by government-aligned attacking forces.[13] The attacking force consisted of Nigerian-led peacekeepers supported by the British-supported Civil Defence Forces (CDF). British support violated UN sanctions that the British had proposed and implemented in October 1997.[14] The British government encouraged Anthony Buckingham, a British national whose company held a diamond-mining concession in Sierra Leone, to use the private military company 'Sandline' to provide troops, arms, and equipment and to plan and coordinate pro-government attacks against the AFRC. UK military support for the operation violated a then active UK arms embargo on Sierra Leone as well as the UN embargo led by Britain.[15]

Despite Charles Taylor's francophone orientation, he solicited US support via the Congressional Black Caucus leadership in Washington, DC.[16] In February 1998, while the British were employing a mercenary force to remove the AFRC and secure Tony Buckingham's diamond-mining concessions, President Taylor was striking a personal bond with US Special Envoy for the Promotion of Democracy and Human Rights in Africa,

Jesse Jackson.[17] After Sani Abacha's death, the Economic Community of West African States Monitoring Group (ECOMOG) support declined, limiting Kabbah's capacity to control Freetown. In January 1999, former AFRC and other Sierra Leone Army (SLA) soldiers invaded Freetown causing Kabbah and the British government to concede a diplomatic solution as the only military option available.[18] Taylor had lobbied US Congressional Black Caucus Chairman, Rep Donald Payne, to convince Jackson to push for negotiations and not military assistance to ECOMOG.[19] Jackson persuaded Kabbah, without giving him the opportunity to consult his ministers, to go with them to Lomé and negotiate with Sankoh.[20] Kabbah and Sankoh eventually agreed on power sharing, amnesty for crimes committed, a TRC, and the replacement of ECOMOG by a UN force. Article VI (2) of the Agreement describes the TRC as one of several 'structures for national reconciliation and the consolidation of peace'.[21]

The Lomé Peace Agreement indicates the interest of both parties in entrenching the military status quo through a legalized agreement.[22] The RUF leadership and the US government, represented by Jesse Jackson and US Ambassador to Sierra Leone, Joseph Melrose, wished to politically entrench favourable military power by acquiring shared political power and procuring external legitimacy and material support. The UK and the Kabbah government viewed the agreement unfavourably but were overwhelmed by US coercion. They secured what Duncan Snidal would suggest was a credible commitment from a stronger military party to cease hostilities.[23] Jesse Jackson sought to lock in the US commitment by pledging US funding for 30 per cent of the disarmament and demobilization process.[24] He had some success: US Secretary of State, Madeleine Albright, stated in October 1999 that 'Sankoh is delivering the right message' and that she 'hoped very much he will continue to intensify his efforts to ensure full adherence to the Lomé Accord'.[25] Sankoh's post as Minister of Minerals and Mines further incentivized the peace agreement's implementation. However, RUF combatants viewed the Lomé Accord as requiring disarmament and loss of rent-seeking power so RUF elites could profit from government positions. Key battlefield commanders independently began imposing rents on mining and other activities, diminishing Sankoh's command control.[26] Only half of the pledged US$50 million for disarmament and demobilization had been received by mid-December 1999, despite a supporting UN Security Council resolution that also established a peacekeeping mission.[27]

In February 2000, as the RUF's reluctance to disarm without the promised payment and educational provisions became clear, the Security

Council expanded the United Nations Mission in Sierra Leone (UNAMSIL) to law enforcement with 11,000 troops.[28] The UK government initiated a sophisticated campaign to shift US policy by shaping the Sierra Leonean security situation and mobilizing Republican opposition in Washington. The British government also shaped a narrative that human rights groups and lower-level State Department bureaucrats would adopt.[29] The narrative emphasized crimes committed by the RUF since Lomé and omitted crimes committed by the CDF (supported by the Kabbah and UK governments). CDF crimes went unreported by human rights groups and government agencies on both sides of the Atlantic.[30] The US took the position that atrocities committed after Lomé were not covered by the amnesty as a gulf opened between more engaged US actors in Freetown and some State Department personnel who adopted the British narrative that Lomé was failing due to the RUF.[31]

In February 2000, Kabbah's government passed the Truth and Reconciliation Commission Act, establishing a TRC to be funded by governmental and international non-governmental agencies.[32] The Commission's members were to be appointed 'after a selection process involving both national and international expertise' and involving a selection panel on which all the protagonists to the conflict and other interested parties would be represented.[33] The institutional design, incorporating a power-sharing agreement, represented both parties' interests and accommodated a direct role for civil society in personnel appointment.

However, the UK government was not satisfied with the negotiated peace and the TRC required by it. British efforts to shift the power dynamic started to focus on Liberia as well as on Sierra Leone. British armed forces began to liaise with a group of militant anti-Taylor Liberian diaspora called the Liberians United for Reconciliation and Democracy (LURD).[34] Most critically, the British government brought the issue of US support for Charles Taylor to Republican Senator Judd Gregg's attention.[35] Gregg's staffer noted: 'We sat down with the British Ambassador on Sierra Leone and he took a very different position to the Clinton position and there was a mutual commiseration and there was a negotiation as to how do we do something about the US policy.'[36] Senator Gregg was the chairman of the US Senate Homeland Security Appropriations Sub-committee. He used this position to block $96 million for disarmament and demobilization funds earmarked for Sierra Leone without hearings, debates, or votes.[37] Gregg opposed the Lomé accord, an RUF role in government, and Charles Taylor's role in the region.[38] He blocked payments on $1.77 billion that the US owed to the UN and refused budgetary approval until US policy towards the region changed.[39]

Identifying and tracing the roles of Gregg, the British government, and Sierra Leone's security and political developments illuminates the causes of a shift in preferences from power sharing to a conclusive military victory for one party to the conflict, and, linked to this, from a truth commission to a war crimes court. Kabbah used RUF non-compliance to justify continued non-implementation of his Lomé obligation to provide specific RUF postings in the government.[40] RUF elements, exercising a great deal of autonomy from the leadership, refused to disarm while corresponding compensation or education remained unavailable. Non-compliance from both sides fomented tensions. The British-driven narrative citing RUF non-disarmament as the sole driver of post-Lomé instability continued to be adopted by the mass media and international civil society. Little attention was drawn to the non-disarmament of the CDF, lack of provision of disarmament and demobilization programmes, or the Kabbah government's refusal to provide all agreed RUF government postings.

In the first week of May 2000, RUF combatants, under UNAMSIL pressure to disarm without compensation, seized over 550 UNAMSIL peacekeepers. The British government and mass media attributed sole blame to the RUF leadership for the incident in which four peacekeepers were killed and three injured.[41] Jesse Jackson, unaware of Sankoh's lack of command authority over RUF subordinates, continued to assure Sankoh of his immunity while requesting the peacekeepers' release.[42] Both the US and British governments condemned the RUF for behaviour violating international norms. However, the US government continued to support Taylor and, by extension, the RUF.[43] Kabbah began to utilize distrust between Johnny Paul Koroma and Sankoh to procure Koroma's and the SLA's allegiance, causing a major shift in Sierra Leone's security dynamic, which dramatically weakened the RUF. The SLA began operating alongside the CDF in Freetown, enabling senior RUF figures' arrest, and in some cases murder alongside Sankoh's house arrest.[44] On 8 May 2000, under President Kabbah's instruction to deploy, British soldiers, the CDF and SLA (under British command), attacked Sankoh's residence under cover of civilian protest at continued peacekeeper detention.[45] The RUF marched on Freetown in response but were met and repelled by a coalition of SLA, CDF, ECOMOG, and British troops coordinated, armed, and trained by the British.[46] In support of the UK position, Judd Gregg called for 'an international war crimes tribunal to investigate and punish atrocities committed by the RUF to be set up', the first time such a tribunal was publicly proposed.[47] Both the military dynamic on the ground and the diplomatic environment in Washington were shifting against the Clinton administration (Table 5.1).

Table 5.1 Military allegiances in Sierra Leone's conflict in May 1997

France (and US, peripherally)	**UK**
APC (political party)	SLPP (political party)
RUF	CDF
SLA	

Table 5.2 Military allegiances in Sierra Leone's conflict in May 2000

France (and an increasingly cautious US)	**UK**
APC (political party)	SLPP (political party)
RUF	CDF
	SLA
	ECOMOG

By May 2000, Sierra Leone's security reconfiguration appeared as shown in Table 5.2.

International media, human rights groups, and the United Nations Security Council (UNSC) held Sankoh responsible for the insecurity of early May, adopting the Kabbah government's explanations of fluid events that were difficult to verify.[48] British intelligence officers fed the media stories alleging evidence proving Charles Taylor's role in the RUF's diamond trade.[49] The absence of protest at the Kabbah government's detention of 180 suspected RUF members, including the Freetown leadership, reinforced the RUF's diplomatic stigmatization.[50] That stigmatization enabled ostensibly impartial UNAMSIL peacekeepers to fight alongside SLA and CDF forces against the RUF, which still controlled half the country and an estimated 90 per cent of the diamond trade.[51]

The dramatic change in Sierra Leone's security situation and severe embarrassment surrounding US failure to meet its UN obligations caused the Clinton administration to change policy on 3 June 2000. Judd Gregg and US Ambassador to the UN, Richard Holbrooke, along with their respective staffers, met to discuss US policy towards Sierra Leone and Liberia.[52] Gregg, still convinced by the UK position, insisted that the US was using taxpayer dollars for ill-informed policy and that money owed to the UN would remain withheld until the policy was adjusted to seek Taylor's removal from power in Liberia and the RUF's defeat.[53] Holbrooke agreed, suggesting a four-pronged approach, including increased military aid to Guinea to enable an insurgency into Liberia, economic sanctions to weaken Taylor's capacity to repel an insurgency, and the RUF's capacity to repel peace enforcement;

a war crimes tribunal that would indict Taylor and legitimize his diplomatic and economic isolation; proactive United States Agency for International Development (USAID) and Central Intelligence Agency (CIA) support of Liberian political opposition.[54] With the continued absence of funding for disarmament, the Clinton administration officially indicated its shift in policy in a letter to Senator Gregg from Ambassador Holbrooke. The letter stated that Sankoh should have no political future, that the UN should try to disrupt the RUF's hold on diamonds, and that the US should come up with a strategy to deal with Liberian President Charles Taylor.[55]

The US government's position thus changed from supporting a negotiated peace to seeing the military vanquishing of the RUF as necessary. Linked to this was a shift in perception of the combatants towards a view that the RUF and Taylor were solely responsible and liable to prosecution for war crimes. There was therefore a seismic shift in TJ policy in Sierra Leone, from truth and amnesty to prosecution. The political drivers of this shift are missed in TJ literature, which explains the shift in terms of normative pressure and excludes the state's self-interest.[56]

Designing the SCSL

From June 2000, international and domestic attention and resources focused on designing a war crimes court. On 5 June, the US State Department announced it was in consultation with the UN and the UK to bring perpetrators of crimes in Sierra Leone to justice, indicating that crimes committed since Lomé were not covered by the Accord.[57] Jesse Jackson was fired as Special Envoy for the Promotion of Democracy and Human Rights in Africa and the next day US senator Judd Gregg released $368 million in peacekeeping funds Jackson had been blocking ($96 million for Sierra Leone). Gregg demanded accountability in Sierra Leone while stating he had received an assurance that Sankoh would play no role in Sierra Leone's future, that the Lomé Accord was hopefully dead, and that RUF control over diamonds would be broken.[58]

However, the political environment in the US was changing. The incoming Bush administration held deep antipathy towards the International Criminal Court (ICC), which some saw as a suitable venue for trials of crimes in Sierra Leone. The Bush administration preferred Security Council–established courts over which it enjoyed greater influence. Three permanent Security Council members – France, Russia, and China – opposed a UN-established and UN-funded tribunal for Sierra Leone, as they viewed it as 'dealing with Liberia through the back door'.[59]

China and Russia, in particular, were alarmed as to a perceived legal trend that impinged upon state sovereignty.[60] They demanded that the US and Britain fund the court themselves – a position the US and Britain accepted as it eliminated key transaction costs and they were also weary of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) costs.[61] If the US and the UK paid, they did not have to bear the cost of bargaining with civil society actors and Security Council states. The only substantive negotiations required of the UK and the US were with a weak Sierra Leonean government they could coerce into compliance.[62] Similarly, the UN Secretariat, civil society, and disinterested members of the Security Council played peripheral designing roles. Three important instruments of control the US and the UK gained over case selection, absent from the UNSC-established ICTR and ICTY, were enhanced control over jurisdiction, the selection of key personnel, and subsequent financial leverage over those personnel. Functional controls provided an insurance policy against prosecutorial action against the US, the UK, and their post-conflict domestic ally, the Sierra Leone People's Party (SLPP).

A strong US–UK relationship, with interests now aligned, and the relative weakness of other voices defined the design of the SCSL. On 8 June, UK representative to the UN, Jeremy Greenstick, announced an expanded UNAMSIL force and stated that justice would be pursued for the peacekeeper attacks, international law violations, and the illegal RUF trade of diamonds for arms.[63] The US government met with Sierra Leone's Attorney General, Solomon Berewa, who, on behalf of the Sierra Leonean government, suggested he serve as co-prosecutor of an international tribunal.[64] The British and Sierra Leonean governments sought to locate the Court within the Sierra Leonean legal system, thus providing them with the greatest possible cooperative control over prosecution case selection.[65] The US government rejected their position, preferring a 'co-establishment process'.[66] The British government continued to assert the need to avoid a prosecutor who might engage in sensitive investigations, including British culpability.[67]

On 12 June, President Kabbah wrote to the UN Security Council requesting it to set up a 'Special Court for Sierra Leone' to 'try to bring to credible justice those members of the RUF and their accomplices responsible for committing crimes against the people of Sierra Leone and for the taking of UN peacekeepers as hostages'.[68] The Secretary General sent a senior legal officer to Freetown to meet with the Sierra Leonean government who expressed a clear preference for 'a national court with a strong international component'.[69] After a closed session on

21 June, the Security Council found that the RUF had violated the Lomé Peace Agreement and demanded that the peacekeeper hostage takers be 'brought to justice'.[70]

Holbrooke's plan was materializing by July 2000. The LURD, who now enjoyed US as well as British support and would also commit international crimes, attacked North Western Liberia from Guinea.[71] 'Guinean' forces were provided with increased US military training and ammunition for the offensive against Taylor.[72] Continuing UN sanctions impeded the Liberian government from legally acquiring arms to defend its territory. Conscious that more than a quarter of US hydrocarbon supplies would soon be procured from the region (greater than that procured from the Middle East), that lucrative fields exist off the Liberian[73] and Sierra Leonean coasts, and that China was emerging as an influential Liberian partner,[74] securing stability became a greater US priority.[75] Despite ECOWAS, French, Chinese, and Russian support, Liberia failed to change UK and US opposition to removing sanctions.[76]

On 14 August 2000, the UN Security Council requested that the UN Secretary General create a Special Court for Sierra Leone by negotiating an agreement with Sierra Leone's government.[77] By November 2000, an overwhelmed RUF signed a ceasefire agreement requiring disarmament and granting diamond-mining control to UN peacekeepers. By May 2001, sanctions limiting Taylor's fiscal capacity to purchase weapons were introduced to accompany his legal exclusion from the armaments marketplace.[78]

Defining the parameters of the SCSL's jurisdiction

The British narrative informing the Court's design was evident in the UNSC resolution that commended Sierra Leone's government and ECOWAS for bringing lasting peace.[79] The resolution made ambitious claims about the Court's potential – that it would pave the way for a 'credible system of justice and accountability', end impunity, enable reconciliation, and restore peace.[80] The resolution assumed that Kabbah was not culpable for crimes and that he intended to refrain from shaping prosecution case selection.

Once Security Council consensus had been reached on the Court's creation and financial independence from UN coffers, Britain and the US largely controlled the Court's design.[81] Negotiation of the Court's legal framework and constitutive instruments occurred in September 2000 at UN headquarters and in Freetown with Sierra Leonean Attorney General, Solomon Berewa, and President Kabbah.[82] The meetings suggested that a comprehensive public information campaign would be required to

persuade Sierra Leoneans of the court's fair nature and the merit of a limited number of accused.[83] However, Kabbah's meagre influence over the Court's design left him and his government on the prosecution's jurisdictional radar. Consequently, Kabbah's government refused to commit to cooperation with the SCSL until the Court was established and the prosecutor appointed.[84] In addressing the Lomé amnesty, despite conceding amnesty in the Conakry Accord, the Secretary General asserted that the UN consistently maintained a position excluding amnesty for international crimes.[85]

In the years within the jurisdiction of the Court (30 November 1996 onward), the TRC attributed 57 per cent of abuses to the RUF, 30 per cent to the SLA, and 12 per cent to the CDF with a negligible percentage committed by ECOMOG forces.[86] Whom to prosecute for those crimes was the cause of UN Secretariat–Security Council contention. The Secretary General recommended extending jurisdiction to 'those most responsible' including those in 'political or military leadership' roles including both a 'leadership or authority position' rather than the Security Council's interpretation of 'those who bear the greatest responsibility' with reference to 'command authority'.[87] The Secretary General also noted the Court's functional vulnerability due to dependence on contributions of personnel, equipment, services, and funds from states not party to the agreement.[88] The Security Council rejected jurisdiction over 'those most responsible', preferring 'those who played a leadership role' excluding the various armed groups' financiers and political supporters, which would include British support of the CDF.[89] The Secretary General accepted the 'persons who bear the greatest responsibility' threshold, but stated that it did not limit jurisdiction to political and military leaders only.[90] Instead, he said, determination of the phrase 'falls initially to the prosecutor and ultimately to the Court itself'. He stated that paragraph two of the proposed amendment which says 'those leaders . . . who have threatened the establishment of and implementation of the peace process in Sierra Leone' is a guide for the prosecutor and not an element of the crime itself.[91] This placed aiding and abetting actors, including Taylor, Compaoré, Gaddafi, the UK government, and the Sierra Leonean government, within the prosecutor's jurisdiction.

This issue was not resolved, but the prosecution ended up following the Security Council's command responsibility preference, ostensibly excluding ostensible political or financial supporters. The SCSL prosecutor's selection demonstrated US concerns shared by Britain and Kabbah about the sovereignty costs of an independent prosecutor potentially pursuing cases impinging upon Anglo-American interests. The US Whitehouse asked Department of Defence (DOD) lawyer David Crane if

he would 'help set up an experiment we've got going in West Africa'.[92] After the August 2001 Security Council resolution endorsing the SCSL, Crane began utilizing DOD intelligence information to identify those he believed to be the most responsible for crimes committed during the conflict.[93]

The conflict's conclusion

The anticipated accused were placed under increasing pressure through 2001 by state supporters of the Court. In January 2001, military, economic, political, and legal pressure procured Taylor's public renouncement of his support for the RUF and Sam Bockarie's apparent expulsion from Liberia.[94] In March 2001, French, Russian, and Chinese support was acquired for UN arms, diamonds, and military training sanctions on Liberia as well as travel bans on cited Liberian government members.[95]

In May 2001, a ceasefire agreement allowed SLA troops to occupy RUF positions and only obligated government consideration of releasing detained RUF. At that time, Guinean attacks, sanction-imposed cessation or reduction of Liberian support, increased UNAMSIL capacity, fleeing disarmed RUF combatants, the threat of British force deployed in Freetown, and recurring British military flights over RUF positions meant interim leader Issa Sesay faced military annihilation. Sesay accepted Sankoh not being released as had been promised, relinquished all RUF areas of control to the government, promised full participation in disarmament, demobilization, and reintegration, and allowed deployment of UNAMSIL peacekeepers to diamondiferous areas.[96] Hoping to avoid SCSL prosecution, Sesay cast himself as peacemaker. He also supported a UNAMSIL presence that deterred Guinean attacks and allowed UNAMSIL-regulated RUF mining.[97]

SCSL jurisdictional constraints

The agreement between the UN and the government of Sierra Leone on the Court's establishment was signed on 16 January 2002. The Sierra Leonean government ratified the agreement.[98] The Court's temporal jurisdiction, beginning on 30 November 1996, excluded key actors in command control positions, including former National Provisional Ruling Council (NPRC) chairman and head of state, Valentine Strasser, and senior NPRC official, Julius Maada Bio. Strasser and other senior NPRC officers had dissidents killed without trial during their time in power and wielded command control over the armed forces.

Britain provided Strasser asylum. The temporal mandate also focused the prosecution disproportionately on criminality relating to capturing and retaining mineral-rich areas.[99]

The statute provided peacekeepers and government-aligned private military contractors ad hoc amnesty. The statute places peacekeepers within their sending state's primary jurisdiction and requires Security Council approval for Court jurisdiction, enabling alleged perpetrators such as ECOMOG commander, Colonel Maxwell Khobie, to evade prosecution.[100] Article 1 also provides ad hoc immunity to British private military contractors, and army and diplomatic personnel who directed, financed, and, in some instances, engaged in hostilities where abuse was perpetrated.[101] The prosecution cited an absence of information as justification for failing to seriously consider culpability above Hinga Norman in the CDF.[102] The TRC, with dramatically less investigative capacity, identified and reported multiple incidents, demonstrating a clear case for Kabbah's aiding and abetting of, and command control over, the CDF.[103]

Another jurisdictional constraint is the mode of liability for an accused. The designing actors, after excluding prosecution of British and government-aligned mercenaries, enabled the 'aiding and abetting' mode of liability, rather than only planning, instigating, ordering, or committing abuse. The prosecution of Charles Taylor is the most conspicuous case here, as proving that abuse occurred is not a significant obstacle since the instances alleged are the same instances of abuse the Court held to have occurred in the RUF and AFRC cases.[104] Aiding and abetting require only that substantive material support is provided to an armed group and that one knows or ought to know that the group has committed or will commit crimes. Taylor, unlike the others accused, was found to have only substantial influence over the RUF/AFRC, not to bear individual criminal responsibility, and not to hold effective control over the leadership of the RUF or AFRC.[105]

The court's structure and mandate set parameters restraining the prosecutor's jurisdiction to those bearing the greatest responsibility for crimes committed, other than external private military and peacekeeping personnel who supported the preferred party to the conflict. Functional and fiscal elements, some of which were built into the court's design, further impeded the pursuit of persons within these parameters.

SCSL functional controls

Article 2 of the SCSL agreement stipulates that the Secretary General and the President of Sierra Leone will appoint key Court personnel.[106]

As they funded the Court, the British and US governments had the informal power to recommend critical Court appointments to the Secretary General and to withhold or threaten funding to procure politically favourable case selection.[107] The US recommended the DOD lawyer David Crane as the court's first Chief Prosecutor. The Secretary General viewed Crane's curriculum vitae unfavourably, requiring Secretary of State Colin Powell and others to persuade him.[108] The Sierra Leonean government appointed the Deputy Prosecutor, Desmond de Silva. President Kabbah and de Silva were former colleagues in the same chambers in London.[109] Despite clear cause for perceived bias, de Silva accepted the position. The US was also able to appoint a number of key prosecution personnel.[110] Similarly to de Silva, the Court's first President, Geoffrey Robertson, accepted his position despite his public assertions as to the RUF's guilt prior to taking up his position as President.[111] While the SCSL's design reflected the US and British positions, consultation with the Sierra Leonean government allowed interested actors, including the President and Vice President, to protect themselves through cooperation, while deploying the Court against a political threat – Sam Hinga Norman.[112] Despite Kabbah's clear command control as Minister of Defence and President, and the TRC's overwhelming evidence of his aiding and abetting in war crimes, the Court refrained from indicting or seriously investigating him. The British government and Kabbah had a shared interest in shaping CDF case selection to prevent their own prosecution. The British-seconded Inspector General of Police allocated Sierra Leonean investigators to the prosecution who led investigations, including those of the CDF. After 30 to 45 days in Sierra Leone, the prosecution had determined what crimes and which persons would be prosecuted.[113]

Prosecution case selection was also shaped via provision of information. David Crane cites the intelligence available at the US DOD as critical to his case selection. After September 2001, when informed that he was likely to be appointed, Crane had had almost a year to examine DOD information. He stated that after seeking NGO corroboration of DOD information, he held 'a four corners idea as to who bore the greatest responsibility' before going to Sierra Leone to begin investigations.[114] A former prosecution investigator noted that it was already clear who would be pursued upon the prosecutor's arrival in Sierra Leone.[115] Crane formed a view of the conflict as beginning because of individual criminal gain.[116] He viewed the RUF case as the 'blood diamond story' – 'the movie for real' in which RUF motives 'all boiled down to a commodity, generally diamonds' and the RUF leadership's personal criminal gain.[117] He also viewed the conflict as 'a good news story' because 'the good

guys [Kabbah and the British Government] won'. Once in Sierra Leone, the prosecution was also contacted by British intelligence (MI6).[118] MI6 Meetings were held in Europe and West Africa. British and American intelligence officers shared intelligence on RUF procurement of financial, military, and logistical support with the prosecution.[119]

Two other elements of the Court's design affected prosecution case selection: Court location and financial dependence. The prosecution was constrained by its extraordinary dependence on US financial support and cooperative support from the Sierra Leonean government. Crane travelled to Washington three to four times a year to request financial support for the Court. That financial dependence constrained RUF case selection. Crane, upon determining that Muammar Gaddafi and Blaise Compaoré were just as culpable as Taylor, was instructed by both the US Department of State and Senator Gregg's office not to pursue either Gaddafi or Compaoré and to stay focused on Taylor.[120] Those offices made clear that pursuit of Compaoré, Gaddafi, or weapons trader Ibrahim Bah would cause cessation of court funding from the US government.[121] Compaoré and the weapons trader, Ibrahim Bah, who organized the facilitation of arms through Burkina Faso to the RUF, were originally thought to be within the political parameters of indictment.[122] Their cooperation with the US government on terrorism (Bah was on the payroll of US intelligence), as well as the anticipated political and diplomatic fallout of indicting more than one head of state outweighed, in the view of the US, the good of holding the two accountable.[123] Upon being appointed prosecutor, Stephan Rapp considered indicting 'at least one additional person'.[124] Rapp declined to proceed on practical grounds citing time-limited resources, but it is likely that the person he considered indicting was Kabbah as he viewed the TRC report, which is highly critical of Kabbah, as indicating the scale of the various parties' culpability.[125] Part of the reason for this was the Court's location in Sierra Leone, which heightened its dependence on support from Kabbah's government. Kabbah wielded the option, if confronted by politically sensitive case selection, to expel court personnel and close the Court – instruments unavailable to Rwandan and Balkan governments under ICTY and ICTR investigation. Senior prosecution personnel therefore viewed Kabbah as beyond their reach, particularly after the removal of ICTR prosecutor, Carla del Ponte.[126] Hollis, in this book, asserts that the evidence to indict Kabbah was not there. Yet evidence was clearly identified by the TRC of both command control and aiding and abetting.[127] A former investigator had 'the door closed in their face', when pursuing evidence of Kabbah's culpability.[128] Alongside the

conflict of interest of Sierra Leone police officers investigating their own head of state, it seems that the prosecution avoided serious investigation of evidence easily obtained by the TRC.

The fact that senior State Department and congressional personnel confirm the motivation to establish the Court as a part of a strategy of regime change in Liberia, and that the prosecutor was told not to pursue Compaoré, Gaddafi, and Bah demonstrates discriminatory prosecution case selection. Hollis asserts in this book that the evidence was not there to pursue those figures. The prosecutor, the State Department personnel, and the Senate staffers confirm that the prosecutor was told not to pursue evidence incriminating those actors and to focus on Charles Taylor. The evidence was insufficient because the prosecutor was instructed not to try to find it. Surprisingly, despite the publication of this information and Taylor's defence citing it in submissions,[129] Taylor's defence neglected to use the selective prosecution precedent in Celebici to have the case thrown out.[130] The Celebici precedent provides judicial oversight of case selection – oversight that the Taylor defence, as well as the CDF and RUF defence, failed to fully explore. By calling the former prosecutor, Crane, or other personnel, Taylor's defence could have demonstrated 'unlawful or improper (including discriminatory) intent' of the prosecutor and the clear refrain from prosecuting 'other similarly situated persons'.[131] Speaking before the Security Council in 2012, SCSL prosecutor, Brenda Hollis, stated that the Court's most important legacy 'will be the achievement of our mandate: to prosecute those who bear the greatest responsibility'.[132] Whether via jurisdictional constraint or functional pressure, the prosecution was unable or unwilling to pursue key persons bearing greatest responsibility. Its legacy is that it pursued only those it was politically expedient to prosecute.

Conclusion

The success of Sierra Leone's TJ experience needs to be considered in the context of its political drivers. This chapter demonstrates that the nature of those drivers aligned more with realist state self-interest than with liberal emerging norms. Consideration of success, therefore, must evaluate conflicts of interest among the actors who designed the Court as well as the personnel who staffed it. If success is independently pursuing its mandate to prosecute those bearing greatest responsibility in spite of political opposition to do so, the SCSL cannot be considered a success. In bending to the self-interest of the US government in avoiding the prosecution of Blaise Compaoré, Ibrahim Bah, and Muammar Gaddafi, the prosecution compromised the emerging norm of independent

prosecution of international crimes cases. The norm was similarly compromised by accommodation of the Kabbah and British governments' realist self-interest in avoiding the prosecution of Kabbah or the British government or commercial actors – interests built into the Court's jurisdiction and function. The nature of Sierra Leone's TJ processes was assured in mid-2000 when Richard Holbrooke met Senator Gregg. The UK had propagated a narrative of sole RUF culpability. The embarrassment of blocked UN funds combined with the declining influence of Taylor in Sierra Leone rendered the Clinton administration's pro-Taylor policy expendable. These two shifting variables constituted exogenous shocks sufficient to shift Sierra Leone's post-conflict TJ course away from a power-sharing government, blanket amnesty, and a TRC towards military resolution and the prosecution of the defeated. In the case of Sierra Leone, the British government enjoyed what Paul Pierson calls 'first mover's benefit'.[133] Greater engagement in Sierra Leonean domestic politics positioned the UK to shape local and global narratives depicting fluid events. Their narrative, combined with a US Senate ally, triggered Clinton administration policy revision favourable to the UK. That revision constructed TJ processes, particularly the SCSL, in a way that compromised their independence, and therefore their success.

Despite international divisions, the Court agreement was commonly characterized as 'an agreement between all members of the UN and Sierra Leone'.[134] This analysis reinforced false perceptions of broad-based and objective foreign involvement in the Court's creation, design, and function. The literature has roundly neglected the role of key actors in shaping the court and its processes.[135] Similarly, commentators routinely address issues relating to SCSL processes, jurisprudence, and jurisdiction as if the Court were created out of utilitarian or moral motives, emphasizing the role of norms and norm entrepreneurs.[136] These analyses are commonly devoid of local and international historical context, leading to strong (but wrong) claims as to the commitment of the international community to hold perpetrators accountable, no matter how rich, powerful, or feared they might be.[137]

One key indicator of TJ success is the extent to which it pursues cases, adjudicates, finds facts, or otherwise behaves in a manner that confronts the interests of the powerful while advancing TJ goals. The assertiveness of US policy allowed it to nearly singlehandedly construct Sierra Leone's TJ 'rules and arrangements'.[138] The Sierra Leonean case exemplifies what US hegemonic power can achieve, to either provide stability, peace, and directed justice, or to disrupt efforts by a lesser power to affect its preferred outcome.

Another lesson of the historical antecedents to Sierra Leone's TJ process is the absence of any accountability for the SCSL's design and

operation. The TRC bore some greater accountability through local and international consultation on design prior to the US policy shift. After the US changed position to align with Britain, the American and British governments behaved strategically and disguised realist intentions with claims that they were supporting international norms. In fact, the SCSL model was employed because of its cost and because it offered the US and UK governments significant influence over its operation. To the extent the Court achieved its politically intended purpose – to assist regime change in Liberia and help stabilize Sierra Leone – it can be considered a success. The Court attached a level of stigma to Taylor that assisted other instruments in politically, economically, and militarily isolating him and forcing him to abandon power in Liberia. In Sierra Leone, the Court removed the RUF and AFRC leadership as political actors for Kabbah's government, along with Kabbah and Berewa's internal SLPP adversary, Sam Hinga Norman. The Court served to reinforce Kabbah's grip on power, and with it Britain's position as first patron.

The Special Court's key lesson for advocates of impartial international criminal justice is that the narratives accompanying TJ processes demand historical interrogation. A critical lesson for civil society actors who genuinely seek normative advance is that they must engage with court design in a manner that seeks to limit constraints on prosecution case selection independence – whether jurisdictional or functional. Transitional processes should be viewed in the context of larger geopolitical goals. It is in this context that the success of Sierra Leone's TJ experience must be judged.

Notes

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2 E. Evenson (2004) 'Truth and Justice in Sierra Leone: Coordination between Commission and Court', *Columbia Law Review* 104, 730.

3 Mahony and Sooka, in this book, consider many of the TRC's constraints within the context this chapter provides.

4 Amnesty International (2012) 'Taylor Verdict Sends Message That No One Is Above the Law', 28 April; L. Gberie (2014) 'The Special Court for Sierra Leone Rests – For Good', *Africa Renewal*, 6 April.

5 The court's primary financial supporters include the governments of the US, the UK, and the Netherlands; C. Schocken (2002) 'The Special Court for Sierra Leone: Overview and Recommendations', *Berkeley Journal of International Law*

20(2), 436–461; International Center for Transitional Justice (2013) 'Sierra Leoneans Reflect on SCSL in "Seeds of Justice"', 11 July, ictj.org; UN Security Council (UNSC) (2000) 'Security Council Resolution 1306', S/RES/1306.

6 D. Hawkin, D. Lake, D. Nielson, and M. Tierney (2006) *Delegation and Agency in International Organizations* (New York: Cambridge University Press).

7 Mahony's interview with Nicholas Rostow, former Senior Policy Adviser to the US Permanent Representative to the United Nations and General Counsel, US. Mission to the United Nations, 9 November 2012, Washington, DC.

8 Star Radio (30 September 1998) 'Liberian Daily News Bulletin', All Africa.com

9 Mahony's interview with Lawrence Wilkerson, former Chief of Staff to Secretary of State, Colin Powell, 7 July 2014, Washington, DC.

10 *Prosecutor v Charles Taylor*, SCSL-2003-01-T, 'Transcript', 9 November 2009, p. 31354.

11 L. Gberie (1997) 'The May 25 Coup d'Etat in Sierra Leone: A Militariat Revolt?', *Africa Development* 22(3–4), 170; Mahony's interview with former Tunisian delegate to the UNSC, 11 June 2009, The Hague, The Netherlands; BBC News (2000) 'Britain's Role in Sierra Leone', 10 September.

12 Global Witness (2001) 'Taylor-made: The Pivotal Role of Liberia's Forests and Flag of Convenience in Regional Conflict', globalwitness.org, p. 17.

13 TRC Report, Vol. 3A, 2004, p. 298.

14 Gberie, 'The May 25 Coup d'Etat', p. 166; interview with former Tunisian delegate; BBC News, 'Britain's Role in Sierra Leone'.

15 Gberie, 'The May 25 Coup d'Etat', p. 166; interview with former Tunisian delegate; BBC News, 'Britain's Role in Sierra Leone'.

16 K. Timmerman (2003) 'Liberia and Blood Diamonds', *Insight Magazine*, 25 July; I. Rashid (2000) 'The Lomé Peace Negotiations', Conciliation Resources.

17 TRC Report, Vol. 3A, pp. 291–292; D. Francis (1999) 'Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?', *Third World Quarterly* 20(2), 328; Legg and Ibbs (27 July 1998) 'Report of the Sierra Leone Arms Investigation', *House of Commons*, HC 1016, p. 28; D. Keen (2005) *Conflict and Collusion in Sierra Leone* (Oxford: James Curry), p. 218; Timmerman, 'Liberia and Blood Diamonds'; Rashid, 'Paying the Price'.

18 IRIN (1999) 'IRIN Update 420 for 11 March 1999', University of Pennsylvania – African Studies Centre; TRC Report, Vol. 3A, 2004, pp. 324–325; Keen, *Conflict and Collusion*, p. 250.

19 Rashid, 'Paying the Price'.

20 Timmerman, 'Liberia and Blood Diamonds'; Rashid, 'Paying the Price'; Keen, *Conflict and Collusion*, p. 251.

21 Lomé Peace Agreement, July 1999, Lomé, Togo.

22 M. Kahler (2000) 'The Causes and Consequences of Legalization', *International Organization* 54(3), 662.

23 Kahler, 'Causes and Consequences', p. 663.

24 Timmerman, 'Liberia and Blood Diamonds'.

25 N. Amishi (2000) 'How U.S. Left Sierra Leone Tangled in a Curious Web', *New York Times*, 4 June.

26 TRC Report, Vol. 3A, pp. 351, 355.

27 UN (22 October 1999) 'UN Mission for Sierra Leone to Aid with Implementation of Lomé Peace Agreement', SC/6742; US Committee for Refugees (15 December 1999) 'Sierra Leone's Path to Peace: Key Issues at Year's End', Press Release.

28 UN (7 February 2000) Press Release, SC/6801.
29 D. Scheffer (2012) *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press), p. 313.
30 Interview with member SCSL-OTP, 26 August 2010, via telephone; Amnesty International (1 November 1998) 'Sierra Leone: 1998 – A Year of Atrocities Against Civilians', p. 2; HRW (July 1999) 'Sierra Leone: Getting Away with Murder, Mutilation, Rape', hrw.org
31 On a visit to Freetown, US Ambassador for War Crimes, David Scheffer informed the US Ambassador that the RUF were spitting in their face through their failure to comply. Scheffer, *All the Missing Souls*, pp. 315, 319.
32 Truth and Reconciliation Commission Act, 2000.
33 TRC Act (2000), Memorandum of Objects and Reasons Appended to the Act.
34 International Crisis Group (ICG) (2002) 'Liberia: The Key to Ending Regional Instability', *Africa Report* 43.
35 Mahony's interview with Kevin Linskey, former staffer to Senator Judd Gregg, 13 December 2010, Washington, DC.
36 Mahony's interview with Linskey.
37 T. Weiner (2000) 'Solitary Republican Senator Blocks Peacekeeping Funds', *New York Times*, 19 May.
38 T. Weiner (2000) 'G.O.P. Senator Frees Millions for U.N. Mission in Sierra Leone', *New York Times*, 7 June; Sierra Leone Web (June 2000) Archive sierraleoneweb.org
39 Weiner, 'Solitary Republican'; Mahony's interview with Victoria Holt, Former staffer to US Ambassador to the UN, Richard Holbrooke, 13 January 2011, via phone.
40 TRC Report, Vol. 3A, p. 249; UN (19 May 2000) 'Fourth Report of the Secretary General on the United Nations Mission in Sierra Leone', S/2000/455, p. 3.
41 TRC Report, Vol. 3A, pp. 358, 415–421, 245–249.
42 Timmerman, 'Liberia and Blood Diamonds'.
43 TRC Report, Vol. 3A, p. 373; interview with former Tunisian delegate; UN (4 May 2000) 'Statement by the President of the Security Council', s/prst/2000/14.
44 TRC Report, Vol. 3A, pp. 405–406, 233, 393, 377.
45 Initial reports suggested the RUF first opened fire. However, the TRC's investigation found that SLA/CDF elements were the first to open fire on the compound procuring an RUF return of fire. A civilian participant in the protest also observed British soldiers that the civilian stated were clearly in command of the CDF and SLA combatants. TRC Report, Vol. 3A, pp. 415–421, 245–249; Interview with Sierra Leonean civilian participant in the 8 May 2000 protests, 17 April 2015, Washington D.C.
46 TRC Report, Vol. 3A, pp. 331, 457–458; ICG, 'Liberia: The Key'; BBC News, 'Britain's Role in Sierra Leone'.
47 J. Gregg, (2000) 'A Graveyard Peace', *The Washington Post*, 9 May.
48 UN (2000) 4139th meeting of the UNSC, S/PV.4139; UN (2000) 'Secretary General Pleads with Council not to Fail People of Sierra Leone, Africa', Press Release, SC/6857; Scheffer, *All the Missing Souls*, pp. 320–330; Mahony's interview with member SCSL-OTP, 26 August 2010, via telephone.
49 *The Washington Post* reported that documents were found at Sankoh's house referring to Charles Taylor's role in trading diamonds with the RUF. The letter

in fact referred to a Charles who was the son of the head of the diamond buyers' association in Antwerp, see *Taylor* Transcript, pp. 31248–31251.

50 TRC Report, Vol. 3A, pp. 449, 451, 454.

51 TRC Report, Vol. 3A, p. 460. See, for example, T. Karon (2000) 'In Sierra Leone: Saving Hostages May Cost Dearly', CNN 16 May; BBC News (2000) 'India Concerned about Hostage Peacekeepers', 9 June.

52 Mahony's interview with Holt; Mahony's interview with Linskey; Mahony's interview with Former staffer to Senator Judd Gregg, US Senate, 13 December 2010, via telephone; Scheffer, *All the Missing Souls*, p. 322.

53 Mahony's interview with Holt; Mahony's interview with Linskey.

54 Mahony's interview with Holt; Mahony's interview with Linskey.

55 Mahony's interview with Holt; Mahony's interview with Linskey.

56 A. Smith (2013) 'The Expectations and Role of International and National Civil Society in the SCSL', in C. C. Jalloh (ed.) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (Cambridge: Cambridge University Press), p. 47.

57 Smith, 'The Expectations and Role', p. 47.

58 Smith, 'The Expectations and Role', p. 47.

59 Interview with former Tunisian delegate.

60 Interview with former Tunisian delegate.

61 Interview with former Tunisian delegate.

62 D. Drezner (2008) *All Politics Is Global: Explaining International Regulatory Regimes* (Princeton, NJ: Princeton University Press).

63 Sierra Leone Web Archive.

64 Scheffer, *All the Missing Souls*, pp. 323, 328.

65 Scheffer, *All the Missing Souls*, pp. 323, 330.

66 Scheffer, *All the Missing Souls*, pp. 330–331.

67 Scheffer, *All the Missing Souls*, p. 331.

68 UN (2000) 'Letter Dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the President of the Security Council', S/2000/786, p. 2.

69 UN (2000) *Fifth Report of the Secretary-General on United Nations Mission in Sierra Leone*, 31 July, S/2000/751.

70 UN (2000) Official communiqué of the 4163rd meeting of the UNSC, S/PV.4163, p. 21.

71 ICG, 'Liberia: The Key', p. 24; Mahony's interview with Linskey.

72 ICG, 'Liberia: The Key', p. 24; Mahony's interview with Linskey; *Taylor* Transcript, pp. 31332–31333; US House of Representatives (8 February 2006) 'The impact of Liberia's election on West Africa', Hearing before Subcommittee on Africa, Global Human Right, and International Relations.

73 An estimated 1.5 billion barrels of oil is estimated to be in Liberian waters. US-based company Chevron and a Nigerian firm Oranto have subsequently been provided concessions by Ellen Johnson-Sirleaf's Liberian government; *The Analyst* (1 September 2010) 'Oil Manoeuvres: Hopes, Woes, Worries in Wait'.

74 This emerging influence is perceived to be arousing Chinese commercial interests as well as China's first foray into peacekeeping.

75 US House of Representatives, 2006; National Energy Policy Development Group (May 2001) Report of the National Energy Policy Development Group, US Government Printing Office, Chapter 8.

76 Interview with former Tunisian delegate; *Taylor* Transcript, pp. 31338–31339.
77 UNSC (14 August 2000) 'Security Council Resolution 1315 (2000)', S/RES/1315.
78 UN (7 May 2001) 'Security Council Liberia Diamond Ban and Travel Ban Come into Force', Press Release, SC/7058.
79 UNSC Resolution 1315.
80 UNSC Resolution 1315.id.
81 Interview with former Tunisian delegate; Scheffer, *All the Missing Souls*, pp. 334–339.
82 UN (4 October 2000) 'Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone', S/2000/915, paras 5–6.
83 UN, 'Report of the Secretary-General', para. 7.
84 UN, 'Report of the Secretary-General', para. 8.
85 UN, 'Report of the Secretary-General', paras 22–23.
86 TRC Report, Vol. 2, p. 39.
87 UN, 'Report of the Secretary-General', paras 31–32.
88 UN, 'Report of the Secretary-General', para. 55.
89 UN, 'Letter Dated 22 December 2000 from the President of the Security Council Addressed to the Secretary-General', S/2000/1234.
90 UN, 'Letter Dated 12 January 2001 from the Secretary-General addressed to the President of the Security Council', S/2001/40.
91 UN, 'Letter dated 12 January 2001'.
92 D. Crane (2010) 'The Investigation, Indictment, and Arrest of Charles Taylor: A Regional Approach to Justice' (The Baldy Centre for Law and Social Policy, University of Buffalo).
93 Crane, 'The Investigation'; Mahony's interview with David Crane, former Chief Prosecutor, SCSL, 17 May 2007 and 17 August 2010, via telephone.
94 UN, 'Ninth Report of the Secretary-General on the United Nations Mission in Sierra Leone', 14 March 2001, S/2001/228, p. 5.
95 Interview with former Tunisian delegate; UNSC (2001) 'Security Council Resolution 1343', 7 March.
96 TRC Report, Vol. 3A, p. 461.
97 Keen, *Conflict and Collusion*, p. 269.
98 Sierra Leone practices dualism, which means that treaties must receive a constitutional and fortiori parliamentary blessing before they can be applied at national level; N. Udombana (2003) 'Globalization of Justice and the Special Court for Sierra Leone's War Crimes', *Emory International Law Review* 17, 8.
99 US House of Representatives, 2006.
100 Article 1(2–3), SCSL Statute; former prosecution investigator, 2010; Mahony's interview with Alhaji Ibrahim Ben Kargbo, President, Sierra Leone Association of Journalists, 4 April 2007, Freetown, Sierra Leone; Mahony's interview with Gavin Simpson, Author, SLTRC report, 30 March 2007, Freetown, Sierra Leone.
101 *House of Commons* (27 July 1998); Legg and Ibbs, 'Report', p. 28.
102 Mahony's interview with Crane; interview with Stephen Rapp, former Chief Prosecutor, SCSL-OTP, 3 April 2007 and 3 February 2013, Freetown, Sierra Leone; interview with Desmond de Silva, former Deputy and Chief Prosecutor, SCSL-OTP, 16 April 2007, London.
103 TRC Report, Vol. 3A, pp. 273, 283, 285–286.

104 See the incidents in the RUF (excluding counts relating to Freetown in January and February 1999) and AFRC indictments. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-A, Appeals Chamber, Judgment, 26 October 2009; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-PT, Amended Indictment, 2 August 2006; *Prosecutor v Brima, Kamara and Kanu*, SCSL-2004-16-PT, Amended Indictment, 18 February 2005; *Prosecutor v Brima, Kamara and Kanu*, SCSL-2004-16-A, Appeals Chamber, Judgment, 22 February 2008; *Prosecutor v Charles Taylor*, SCSL-03-01-PT, Prosecution Second Amended Indictment, 29 May 2007, 9.
105 *Prosecutor v Charles Taylor*, SCSL-03-01-PT, Judgment, 18 May 2012, 2466–2468.
106 SCSL (2000) Statute of the Special Court for Sierra Leone, Freetown, Sierra Leone.
107 Mahony's interview with former Registrar, Robin Vincent, 2007, Freetown, Sierra Leone.
108 Mahony's interview with Rostow.
109 UK Parliament, Select Committee on Standards and Privileges, minutes of evidence, 19 July 2005.
110 Mahony's interview with Rostow.
111 Robertson was excluded from sitting on the RUF case as a consequence of his assertions of RUF guilt. He later resigned.
112 Interview with former Tunisian delegate; SCSL Statute; Special Court Agreement, 2002 (Ratification) Act.
113 Mahony's interview with Crane.
114 Mahony's interview with Crane.
115 Interview with former prosecution investigator, 2010.
116 Crane, 'The Investigation'.
117 Crane, 'The Investigation'; US House of Representatives Committee on the Judiciary (8 April 2008) 'Subcommittee on Crime, Terrorism, and Homeland Security, Prosecuting the use of children in times of conflict', Testimony of David Crane.
118 Mahony's interview with Crane.
119 *Taylor* Transcript, 9 November 2009, p. 31446.
120 Crane, 'The Investigation'; Mahony's interview with Michael Miklaucic, former Deputy Ambassador at Large for War Crimes Issues, US Department of State, 20 September 2011; Mahony's interview with former staffer to Senator Judd Gregg, 12 July 2012, Washington, DC; Mahony's interview with Crane; Chief Prosecutor, David Crane also stated this in an interview with *The Times* newspaper (25 February 2011) 'Prosecutor reveals how Britain let Gaddafi off', *The Times*.
121 Crane, 'Prosecutor Reveals'; Mahony's interview with Crane; Mahony's interview with Miklaucic.
122 Mahony's interview with former SCSL prosecution investigator, 26 August 2010.
123 Mahony's interview with former SCSL prosecution investigator; According to intelligence reports, Bah had been given $10,000 by US officials who also bought him a plane ticket to Abidjan where he spoke to US officials in January 2002 as well as in Ouagadougou in February. See: *Taylor* Transcript, pp. 31451–31453.

124 S. Rapp (2013) 'The Challenge of Choice in the Investigation and Prosecution of International Crimes in Post-Conflict Sierra Leone', in Jalloh (ed.), *The Sierra Leone Special Court*, p. 25.
125 Rapp, 'The Challenge of Choice', p. 25. The Report (Vol. 3A) documents President Kabbah's trip to the CDF base zero on Bonthe Island with supplies for the CDF and his organization of support before and after Operation Black December in which mass abuses occurred and their occurrence was communicated to the President (pp. 283, 285–286). Kabbah's leadership role and the CDF's chain of command are also documented (p. 273).
126 Interview with former senior SCSL prosecution member, 18 May 2007; Carla Del Ponte (2009) *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity. A Memoir* (New York: Other Press).
127 TRC Report, Vol. 3A, pp. 273, 283, 285–286.
128 Interview with member SCSL-OTP, 26 August 2010.
129 C. Mahony (2012) 'Prioritising International Sex Crimes before the Special Court for Sierra Leone: One more Instrument of Political Manipulation?', in M. Bergsmo (ed.) *Thematic Prosecution of International Sex Crimes* (Beijing: Torkel Opsahl Academic E-Publisher), pp. 59–84; *Prosecutor v Taylor*, Sentencing brief on behalf of Charles Ghankay Taylor, SCSL-03-01-T, 10 May 2012, pp. 79–80.
130 *Prosecutor v Delalic, Mucic, Delic, and Landzo* (Celebici case), IT-96-21-A, Appeals Chamber, Judgment, 20 February 2011, para. 611.
131 Celebici case, para. 611.
132 UNSC (2012) '6844th Meeting of the Security Council, The Situation in Sierra Leone', S/PV.6844. See also Hollis in this book.
133 P. Pierson (2004) *Politics in Time: History, Institutions, and Social Analysis* (Princeton, NJ: Princeton University Press).
134 H. Steiner, P. Alston and R. Goodman (2008) *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press), p. 1239.
135 Smith, 'The Expectations and Role', p. 47.
136 See, for example, Jalloh (ed.), *The Sierra Leone Special Court*.
137 Jalloh, *The Sierra Leone Special Court*; T. Perriello and M. Wierda (2004) *The Special Court for Sierra Leone: The First 18 Months* (New York: International Centre for Transitional Justice); E. Higonnet (2005) 'Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform' (Yale Law School Student Scholarship Series 6); No Peace Without Justice (2003) 'Final Narrative Status Report July 2002–October 2003'; B. Dougherty (2004) 'Right-sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra Leone', *International Affairs* 80(2), 311–328; L. Gberie (2003) 'Briefing: The Special Court of Sierra Leone', *African Affairs* 102(4), 637–648; Sigall Horovitz (2006) 'Transitional Criminal Justice in Sierra Leone', in N. Roht-Arriaza and J. Mariezcurrena (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (New York: Cambridge University Press), pp. 54–55; J. Poole (2002) 'Post-Conflict Justice in Sierra Leone', in M. C. Bassiouni (ed.) *Post-Conflict Justice* (Ardsley, NY: Transnational Publishers), pp. 563–592; W. Schabas (2003) 'The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25(4), 1035–1066; C. Bhoke (August 2006) 'The trial of Charles Taylor: Conflict Prevention, International Law and an Impunity-free Africa', ISS Paper, p. 127.
138 J. Goldstein (2005) *International Relations* (New York: Pearson-Longman), p. 83.

6

Comparing Fairness and Due Process in the RUF and CDF cases: Consequences for the Legacy of the Special Court for Sierra Leone

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> Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful. But his delight is in the law of the Lord; and in his law doth he meditate day and night. And he shall be like a tree planted by the rivers of water, that bringeth forth his fruit in due season; his leaf also shall not whither; and whatsoever he doeth shall prosper. The ungodly are not so: but are like the chaff which the wind driveth away. . . . For the Lord knoweth the way of the righteous: but the way of the ungodly shall perish.
>
> – Justices Gelaga King and Jon Kambanda dismissing the RUF Accuseds' appeals.[3]

Introduction

As the modern crop of international criminal tribunals finish their caseloads, concerted efforts to define affirmative transitional justice (TJ) legacies have begun. Having prosecuted significantly fewer accused than its closest relatives, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) – just nine trials in more than a decade, at a cost of several hundred million dollars[4] – the task facing the Special Court for Sierra Leone (SCSL) is especially challenging. No doubt the supporters of the SCSL will seek to rest their plaudits on evidence suggesting that segments of Sierra Leonean society hold broadly positive views of the trials and believe that the Court contributed to bringing peace to Sierra Leone.[5] However, these arguments should be approached with a degree of circumspection.

In a country destroyed by poverty, war and crime, and in dire need of some form of accountability, such evidence, whilst part of the overall picture, speaks little to more specialised aspects of legacy. The Court, as a legal institution, needs also to be judged on whether the trials were fair and impartial, whether the practice and procedure provide valuable precedent for other domestic and international legal processes and whether justice was actually done.

Through examination of the trial processes that convicted two sets of accused – one from the principal rebel group (the Revolutionary United Front or RUF) and one from the pro-government forces (the Civil Defence Forces or CDF), this chapter considers the legacy the SCSL leaves to international criminal law and its practice. It examines the application of international standards of fairness and impartiality to each set of accused – who were tried before the same Trial Chamber[6] – to offer a comparative analysis of the quality of justice in each case. The chapter identifies a marked disparity in the treatment of the accused at both the trial and appellate levels. Whilst the CDF accused enjoyed the application of internationally endorsed trial processes (as developed at the ICTY and the ICTR) that went some way to guaranteeing the presumption of innocence, these were not evident in the RUF trial. For those who hoped the SCSL's legacy would be built on 'international standards of justice, fairness and due process of law',[7] this inequality strikes at the heart of the SCSL's legacy. It also provides a solid premise for an analysis of whether or not the SCSL should be considered a success.

A useful departure point for this analysis is to explore how outcome-orientated 'justice' arose from the inflammatory post-conflict environment in which the trials took place. That environment enabled SCSL-sponsoring or supporting actors to promulgate an unqualified view of the RUF as an embodiment of disorder and wickedness. In contrast, the same SCSL officials, associated human rights groups and others invested in the Court's success advanced a considerably more favourable view of the other armed group whose trial is examined in this chapter – the CDF. The dominant narrative that emerged about the CDF saw them as democrats who, whilst having engaged in regrettable criminal conduct, had sacrificed life and limb in a struggle to defend democracy and the state.[8] In the language of theocentric natural law, the CDF's cause was viewed as rational, ordered and good.[9] The RUF's was the absolute converse. An exploration of why these views were so forcefully promulgated during the trials by the SCSL's state supporters and associated human rights groups is beyond the scope of this Chapter. However, Mahony's chapter in this book offers a persuasive account of the motivations of

the principal actors, the US and the UK, whose agendas dominated the SCSL's design and TJ delivery. This chapter takes no view on the veracity of the claims about the RUF and CDF, but rather argues that these prejudicial views about particular groups of combatants infected the SCSL judiciary and consequently the fairness, impartiality and process of each trial.

To substantiate this conclusion, Section I of the Chapter briefly examines the trial environment and the narrative promoted about the RUF that its cause was anarchic, tyrannical and evil. Section II examines specific evidence demonstrating the SCSL judiciary's adoption of this view and the presumption of guilt it foreshadowed. Having considered these contextual issues, Section III examines how the judiciary employed innovative 'legal principles' absent from the CDF trial to erode, and finally remove, the presumption of innocence in the RUF trial. In light of these process disparities and the unfair convictions that resulted in the RUF trial, Section IV concludes that any claim that the SCSL was a success must examine and challenge the preconception that the two trials were intended to assess individual culpability. Instead, narratives propagated by actors with vested interests in a skewed outcome impacted the Court processes to cast the trials as modern morality plays, condemning the RUF and lending the CDF legitimacy. The accused became mere allegorical figures existing only to convey a selective, moral certainty. Due process was contingent upon whose rights were at issue and fairness and impartiality were commodities to be traded against result. Those who accepted the underlying narratives may welcome and celebrate this legacy. However, regardless of the truth or falsity of the claims about the two groups, it also indicates that the SCSL must, in the final analysis, be viewed as a deeply flawed legal institution.

Section I: Promotion of the view that the RUF were anarchic, tyrannical and evil

I:I Non-judicial views

During the trials, SCSL officials and associated human rights groups promoted the view that the RUF was without moral purpose, deserving of nothing but condemnation. This view rested on the fact that the RUF had conducted an 11-year campaign (1991–2002) to overthrow a succession of governments and had attracted a reputation as a brutal organisation preoccupied with seizing power through the commission of crimes against civilians. Its leadership and membership had been vilified in the

national and international media. The same actors promoted a considerably more favourable view of another group whose leaders were indicted for crimes against humanity: the CDF, who were seen as having acted virtuously to protect democracy and prevent a slide into anarchy and tyranny, despite having regrettably committed some relatively minor crimes.

The beginnings of these views may be traced to the pre-trial work of human rights organisations. Unhelpfully, entities such as Human Rights Watch (HRW) and No Peace Without Justice (NPWJ), unqualified supporters of the SCSL, focused almost exclusively on RUF crimes committed. Despite the fact that, as finally confirmed by the SCSL Appeals Chamber,[10] the CDF *were* responsible for crimes against humanity, including murderous attacks on civilians and grotesque sexual violence, these crimes were ignored or grossly underreported.[11] In many instances, their reports referred to CDF crimes only tangentially, sought to explain them as a consequence of those committed by the rebels or characterised them as arising from a lack of discipline, rather than any illegitimacy of motive or overall purpose.[12]

Exceptions were built into the SCSL Statute, consistent with the aforementioned narrative, which reflected an acceptance that those who assisted democratic restoration deserved favourable treatment. Having viewed the wide criticism of the ICTY and ICTR for allegedly selective prosecutions,[13] the authors of the Court's mandate wisely declined to limit the personal jurisdiction of the SCSL to the RUF only. Notwithstanding, a slippery slide into selectivity began with a waiver granting immunity for 'peacekeepers and related personnel' being inserted into the Statute.[14] This was inserted for the sake of the Economic Community of West African States Monitoring Group (ECOMOG, a largely Nigerian force that fought on the side of the government) and also applied to a mixed contingent of international peacekeepers, the United Nations Mission in Sierra Leone (UNAMSIL), which included those from the UK and many others who were supporting the government diplomatically or by providing arms, or otherwise violating UN resolutions designed to end the war.[15]

There is convincing evidence that the SCSL Office of the Prosecutor (OTP) inculcated these themes into its indictments and selection of accused for prosecutions. The indictments pivoted on overall plans that alleged criminality arising as a consequence either of attempting to overthrow or to save the government.[16] Despite the fact that cogent evidence implicated President Kabbah (the President of Sierra Leone and Minister of Defence, and therefore commander of the CDF) in gross violations of

international law, he was not targeted for prosecution. No reasoned view of the available legal liabilities or the evidence exists that might justify the Prosecution's issuance of this de facto immunity.[17]

Further, and of equal toxicity to the interests of fairness and impartiality, was the Prosecution's rhetoric throughout the trials. As far as the Prosecutor was concerned, he had 'never seen a more black and white situation in my life, of good versus evil'.[18] Despite a prohibition on commenting on cases sub judice, an overarching obligation to respect the presumption of innocence,[19] and ongoing trial of the RUF accused, the Prosecution publicly labelled the ex-President of Liberia, Charles Taylor (then accused of sponsoring and leading the RUF) a 'war criminal', a 'terrorist' and 'Africa's Hitler'.[20] In contrast, when challenged concerning the propriety of the prosecution of the CDF (in light of the prevailing view that the accused were motivated by a noble desire to defend democracy), the Deputy Prosecutor, with a notable degree of regret, stated that he was 'afraid you can fight on the same side of the angels and nevertheless commit crimes against humanity'.[21]

I:II Views of the SCSL judiciary

Claims that international criminal judges are immune to external pressures cannot be taken too seriously. However, it is often possible to distinguish human rights activists or prosecutors' campaigning views from those held by professional judges. At the SCSL, unfortunately, there was little to distinguish the two. On 2 August 2007, whilst still sitting in judgment of the RUF accused, Justice Thompson issued a minority decision acquitting the CDF accused of all the charges, notwithstanding the conclusion that they were responsible for a range of crimes including murder, cruel treatment, pillage and conscripting and using child soldiers.[22] Having unilaterally raised defences on behalf of the accused, Justice Thompson reasoned that the two remaining accused should be acquitted on the basis of necessity and/or '*salvus civis supreme lex est*'.[23]

In essence, Justice Thompson reasoned that extreme duress to ensure the state's survival compelled the CDF to commit crimes. Accordingly, the crimes were forgivable and the lesser of two evils.[24] The CDF forces were fighting with 'patriotism and altruism' against 'rebellion, anarchy and tyranny', which constituted an 'evil' that was 'so pressing that normal human instincts [cried] out for action and [made] counsel of patience unreasonable'.[25] Of course, these extended views of duress undermined the very premise of modern international humanitarian law that offers no such excuse for the CDF crimes, no matter the horrors of the forces opposed. More significantly, from the perspective of

fairness and impartiality towards the RUF accused and the victims of the CDF atrocities, they bore no relation to a reasoned view of the evidence. Accordingly, they were at odds with any reasonable interpretation of the demands of the judicial oath. The suggestion that all the crimes that had been committed by the CDF – such as cannibalism, murdering young children and forcing sticks through females' genitals – were motivated or in any way the result of an attempt to protect the state or eradicate tyranny was without evidential support and intellectually and logically bereft.

Notwithstanding, the trial and appellate level dismissed the RUF Defence motion for the voluntary withdrawal or disqualification of Justice Thompson for bias, or an appearance of bias, against the RUF accused.[26] At the trial level, Justice Thompson's two colleagues (Justices Itoe and Boutet) considered that the Separate Opinion 'gave rise to some indicia of an appearance of bias'.[27] However, they were not persuaded that the Judge held clear views on the rebels' overriding criminality.[28] Subsequently, the Appeals Chamber dismissed the Defence appeal in just four paragraphs of reasoning. On the basis of a finding that neither the RUF or RUF accused were mentioned, or even alluded to by the Judge, the Appeals Chamber dismissed the Trial Chamber's (*de minimis*) finding that there were at least indications of an appearance of bias. The Appeals Chamber concluded that 'no objective appearance of bias . . . [could] . . . reasonably be ascertained from Justice Thompson's Separate Opinion'.[29]

Of course, the Trial and Appeals Chambers' decisions studiously avoided any attempt to identify whom Justice Thompson could have been alluding to, if not the RUF commanders, including those on trial. While there were other armed groups in Sierra Leone, only the RUF, the larger of the two rebellious groups, were routinely referred to as rebels. With such a fundamental fair trial right at stake, this obtuse disregard of the obvious could only mean that the Trial and five Appellate Judges were not only unconcerned by Thompson's obvious partiality (when assessed against international standards), but that they also actively sought the inevitable consequences of leaving Justice Thompson in charge of the RUF trial. The Trial and Appellate judiciary shared the same judicial starting point: that it was entirely appropriate to rest the CDF and the RUF judgments on presumptions that the CDF accused were duty-bound to act to stop the RUF *and* that the RUF were anarchic, tyrannical and evil.

In the face of the widespread condemnation of the RUF within and outside the SCSL as summarised above, only a steadfast grip by the

Court on the remaining principles of legality and individual culpability was likely to deliver fair trials for the RUF accused. However, as will be discussed below, as is plain from an analysis of the critical judicial pronouncements, novel legal principles and presumptions of guilt deployed in the RUF trial (but not the CDF trial), this was not to be. Whilst each set of accused was convicted, the convictions in the RUF trial were inevitable from the outset. The principles and presumptions employed provide a powerful demonstration of the SCSL's judicial acquiescence in the pervasive narratives that portrayed the RUF as evil and the CDF as patriots deserving of a regular trial process. The SCSL Statute guarantees both the RUF and CDF accused 'equality' under international standards mandating a presumption of innocence as a cornerstone of due process.[30] However, as will be discussed below, the presumption of innocence was reserved for those that the Court's sponsors considered to be fighting on the side of the angels.

The following section examines the judicial approach to critical procedural safeguards (the accused's right to be informed of the charges [Section III] and the burden and standard of proof [Section IV]) in each trial, identifying the prejudicial impact of these views on the trial processes and their outcomes.

Section II: The right to be informed

II:I International standards

The right to be informed of the charges is one of the most important protections underpinning the presumption of innocence. Mirroring the major human rights instruments, the Statutes of the international tribunals and courts recognise the full importance of this vital safeguard.[31] An indictment is expected to play a large part in delivering two of the most crucial elements of the presumption of innocence: the right to be informed promptly and in detail of the nature and cause of the charge against the accused, and the right to have adequate time and facilities for the preparation of his or her defence.[32] Indictments must contain a 'concise statement of the facts and the crime or crimes for which the Accused is charged'.[33] It must contain both the charges, that is, the alleged legal basis for the conviction – and the material facts supporting those charges, which include the acts or omissions of the accused that give rise to that allegation of infringement of a legal prohibition.

An indictment has to be specific enough to allow for the preparation of an effective defence.[34] The later pre-trial brief cannot be used to

fill the gaps in the material facts pleaded in an indictment.[35] It is not acceptable for the Prosecution 'to omit the material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending upon how the evidence unfolds'.[36]

The indictment must be specific enough to prevent the Prosecution from introducing new material facts (constituting fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge) without requiring an amendment to the indictment. New charges are defined as a basis for conviction 'that is factually and/or legally distinct from any already alleged in the indictment'.[37] Accordingly, '[w]here the evidence at trial turns out differently than expected the indictment may be required to be amended, an adjournment granted or certain evidence excluded as not within the scope of the indictment'.[38]

As for the disclosure of evidence, the Prosecution should disclose a pre-trial brief summarising its case, a list of witnesses (including a summary of their expected evidence) and a list of exhibits to be relied upon, as well as the exhibits themselves.[39] Appropriate time limits should be set to ensure that the accused has full knowledge of the case prior to it being led in the courtroom.[40] In addition, the Prosecution must also disclose to the Defence the witness-related material – including witness statements – before the trial begins.

At the SCSL, the Statute and Rules of Procedure and Evidence contained provisions reflecting these international safeguards.[41] These rules are designed to ensure that the accused knows the case he or she must meet to avoid miscarriages of justice. Section II:II discusses the approach the judiciary took to this fundamental right in the CDF case. Section II:III demonstrates how different an approach was taken in the RUF case. As is plain, the 'right to defend oneself can only be exercised effectively, i.e. with a minimum of chances of success, if the accused knows what he or she is accused of. Otherwise a Kafkaesque situation arises'.[42] The willingness of the SCSL judiciary to jettison each and every one of these rules in the RUF trial, whilst carefully maintaining them in the CDF trial, is an eloquent demonstration of the judicial intent that determined that in no circumstances were the RUF accused to be acquitted.

II:II Protection of the CDF accuseds' right to be informed

Two weeks before the CDF trial commenced, the Prosecution sought an amended indictment to add four new counts of sexual violence and to extend the existing charges' time frame and geographic locations.[43] The new evidence related to serious charges of gender-based violence. Any

(evidential) prejudice to the accused could have been easily remedied through a trial adjournment to allow the accused an opportunity to investigate the new material. However, despite this potential, the Trial Chamber rejected the application. The strongly worded judicial condemnation of the Prosecution's request provides a useful contrast to the approach towards analogous issues in the RUF case.

The Majority (Justice Boutet dissenting) of Trial Chamber I found the 'delay' in bringing these amendments 'unacceptable and untenable'.[44] Despite well-known difficulties in investigating and prosecuting gender-based violence, the Trial Chamber could not understand the delay in completing the investigation.[45] The Trial Chamber majority claimed that new charges immediately preceding the Prosecution case's commencement would 'prejudice [the accuseds'] rights to a fair and expeditious trial' and violate their rights as guaranteed by the Statute.[46] They cited the prospective violation as 'an abuse of process that will certainly have the effect of bringing the administration of justice into disrepute'.[47]

Subsequently, the Trial Chamber ruled on a motion filed by the first accused in the CDF case, Norman. He complained, inter alia, that the Prosecution had added new allegations to the indictment without seeking an amendment to it. The Majority agreed, declaring, '[i]n accordance with the Accused's right to a fair trial and in the interests of justice', the portions constituting material changes to the Indictment must be stayed.[48]

Subsequently, the Majority took an equally aggressive stance in relation to a Prosecution attempt to introduce *evidence* of sexual violence in support of the existing charges.[49] Once again, rejecting the application, the Majority (Justice Boutet dissenting) held, inter alia, that admitting new evidence so late in the trial 'when the Prosecution is about to close its case is not only not fair to the Accused persons but does derogate significantly from their Article 17 due process rights'.[50] Strikingly, Justice Itoe, in a concurring opinion, felt sufficiently alarmed at the suggestion that it might be alleged that the CDF were responsible for sexual violence that he was driven to conclude that the evidence was not necessarily prejudicial because it was incriminating, but because it was considered to be 'unfairly compromising of the interests and the status of innocence or of the good standing of the victim of such evidence'.[51] The evidence was 'of a nature to cast a dark cloud of doubt on the image of innocence that the Accused enjoys under the law until the contrary is proved'.[52]

The Prosecution appealed.[53] Commenting generally on the Consolidated Indictment, the Appeals Chamber opined that the Prosecution went above and beyond their due process obligations to the CDF accused.[54]

Ultimately, the Appeals Chamber, having carefully considered and weighed the potential prejudice, 'exceptionally' reversed the Trial Chamber's decision and permitted the amendments to be made.[55] As is evident, even though the Trial and Appeals Chambers eventually disagreed on the impact of the additions to the Prosecution case, both the lower and upper Chambers were at pains to ensure that the accused benefitted from international standards.

II:III Abandonment of the RUF accuseds' right to be informed

This due diligence stands in contrast to the approach taken by the same judges in the RUF case. As discussed above, international standards demand that the admission of new charges and evidence after the trial has commenced should be an exceptional occurrence requiring a careful weighing of prejudice to the accused. In order to circumvent these strictures, Trial Chamber I designed an unprecedented and self-fulfilling disclosure and admissibility regime that allowed new charges and evidence to be admitted at any stage of the trial. As discussed below, the regime rested on a wholly improper presumption that the indictment was not expected to contain the totality of the Prosecution's charges or material facts, along with a re-interpretation of the word 'new' so it no longer had its ordinary meaning. This allowed the admission of a plethora of new investigative material containing 250 new charges and thousands of new material facts to be admitted into the trial record. In true Kafkaesque form, despite the hundreds of new pages of evidence admitted into the trial, the Trial Chamber and the Prosecution insisted throughout that this new evidence was in fact 'not new'.

II:III:I Presumption that the indictment should not contain the totality of the case

In the first RUF decision on a Defence challenge to the then separate RUF indictments, the Trial Chamber concluded that there was no requirement to plead all the charges or material facts where the crimes alleged are cases of 'mass criminality'.[56] Purporting to rely upon *Prosecutor v Ntakirutimana* at the ICTR,[57] the Trial Chamber concluded that the 'sheer scale of the alleged crimes made it impracticable to require a high degree of specificity in such matters as the identity of the victims and the time and *place of the events*' [emphasis added].[58] This was a serious misreading of the jurisprudence that articulates a narrow exception to the pleading requirements: that 'there *may* be *instances* where the sheer scale of the alleged crimes "makes it impracticable to require a high degree of specificity in such matters as *the identity of the victims and the dates* for the

commission of the crimes"' [emphasis added].[59] The novel ruling of Trial Chamber I that not only did the accused not need to know of the finer details of an allegation (such as the names of every victim in an incident of mass criminality), but they had no right to know even the alleged time or place of the incident, was a finding that discarded 20 years of jurisprudence at the ICTY and ICTR, as well as the basic premise of any civilised criminal trial. As a matter of logic and general principles of law, whatever the scale of the crimes, the accused needs to be informed of the material facts of the alleged conduct that describe his or her alleged role.[60] At a minimum, this requires that the accused know the (approximate) *time* and *place* of the events.

Attempting to excuse the inexcusable, at the final judgment stage the Trial Chamber noted that, since the trial was intended to 'proceed as expeditiously as possible in an immediate post-conflict environment', the Prosecution was not required to plead the totality of its case.[61] The Trial Chamber did not explain who had the expectation or why it was of such paramount importance that it justified depriving the RUF accused of the substance of the allegations. Nonetheless, in so ruling, the Trial Chamber created a de facto presumption in the RUF (but not the CDF) trial that the Prosecution was not only allowed, but also expected, to adduce new criminal allegations through new evidence after the trial had commenced.

II:III:II Trial Chamber I's innovation: new charges and evidence are not 'new'

As discussed above, the international jurisprudence prohibits the admission of new charges and material facts unless the indictment is amended and the prejudice from the new evidence can be remedied. Instead, and in order to circumvent these requirements, in the RUF case, Trial Chamber I designed a new admissibility threshold test that was unabashedly circular and allowed any new evidence to be admitted irrespective of the prejudice to the accused.

The usual comparative assessment to determine whether the information disclosed is new takes place through an examination of the notice provided in the Indictment, Pre-Trial Brief, the witness's original statements (where relevant) and an assessment of whether the latterly disclosed evidentiary material alters the incriminating quality of the evidence of which the Defence already had notice.[62] This standard was abandoned at the SCSL. Adopting reasoning that would have sat well in an Orwellian novel, the Trial Chamber decided that the new supplemental statements being produced through the new interviews and

containing the new charges and evidence were in fact *not new*. As the Trial Chamber reasoned, supplemental or will-say statements containing allegations that were 'building blocks constituting an integral part of, and connected with the same *res gestae* forming the factual substratum of the charges in the indictment' were not 'new allegations'.[63] The precise meaning of these definitions was never explained. They are not part of the ICTR and ICTY jurisprudence and the Trial Chamber carefully avoided any further definition. If any meaning can be discerned, it is that new evidence that is relevant to old charges is not to be considered new. This novel threshold admissibility test provided the Prosecution with carte blanche to admit new evidence at any time whilst claiming it was not new. All new charges and evidence were determined to be admissible provided they were relevant to an indictment that alleged a joint criminal enterprise to take over the country. Even though an allegation was not in the indictment, Pre-Trial Brief, witness statements or exhibits, but appeared in new evidence found during the four-year trial, the accused was deemed to have known of it since the beginning of the trial.[64] Since new no longer meant new, it was now impossible to rule new evidence *inadmissible*. In one brain-twisting legal pronouncement, the Trial Chamber removed any possibility that the accused could advance a claim of prejudice or seek remedies to deal with the new charges or evidence. Rather than being 'unacceptable and untenable' or 'bringing the administration of justice into disrepute', as much less serious evidential additions were in the CDF case, the Prosecution's conduct was now perfectly reasonable and the accuseds' complaints of no consequence.

Unsurprisingly, this innovation led to over 250 new charges, over 150 (de facto) amendments to the charges, hundreds of new material facts and thousands of new facts.[65] These new charges constituted the main allegations and evidence used to convict the accused.[66] The Appeals Chamber's approach to this issue was equally devoid of fairness and even-handedness. Having expressly concluded in the CDF case that 'it . . . [is] . . . fundamental . . . that once a trial is underway with live witnesses it should proceed straight-forwardly without changes of goal posts',[67] the Appeals Chamber dismissed the RUF appeal ab initio on a technicality basis. The Chamber would not consider the prejudice arising because the voluminous annexes required to list (not argue) the additional charges and evidence were alleged to be in violation of the page limit for the appeal.[68] The dismissal of a ground of appeal with such far-reaching consequences for the fairness of the RUF trial (and the convictions and sentences that followed) on technical grounds, whilst taking an entirely different approach in the CDF trial, is further evidence

of the contingency of due process rights at the SCSL. As the Appeals Chamber must have appreciated, had the merits of the ground of appeal been considered in light of international standards, it would have been duty-bound to quash the whole trial and order a retrial.

Section III: Partisan approach to evidence

The fair assessment of evidence is another critical aspect of the presumption of innocence. Section III looks at differences in approaches to the assessment of evidence between the CDF and RUF cases. As discussed, Trial Chamber I invented novel presumptions that not only reversed the burden of proof, but also made conviction of the RUF accused all but inevitable. Conversely, the Trial Chamber's assessment of the evidence in the CDF case, whilst no exemplar of judicial skill or legal dexterity, adhered to international standards that provided a firm platform for a fair application of the presumption of innocence and the 'beyond reasonable doubt' standard.

III:I International standards

The ICTY and ICTR have established a body of mandatory evidentiary rules to ensure that evidence is assessed in light of the presumption of innocence and the burden and standard of proof. They are based on sensible assumptions concerning, inter alia, the manner in which the reliability and veracity of evidence must be assessed and recorded, bearing in mind the fragilities of oral testimony and the way in which proceedings can affect the quality of evidence heard or seen by the Court.[69] Trial Chambers are required to make findings of facts on those issues that are essential to the determination of guilt on a particular count.[70] A Trial Chamber is presumed to have evaluated all the evidence presented to it, though it is obliged to demonstrate that it has not 'disregarded any particular piece of evidence',[71] and is mandated to address the specific issues, factual findings or arguments which validate its decisions.[72]

In making assessments concerning the credibility and reliability of oral testimony, a Chamber must consider a range of relevant factors including the internal consistency of the witnesses' testimony,[73] its consistency with other evidence in the case,[74] any personal interest witnesses may have that may influence their motivation to tell the truth and observational criteria such as the witnesses' demeanour,[75] conduct and character.[76] In the face of material inconsistencies, a Chamber must demand an explanation of substance rather than mere procedure, something concrete to dispel doubt.[77]

III:II Presumption of innocence in the CDF trial

As will be discussed, the CDF accused were the recipients of extraordinarily favourable presumptions of virtuous intent, which went well beyond the presumption of innocence that benefits the accused at the ICTY and ICTR. These presumptions of virtuous intent were evidenced most clearly in two ways. First, one of the members of the Trial Chamber, Justice Thompson, regarded the fight against the rebels as a noble project that excused the most gratuitous crimes. The two other Justices saw little or nothing wrong with this view.[78] Indeed, when the Majority turned to sentencing the two CDF accused, not only did they pass manifestly derisory sentences, but they did so on essentially the same terms, namely that the accused were '[d]efending a cause that is palpably just and defendable, such as acting in defence of constitutionality by engaging in a struggle or a fight that was geared towards the restoration of the ousted democratically elected Government of President Kabbah'.[79] In other words, just as Thompson considered that crimes such as cannibalism and terrible sexual violence should be excused, the majority presumed, without any examination of this specific issue, that the accused were fighting for a just cause. This cause apparently removed much of their criminal culpability, obviating the need for meaningful punishment.

Second, although the CDF accused were charged with a joint criminal enterprise that was the mirror image of that charged against the RUF accused (inter alia, the intention to use 'any means necessary' to defeat and completely eliminate the RUF/AFRC[80]), the Trial Chamber dismissed this allegation without any consideration of the evidence.[81] In contrast to the RUF trial, there was no presumption in the CDF trial that any and all crimes were necessarily implied by participation in the efforts to defeat the RUF. This judgment did not arise from any principled analysis or reasoning: it was a presumptive finding that logically reflected an assumption that the CDF accused's crimes did not arise as a result of any criminal plan or shared criminal intent, but were instead the acts of individual 'bad apples'.

III:III Presumption of guilt in the RUF trial

In the face of Prosecution evidence that was replete with material contradictions (that should, in light of the presumption of innocence, have led to the accused's acquittal on most, if not all, of the charges[82]), the Chamber invented three express presumptions of guilt. These presumptions obviated the need to consider the evidence at all. First, echoing the

sentiment contained in Justice Thompson's flamboyant acquittal of the CDF, the Chamber concluded that the mere fact that the RUF accused intended armed rebellion meant that they also intended the crimes. As the judgment observed:

> It indeed goes without saying and the Chamber so concludes that resorting to arms to secure a total redemption and using them to topple a government which the RUF characterized as corrupt necessarily implies the resolve and determination to shed blood and commit the crimes for which the Accused are indicted.[83]

As is plain from this remarkable statement, the Chamber went further than assessing evidence with a presumption of guilt: in the minds of Trial Chamber I, rebellion against the government *necessarily implied* intent to commit war crimes and crimes against humanity. As long as there was evidence of actions in furtherance of rebellion, no evidence of criminal wrongdoing was required for guilt to be pronounced.

Second, despite most of the Defence case being focused on refuting the existence of crimes in the accused's sphere of control, and despite the requirements detailed above for the treatment of oral testimony, the Trial Chamber made a presumption that any evidence of crime was reliable,[84] and any evidence that a crime did not occur was unreliable:

> [I]t does not follow that a crime that did not occur merely because an individual [i.e., a Defence witness] says he did not hear of it or of the event. The Chamber attaches no weight whatsoever to this and similar evidence in making determinations about whether crimes have been committed or not.[85]

Third, the Trial Chamber expressly presumed that all relationships between RUF fighters and women at all times in all places took place without consent. The Chamber concluded that 'there should be a presumption of absence of genuine consent to having sexual relations or contracting marriages with the said RUF fighters'.[86] In doing so, the Trial Chamber misapplied ICTY jurisprudence. Instead of placing the burden of proof upon the Prosecution to prove that true consent in specified circumstances was not possible or that any consent was consequently negated,[87] the Trial Chamber presumed that *all* sexual, familial or working relationships between the RUF fighters and women across the whole of Sierra Leone lacked consent. At the ICTY, a permissible presumption

may arise with regard to individual cases or localised areas, such as if the victims involved are in detention.[88] However, international standards do not permit such a presumption to extend to thousands of square kilometres and thousands of varied and unknown relationships.

These three aforementioned presumptions fundamentally violated the presumption of innocence, and also the principle of individual responsibility. They allowed hundreds of crimes to be attributed to the accused without proof of any action other than (lawful) participation in rebellion. Moreover, as shown by the Trial Chamber's contrasting approach in the CDF case, these presumptions were not the consequence of mere inadvertence or judicial incompetence.

As for the Appeals Chamber in the RUF case, instead of considering the Trial Chamber's divergent approaches to the two cases, or more importantly analysing how much of the trial had been irrevocably infected by the presumptions of guilt, it ignored the appellant's complaints or otherwise dismissed them on (purported) technical drafting errors. Although three of the five Judges in the Appeals Chamber found the Trial Chamber's Majority approach to mitigation in the CDF case a step too far (reversing the ruling that the pursuit of democracy could mitigate the sentences),[89] they were not troubled by the conclusion in the RUF case that rebellion necessarily implied an intention to commit war crimes and crimes against humanity.[90] On the contrary, the Appeals Chamber simply ignored the complaint.[91]

As for the Trial Chamber's presumption that all relationships between men and women in RUF territory were criminal, the Appeals Chamber dismissed the appeal claiming that this was not what the Trial Chamber really meant.[92] Despite the Trial Chamber's unambiguous finding that 'there should be a presumption of absence of genuine consent' (and no other relevant finding), the Appeals Chamber claimed that this presumption was not the 'framework for its analysis and nothing suggests that it informed its findings on the elements of the offences'.[93]

In relation to the Trial Chamber's total failure to consider or comment on one of the hundreds of material inconsistencies in the Prosecution case,[94] the Appeals Chamber lapsed once more into technicalities, dismissing the complaint summarily on the basis that the voluminous annexes listing the material inconsistencies were in violation of the page limit for the appeal.[95] Similarly, according to the Appeals Chamber, the RUF appellant's complaints concerning the Trial Chamber's express dismissal of all Defence evidence refuting the existence of crimes were 'undeveloped' and therefore also summarily dismissed.[96]

Section IV: The SCSL judiciary's refusal to consider relevant motives of RUF prosecution witnesses: financial inducements

The OTP Witness Management Unit (OTP WMU) routinely made payments to witnesses which were supposed to be for welfare only. However, Defence teams in each of the RUF, AFRC and Taylor trials complained that significant proportions of the payments were not bona fide welfare payments and were being used to influence witness testimony to implicate the accused. The only trial in which the payments did not provide a reasonable basis for such a concern was in the CDF trial.

IV:I International standards

At the SCSL there were two official bodies that provided assistance to witnesses: the OTP's Witness Management Unit and the Registry's Witness and Victims Section (WVS). At the SCSL, the WMU was situated within the investigative branch of the OTP and managed by the Chief of Investigations under the general oversight of the Prosecutor.[97] The OTP WMU purported to 'provide critical confirmation of witness evidence and . . . support for persons required to give evidence'.[98] As noted by Easterday, this mechanism and practice did not comport with best practice standards: witness protection should be separated from the investigation to 'ensure objectivity and minimize the risk that admission to the programme unwittingly may become an incentive for witnesses to give false testimony that they believe the police or prosecution wants or needs'.[99] This is an approach that has been adopted by the International Criminal Court (ICC). It is the Registry, not the Prosecution, who are placed in charge of disbursements to witnesses. They have the exclusive task of deciding on the nature and scale of the substantive protection witnesses may require.[100]

In order to safeguard neutrality, witness protection programmes also ensure that witnesses are told that witness protection is not dependent on cooperation.[101] Importantly for the SCSL context, the UN recommends that witness programmes only provide benefits to witnesses 'no greater than their legal earnings before admission to the program',[102] and that these should be 'administered and delivered by professionals who are independent from the investigation and prosecution services'.[103]

IV:II The CDF trial

The CDF accused were concerned with payment to only one witness.[104] They asked the Chamber to take into account the payment when

assessing the veracity of the witness.[105] Beyond this, the Defence in the CDF case had no cause to believe that witness payments had been used as bribes by the OTP. Once again, the RUF case was very different.

IV:III The RUF trial

The witness payments in the RUF case were deeply troubling for anyone with a passing interest in fair and impartial justice. Prosecution payments were made to witnesses, for example, for 'time wasted', schooling, to support a foster parent, for 'source development/information', recreational purposes (such as meals in expensive restaurants), domestic repairs and for unspecified or contradictory purposes.[106] Witnesses admitted on oath that the Prosecution had given them payments as gifts. In one instance, a critical Prosecution witness (in both the RUF and Taylor trials) admitted that the Prosecutor gave him an unknown quantity of money in an envelope and said: 'Please put it into good use and take care of yourself.' The witness confirmed that the payment was unsolicited and not linked to any witness welfare issue. The Prosecution did not disclose the payment to the Defence.[107] Another potential witness was taken on 'fully funded Sunday lunch excursions to one of the most expensive and exclusive seaside resorts'.[108] A critical accomplice witness confessed that his life had been demonstrably improved as a result of the payments. He now was able to 'sleep in a decent place', had 'decent food to eat' and could now 'change clothes'. He candidly admitted on oath that he was now motivated to help the Prosecution. As he stated during cross-examination: 'Yes. Yes, I want to help them. Today and tomorrow, I want to help them.'[109] Despite clear breaches of best practice and evidence (from the OTP itself or their own witnesses) of improper payments in all the trials concerning the rebel forces, the OTP consistently refused to provide detailed answers to questions relating to internal protocol, organisational structure and criteria for providing funds to witnesses.[110]

It ought to go without saying that Prosecution conduct with regard to witness payments in one of the poorest countries in the world should have received proper scrutiny.[111] Instead, the Trial and Appeal Chambers chose to judicially erase the payments from the RUF trial record and judgment. During the trial, the Trial Chamber claimed to be confused as to the issue and sought to re-frame the accused's complaints concerning the payments as casting imputations upon the Court and therefore impermissible. The Court claimed that the Defence argument (that the payments were improper) amounted to an accusation that the 'entire judicial process is tainted' and was a 'veiled suggestion that the judicial

process is . . . being called in question'.[112] Consequently, even though the judges accepted that there was 'certainly confusion as to who is paying what, where and when',[113] the Defence were prevented from fully examining the inferences of motivation or impropriety when cross-examining the witnesses in receipt of the payments.[114] In turn, this approach enabled the Chamber to suggest that it would 'not be easy' to draw inferences about financial inducements.[115] Claiming to be utterly confused by a simple and recurring question – whether witnesses were being bribed to give false evidence – Justice Boutet queried during the trial: 'I don't know where you [the accused] want us to place ourselves with this sort of evidence.'[116]

Subsequently, a Defence attempt to call evidence from the Deputy Head of the WVS to contradict the Prosecution's claim of legitimate witness welfare expenditure was met with the finding that hearing the testimony (estimated to last for one 1 hour) would delay the trial and undermine the accuseds' right to an expeditious trial.[117] Towards the end of the trial when all the relevant evidence had been heard, the Sesay Defence submitted a further application to the Chamber, this time for an order requiring the Prosecution to call evidence to explain the 'anomalies' in the OTP WMU payments and to allow a comprehensive understanding of how the payments might have affected the evidence.[118] The Trial Chamber dismissed the motion. The Chamber held that the Defence motion was not raised at the 'earliest opportunity'.[119] As pointed out by Easterday, the Chamber's approach was contradictory: the Defence had been earlier told that they could not raise the issue on cross-examination because it was not the right time, but later the Chamber refused to hear evidence on the issue because it was too late.[120] Instead, the Chamber ruled that the Motion was 'meretricious' and no 'material prejudice' had been caused to the 'objecting parties'.[121]

In a final *coup de grace*, at the judgment stage, the Trial Chamber ignored the accused's arguments in relation to the payments and their effects on the evidence, making no comment whatsoever about the Prosecution payments. Instead, the Chamber focused its discussion entirely on payments made by the WVS – even though the Defence had not once during the trial suggested that they were improper or had affected the evidence – irrelevantly concluding that there was nothing to suggest that WVS payments affected the credibility of witness testimony.[122]

On appeal, the Appeals Chamber's approach was equally devoid of fairness and legal principle. The dismissal of the Defence complaint was contained in four paragraphs of discussion.[123] As well as falling back

on new claims of technical deficiencies, the Appeals Chamber insisted that the Trial Chamber *had* properly considered the payments.[124] Despite the fact that there is not a single piece of judicial reasoning throughout the trial or in the judgment to suggest that the payments from the OTP had been taken into account, the Appeals Chamber claimed that there was a thorough consideration of the issue with regard to witness assessments.[125]

Conclusion: legal trials or morality plays?

It is a fundamental element of international human rights and criminal law that every individual shall be equal before the law. However, an analysis of the disparities of treatment in the CDF and RUF trials shows the SCSL's abandonment of this cornerstone principle. Whilst the CDF trial was hardly a model of best practice and there is no prospect of its procedural jurisprudence standing as a worthwhile precedent for future criminal courts, it was *a* trial with a regular process and the deployment of familiar legal principles. In contrast, the RUF trial suffered from a surfeit of novel principles designed to ensure that the accused were convicted. The outcome-orientated justice provided by the court was entirely consistent with the inflammatory, post-conflict environment in which the trials took place, in which the RUF were characterised as the unholy embodiment of disorder and wickedness. In contrast, at the time of the trials, SCSL officials, associated human rights groups and those involved in the creation of the Court promoted a considerably more generous view of the CDF. As the review of key procedural decisions in this chapter demonstrates, these narratives appear to have infected the SCSL's judiciary and consequently the trial processes, leading to manifestly unfair trials for the RUF accused. Consequently, these trials might be best understood as modern morality plays designed to condemn the RUF and provide international and local audiences with outcomes that affirmed the narratives promulgated by the SCSL's sponsors, as well as reproducing universal themes of morality that required the triumph of democracy and virtue over anarchy and iniquity.

Moreover, the inequality before the law strikes at the heart of the SCSL's legacy as a legal institution. Ultimately, the rule of law derives its force and dynamism, including its deterrent effect, from the equality and even-handedness of its application. As has been correctly observed, '[t]rue law is the right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions'.[126] In other

words, whilst those who accepted the prevailing narratives about the RUF may celebrate the convictions of those accused and the success of the Court, the denial of fairness and international standards of due process that underpinned them is more than troubling. It is the mark of a deeply flawed legal institution that abandoned its fundamental raison d'être.

Notes

1 Lead Counsel for Sesay, first accused of the SCSL RUF trial.
2 Pupil Barrister at Trinity Chambers, Newcastle. Consultant for Global Rights Compliance LLP.
3 RUF Case (Appeal Judgment Dissenting Opinion of Justice Gelaga King and Justice Jon Kamanda on Prosecution's First Ground of Appeal) SCSL-04-15-A (26 October 2009), para. 18, *citing* The Holy Bible, Psalm 1.
4 Sixty-Fifth General Assembly, Informal Thematic Debate, 'Rule of Law Represents "Best Hope for Building Peaceful, Prosperous Societies"', G.A./11069, available at: http://www.un.org/news/press/docs/2011/ga11069.doc.htm; A. Cassese (2006) 'Report on the Special Court for Sierra Leone', para. 39, available at: http://www.rscsl.org/documents/cassese%20report.pdf
5 Address of Justice Fisher to the United Nations Security Council (UNSC) (28 May 2014), available at: http://ictj.org/sites/default/files/SCSL%20President%20SC%20Statement.pdf; No Peace Without Justice (NPWJ) and SCSL (2012) 'Impact and Legacy Survey for the Special Court for Sierra Leone', available at: http://www.rscsl.org/Documents/NPWJ_SCSLImpactLegacyReport_04OCT12.pdf; NPWJ (2012) 'Making Justice Count: Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia', available at: http://www.npwj.org/node/5599; Campaign for Good Governance (CGG) (2003) 'Opinion Poll Report on the TRC and Special Court', available at: http://www.rscsl.org/Documents/CGG_Survey.pdf
6 Trial Chamber I, consisting of Justices Thompson, Itoe and Boutet.
7 Resolution 1315 (2000) Adopted by the Security Council at its 4186th meeting, on 14 August 2000: S/RES/1315 (2000).
8 P. Penfold (2013) 'International Community Expectations of the Sierra Leone Special Court', in C. C. Jalloh (ed.) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (Cambridge: Cambridge University Press); L. Gberie (2013) 'The Civil Defense Forces Trial: Limit to International Justice?', in Jalloh (ed.) *The Sierra Leone Special Court*.
9 H. M. Hensel (2004) 'Theocentric Natural Law and the Norms of the Global Community', in H. Howard (ed.) *Sovereignty and the Global Community* (Aldershot: Ashgate), pp. 27–28.
10 *Prosecutor v Fofana and Kondewa* ('CDF case') (Trial Judgment) SCSL-04-14-T (2 August 2007) ('CDF TJ') pp. 298–300; reversed in CDF case (Appeal Judgment) SCSL-04-14-A (28 May 2008), paras 309, 321–322 ('CDF AJ').
11 Human Rights Watch (HRW) (1999) 'Letter to U.N. High Commissioner for Human Rights Mary Robinson on the Sierra Leone Conflict', June 18, available at: http://www.hrw.org/news/1999/06/17/letter-un-high-commissioner-human-rights-mary-robinson-sierra-leone-conflict; HRW (1999) 'Letter to

U.N. Secretary-General Kofi Annan on the Sierra Leone Conflict', July 7, available at: http://www.hrw.org/news/1999/07/06/letter-un-secretary-general-kofi-annan-sierra-leone-conflict; HRW (1999) 'Letter to U.S. President Clinton on the Sierra Leone Conflict', June 30, available at: http://www.hrw.org/news/1999/06/29/letter-us-president-clinton-sierra-leone-conflict

12 HRW (1999) 'Sierra Leone: Getting Away with Murder, Mutilation, Rape', July, Vol. 11 No. 3(A), available at: http://www.hrw.org/reports/1999/sierra/SIERLE99.htm; Amnesty International (1998) 'Sierra Leone: 1998 – A Year of Atrocities Against Civilians', AFR51/022/1998, available at: http://www.amnesty.org/en/library/asset/AFR51/022/1998/en/e39f65cf-d99d-11dd-af2b-b1f6023af0c5/afr510221998en.html, pp. 2, 25, 30, 34, 35; NPWJ, 'Making Justice Count', pp. 1, 4–6, 18, 20.

13 See, for instance, N. Combs (2007) *Guilty Pleas in International Criminal Law: Constructing a Restorative Justice Approach* (Stanford, CA: Stanford University Press), pp. 53–54; R. G. Teitel (2014) *Globalizing Transitional Justice: Contemporary Essays* (Oxford: Oxford University Press), p. 90; L. Reydams (2005) 'The ICTR Ten Years On: Back to the Nuremberg Paradigm?', *Journal of International Criminal Justice* 3, 977; C. Del Ponte (2009) *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity* (New York: Other Press), pp. 231–233, 236.

14 SCSL Statute, article 1(2).

15 D. Scheffer (2013) *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press).

16 *Prosecutor v Sesay et al*. (Amended Consolidated Indictment) SCSL-2004-15-PT (13 May 2004), para. 37 ('RUF Indictment'); CDF case (Consolidated Indictment) SCSL-03-14-I (4 February 2004), para. 19 ('CDF Indictment').

17 The Sierra Leonean TRC (2004) 'Final Report of the Truth and Reconciliation Commission for Sierra Leone', Vol. 2, Chapters 2, 5, paras 33, 264–265, 277, 283, 300, 330, 256, 363. See also Mahony in this book.

18 D. Crane (2003) Press Conference, Freetown, 18 March. Reported in International Crisis Group (2003) 'The Special Court for Sierra Leone: Promises and Pitfalls of a "New Model"', 4 August, available at: http://www.refworld.org/docid/3f5218d64.html, p. 14; C. da Silva (2011) 'The Hybrid Experience of the Special Court for Sierra Leone', in B. S. Brown (ed.) *Research Handbook on International Criminal Law* (Northampton, MA: Edward Elgar Publishing), p. 242.

19 Code of Professional Conduct; SCSL Statute, article 17.

20 A. W. Fofana (2005) 'New War Crimes Prosecutor Says Taylor is Africa's Hitler', *The Independent*, 6 July, available at: http://allafrica.com/stories/printable/200507060759.html; J. Abubakar (2005) 'Nigeria Faces UN Sanction Over Charles Taylor', *Daily Trust (Abuja)*, 24 May; Standard Times (2005) 'New Chief Prosecutor Welcomes Call for the Surrender of Charles Taylor', 5 July; T. Borbor (2005) 'David Crane Speaks on His Legacies as Chief Prosecutor', *Cocorioko*, 28 June; Vanguard World (2005) '200 African Civil Society Groups Insist on Taylor's Trial', 29 June, available at: http://www.vanguardngr.com/articles/2002/world/w129062005.html; The New Citizen (2005) 'Taylor is a Terrorist', 28 June.

21 IRIN News (2004) 'Special Court Opens Its Doors Amid Controversies', 15 March, available at: http://www.irinnews.org/report/49101/sierra-leone-

special-court-opens-its-doors-amid-controversies; T. Cruvellier (2009) 'From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test', *International Center for Transitional Justice*, Sierra Leone Monitoring Programme, available at: http://ictj.org/sites/default/files/ICTJ-SierraLeone-Taylor-Trial-2009-English.pdf, p. 24.

22 CDF TJ, pp. 298–299.

23 CDF TJ (Separate Concurring and Partially Dissenting Opinion of Hon Justice Bankole Thompson Filed Pursuant to Article 18 of the Statute) SCSL-04-14-J (2 August 2007), para. 47 ('Thompson Dissent').

24 Thompson Dissent, para. 80.

25 Thompson Dissent, paras 71, 80, 87(6), 97, 101.

26 RUF Case (Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case) SCSL-04-15-T (14 November 2007), para. 3 ('Thompson Motion').

27 RUF Case (Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon Justice Bankole Thompson from the RUF Case) SCSL-04-15-T (6 December 2007), para. 84 ('Thompson Withdrawal Decision').

28 Thompson Withdrawal Decision, para. 69.

29 RUF Case (Decision on Sesay, Kallon and Gbao Appeal Against Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon Justice Bankole Thompson from the RUF Case) SCSL-04-15-T (24 January 2008), paras 13–14.

30 SCSL Statute, articles 17(1)–(4).

31 ICC Regulations, Regulation 52; ICTY RPE, Rule 47(c); ICTR RPE, Rule 47(c); ICCPR, Article 14(3)(a); ECHR, Article 6(3)(a); ACHR, Article 8(2)(b); ICTY Statute, Article 21(4) (a); ICTR Statute, Article 20(4) (a).

32 ICTY Statute, Article 21(4)(a)&(b); ICTR Statute, Article 20(4)(a)&(b); SCSL Statute, Article 17(4)(a)&(b).

33 *Prosecutor v Kvočka et al.* (Judgment) IT/98/30-1/A (28 February 2005), paras 27–28; 30–31, 59, 65, 434 ('Kvočka AJ'); *Prosecutor v Ntagerura et al.* (Judgment) ICTR-99-46-A (7 July 2006), paras 29, 121 ('Ntagerura AJ').

34 *Prosecutor v Kupreškić et al.* (Appeal Judgment) IT-95-16-A (23 October 2001), para. 98 ('Kupreškić AJ'); Ntagerura AJ, para. 22.

35 *Prosecutor v Stanišić & Simatović* (Decision on Defence Motion to Reject Prosecution's Final Pre-Trial Brief of 2 April 2007) IT-03-69-PT (17 July 2007), para. 19; *Prosecutor v Deronjić* (Decision on Form of the Indictment) IT-02-61-T (25 October 2002), para. 10 ('Deronjić Decision'); *Prosecution v Nyiramashuko* (Decision on the Preliminary Motion by Defence Counsel on Defects in the Form of the Indictment) ICTR-97-21-I (4 September 1998).

36 Kupreškić AJ, para. 92.

37 *Prosecutor v Halilović* (Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment) IT-01-48-PT (17 December 2004), para. 30 ('Halilović Decision'); see also, *Prosecutor v Prlić* (Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment) IT-04-74-PT (18 October 2005), para. 13.

38 Deronjić Decision, paras 10, 34, fns 29, 92; citing Kupreškić AJ, para. 114.

39 ICTY RPE, Rules 65ter (E), 66 and 68; ICTR RPE, Rules 66, 68 and 73bis (B); SCSL RPE, Rule 73bis.

40 ICTR RPE, Rule 73bis (B); SCSL RPE, Rule 73bis (B); ICTY RPE, Rule 65ter (E).

41 SCSL RPE, Rules 66 (A)(i)–(ii); SCSL Statute, Article 17(4).
42 S. Treschel (2005) *Human Rights in Criminal Proceedings* (Oxford: Oxford University Press), p. 193.
43 CDF Case (Decision on Prosecution Request for Leave to Amend the Indictment) SCSL-04-14-PT (20 May 2004), para. 10(a) ('CDF Leave to Amend').
44 CDF Leave to Amend, para. 48.
45 CDF Leave to Amend, para. 57.
46 SCSL Statute, Articles 17(4)(a), 17(4)(b) and 17(4)(c).
47 CDF Leave to Amend, para. 86.
48 CDF Case (Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment) SCSL-04-14-T (29 November 2004), para. 38.
49 CDF Case (Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence) SCSL-2004-14-T (24 May 2005), paras 1, 3; See also, CDF Case (Decision on Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98) SCSL-04-14-T-550 (3 February 2006) ('CDF Rule 98'), paras 1–4, 8: Prosecution denied another separate attempt to adduce evidence in support of 'other unspecified geographic locations'.
50 CDF Rule 98, para. 19(viii).
51 CDF Case (Separate Concurring Opinion of Hon Justice Benjamin Mutanga Itoe, Presiding Judge, on the Chamber Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence) SCSL-04-14-T (24 May 2005) ('CDF Itoe Admissibility'), para. 65.
52 CDF Itoe Admissibility, para. 78.
53 CDF Case (Decision on Amendment of the Consolidated Indictment) SCSL-04-14-AR73 (16 May 2005) ('CDF Amendment of Indictment').
54 CDF Amendment of Indictment, para. 53.
55 CDF Amendment of Indictment, para. 87.
56 RUF Case (Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment) SCSL-2003-05-PT (13 October 2003) ('RUF Motion for Defects').
57 RUF Motion for Defects, para. 7(xi), fn 4.
58 RUF Motion for Defects, para. 7(xi).
59 *Prosecutor v Ntakirutimana* (Trial Judgment) ICTR-96-10 & 96-17-T (21 February 2003), para. 89; Kupreškić AJ, para. 89.
60 Kupreškić AJ, para. 98.
61 RUF TJ, para. 330; RUF Case (Appeal Judgment) SCSL-04-15-A (26 October 2009), para. 60 ('RUF AJ').
62 *Prosecutor v Bagasora et al.* (Decision on Admissibility of Evidence of Witness DP) ICTR-98-41-T (18 November 2003), para. 6.
63 RUF Case (Decision on Defence Motion Seeking a Stay of the Indictment and Dismissal of All Supplemental Charges [Prosecution's Abuse of Process and/or Failure to Investigate Diligently]) SCSL-04-15-T (6 December 2007), para. 17.
64 RUF Case (Sesay Grounds of Appeal) SCSL-2004-15-A (1 June 2009) ('Sesay Appeal Brief') Annex A1.
65 Sesay Appeal Brief.
66 W. Jordash and S. Martin (2010) 'Due Process and Fair Trial Rights at the Special Court: How the Desire for Accountability Outweighed the Demands

of Justice at the Special Court for Sierra Leone', *Leiden Journal of International Law* 23, 597.

67 CDF Amendment of Indictment, para. 80.

68 RUF AJ, para. 44; RUF AJ, p. 17, fn 96.

69 J. Easterday (2013) 'The Consequences of Witness Payments at the Special Court for Sierra Leone', in Jalloh (ed.) *The Sierra Leone Special Court*, p. 453; N. Combs (2010) *Fact Finding without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions* (Cambridge: Cambridge University Press), pp. 12–14, 44–62; T. Kelsall (2009) *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press), pp. 171–224.

70 CDF TJ, paras 274–276; *Prosecutor v Kordić & Čerkez* (Judgment) IT-95-14/2-A (17 December 2004), para. 382 ('Kordić & Čerkez AJ'); Kvočka AJ, paras 23, 288; Ntagerura AJ, para. 206.

71 *Prosecutor v Limaj et al.* (Appeal Judgment) IT-03-66-A (27 September 2007), para. 86; Kordić & Čerkez AJ, para. 382.

72 *The Prosecutor v Krajišnik* (Appeal Judgment) IT-00-39-A (17 March 2009), para. 139; Kvočka AJ, para. 23.

73 CDF TJ, para. 256; *The Prosecutor v Kajelijeli* (Trial Judgment) ICTR-98-44A-T (1 December 2003), paras 261, 468 and 704 ('Kajelijeli TJ'); *The Prosecutor v Jovica Stanišić and Franko Simatović* (Trial Judgment) IT-03-69-T (30 May 2013), para. 19 ('Stanišić TJ').

74 *Prosecutor v Gotovina et al.* (Trial Judgment) IT-06-91-T (15 April 2011) Vol. I of II ('Gotovina TJ'), para. 31; Stanišić TJ, para. 19.

75 Kajelijeli TJ, paras 457, 680, 704; Gotovina TJ, para. 31; Stanišić TJ, para. 19.

76 *Prosecutor v Blagojević and Jokić* (Trial Judgment) IT-02-60-T (17 January 2005), para. 23; Gotovina TJ, para. 31; Stanišić TJ, para. 19.

77 *Prosecutor v Kayishema and Ruzindana* (Trial Judgment) ICTR-95-1-T (21 May 1999), paras 78, 443.

78 Thompson Withdrawal Decision, para. 69.

79 CDF Case (Judgment on the Sentencing of Moinina Fofana and Allieu Kondewa) SCSL-04-14-14-T (9 October 2007), para. 86.

80 CDF TJ, para. 702; CDF Indictment, para. 19.

81 CDF TJ, *inter alia*, paras 732, 770, 803, 814, 850, 865, 907, 914, 939 and 949.

82 Sesay Appeal Brief Annex C.

83 RUF TJ, para. 2016.

84 RUF TJ, para. 527; RUF Case (Transcript of 13 March 2008, DIS-129), p. 15; RUF Case (Transcript of 29 April 2008, DMK-108), pp. 75–76.

85 RUF TJ, para. 528.

86 RUF TJ, para. 1471.

87 *Prosecutor v Kunarac et al.* (Appeal Judgment) IT-9623 & IT-96-23/1-A (12 June 2002) para 132 ('Kunarac AJ').

88 Kvočka AJ, para. 396.

89 CDF AJ, pp. 190, 247, 300, 522, 523.

90 RUF TJ, paras 2018–2019.

91 Sesay Appeal Brief, paras 81–83; RUF AJ, paras 305–306.

92 RUF AJ, paras 741, 734, 737; RUF TJ, para. 1471.

93 RUF AJ, paras 737, 739.

94 Sesay Appeal Brief, Annex C.

95 RUF AJ, para. 44; RUF AJ, pp. 16–17, fn 96.
96 RUF AJ, para. 43; RUF AJ p. 16, fn 93.
97 Easterday, 'Consequences', p. 449.
98 Easterday, 'Consequences', p.449 citing SCSL (2007) 'Special Court for Sierra Leone Budget 2007–2009', p. 22.
99 Easterday, 'Consequences', p. 450, citing UN Report on Witness Protection, p. 45.
100 C. Mahony (2010) 'The Justice Sector Afterthought – Witness Protection in Africa', available at: http://www.issafrica.org/siteimages/WitnessProt.pdf, pp. 18, 34–38.
101 Easterday, 'Consequences', p. 450, citing UN Report on Witness Protection, p. 56.
102 UN Report on Witness Protection, pp. 56–57.
103 UN Report on Witness Protection, p. 28; Mahony, 'Afterthought', p. 12.
104 TF2-017.
105 CDF Case (Final Trial Brief of Third Accused, Allieu Kondewa, Re-filed Pursuant to Decision of Trial Chamber 1 Date 15 December 2006) SCSL-04-14-T (8 January 2007), p. 10; CDF Case (Fofana Final Trial Brief) SCSL-04-14-T (24 November 2006).
106 RUF Case (Motion to request Trial Chamber to Hear Evidence Concerning the Prosecution Witness Management Unit and its Payments to Witnesses) SCSL-04-15-T (30 May 2008) ('RUF Witness Payments Motion'), paras 14, 19, 22, 30; Annex B.
107 RUF Witness Payments Motion, para. 30; *Prosecutor v Taylor* (Trial Transcript of 3 March 2008) SCSL-03-01-T, p. 5147.
108 Mahony, 'Afterthought', p. 85.
109 *Prosecutor v Sesay et al.* (Trial Transcript of 10 November 2005) SCSL-04-15-T, p. 79; RUF Witness Payments Motion, para. 30.
110 Easterday, 'Consequences', p. 451, fn 31; RUF Witness Payments Motion, Annex E.
111 UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, 'Least Developed Countries', available at: http://unohrlls.org/about-ldcs/
112 *Prosecutor v Sesay et al.* (Trial Transcript of 11 April 2005) SCSL-04-15-T, p. 16 (lines 1–3, 6).
113 *Prosecutor v Sesay et al.* (Trial Transcript of 11 April 2005) SCSL-04-15-T, p. 9 (lines 3–4).
114 Easterday, 'Consequences', pp. 453, 456; *Prosecutor v Sesay et al.* (Trial Transcript of 11 April 2005) SCSL-04-15-T, p. 9 (lines 3–4).
115 Easterday, 'Consequences', p. 456; *Prosecutor v Sesay et al.* (Trial Transcript of 11 April 2005) SCSL-04-15-T, p. 14 (lines 2–7).
116 Easterday, 'Consequences', p.456; *Prosecutor v Sesay et al.* (Trial Transcript of 11 April 2005) SCSL-04-15-T, p. 20 (lines 15–17).
117 Mahony, 'Afterthought', p. 85, citing RUF Case (Trial Transcript of 20 June 2007) at 52–59, 61.
118 RUF Witness Payments Motion.
119 RUF Case (Decision on Sesay motion to request the Trial Chamber to hear evidence concerning the Prosecution's Witness Management Unit and Its Payments to Witnesses) (25 June 2008), para. 2; Easterday, 'Consequences', p. 457.

120 Easterday, 'Consequences', p. 457.
121 RUF Case (Decision on Sesay motion to request the Trial Chamber to hear evidence concerning the Prosecution's Witness Management Unit and Its Payments to Witnesses) (25 June 2008), p. 3.
122 RUF TJ, paras 523–526.
123 Sesay Appeal Brief, paras 59, 60; RUF AJ, paras 197–200.
124 RUF AJ, paras 197, 199, 200, RUF AJ, para. 198, citing to RUF TJ, para. 523.
125 RUF AJ, para. 200, citing to RUF TJ, paras 486, 523, 544–546, 553–555, 562–564.
126 M. T. Cicero (1970) 'De Republica', 3.22.33, cited in A. P. d'Entrèves, *Natural Law* (New York: Harper, 2nd Edn), p. 25; M. T. Cicero (1994) *The Republic*, trans. Clinton W. Keyes (Cambridge, MA: Harvard University Press), p. 211.

7

Sexual and Gender-Based Violence in Post-Conflict Sierra Leone: The Contribution of Transitional Justice Mechanisms to Domestic Law Reform

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The Special Court for Sierra Leone (SCSL) is well known in the international legal community for its examination of sexual and gender-based violence (SGBV) directed against women, men, boys and girls in the Sierra Leone civil war. For example, the SCSL was the first international criminal tribunal to convict an individual for the crime against humanity of sexual slavery, and the first to examine the phenomenon referred to as 'forced marriage' or 'conjugal slavery'.[2] One way in which the legacy of the SCSL can be traced is through its impact upon the domestic laws of Sierra Leone. A nuanced connection can be traced from the SCSL to the enactment of certain domestic legislation on gender issues, as well as the creation of courts and investigation units specifically aimed at addressing rape. Less clear, however, is whether there is any link between the work of the SCSL and attitudinal change in Sierra Leone around SGBV in general. As in pre-conflict and wartime Sierra Leone, post-conflict Sierra Leone suffers from high levels of SGBV, despite legislative changes in 2007 and 2012.

This chapter begins by setting out far-reaching legal reforms adopted in Sierra Leone in 2007 and 2012, which aimed to implement the recommendations of Sierra Leone's Truth and Reconciliation Commission (TRC) on gender equality in inheritance, consent in customary marriage and criminalization of domestic and sexual violence. Next, this chapter considers how, during the same time period in which these legal reforms were being drafted and adopted, the SCSL addressed SGBV in its cases. The Court's jurisprudence in this respect was both groundbreaking and disappointing, leaving a somewhat mixed legacy within international

criminal law.[3] Finally, this chapter examines the intersection between the TRC-inspired legal reform and the SCSL's work on SGBV outlined in the first two sections. It argues that the SCSL's indictments, jurisprudence and outreach on SGBV influenced Sierra Leone's law reform agenda and outcomes, albeit in an indirect manner. It concludes by reflecting on the positive and negative aspects of considering domestic law reform as a legacy of transitional justice in Sierra Leone.

Domestic legislation addressing gender-based discrimination

Sierra Leone's Truth and Reconciliation Commission was mandated to pay 'special attention to the subject of sexual abuse'.[4] Sexual and gender-based violence was widespread during the conflict in Sierra Leone, especially between 1997 and 1999.[5] This violence appears to have been largely directed against women and girls, but men and boys were also targeted.[6] The use of SGBV evolved over time from 'sporadic behaviours committed by rogue individuals to collective sexual violence committed by multiple perpetrators'.[7] Physicians for Human Rights has estimated that between 50,000 and 64,000 internally displaced women and girls suffered sexual violence during the conflict.[8] This violence included rape (including gang rape), sexual slavery, forced marriage, insertion of foreign objects into genital or anal openings, abduction and forced nudity.[9] When this conflict-related sexual violence was added to the overall (already high) rates of non-conflict sexual violence, Physicians for Human Rights estimated that as many as 215,000 to 257,000 women and girls in Sierra Leone may have been affected by SGBV.[10] These accounts have been confirmed in other studies.[11] Estimates have not been made of the number of men and boys who became victims of SGBV during the Sierra Leone war.

The TRC commissioners focused on sexual and gender-based violence targeted at women and girls, reasoning that, numerically, they represented the vast majority of victims of this type of abuse.[12] The TRC report was wide-ranging, covering not only sexual abuse of women and girls, but also the impact of the conflict on their physical and mental health, economic situations and status (e.g., as internally displaced persons, refugees, child mothers and female heads of households).[13] It also examined their roles as combatants and collaborators.[14] The TRC commented on the impact of pre-existing gender-based discrimination in Sierra Leone on women's and girls' experiences during the conflict: 'The patriarchal hegemony that had existed in Sierra Leone continued and

worsened during the conflict, evolving in the most macabre manner. The cultural concept that a woman was "owned" by a man played itself out in many of the violations that women suffered during the conflict'.[15] The TRC documented various forms of gender-based violence, for example women being forced to breastfeed their dead children's body parts, and being forced to laugh and clap while watching their family being tortured, as a mockery of their nurturing roles.[16]

The TRC's recommendations were aimed, in part, at undoing the patriarchy permeating Sierra Leone's domestic laws that helped to feed and reinforce gender discrimination. Thus, the Commission issued wide-ranging recommendations for the repeal of gender discriminatory laws and the enactment of non-discrimination laws, including those extending to the realm of customary law.[17] In direct response to the TRC's recommendations, in 2007 three so-called 'gender justice' laws were introduced in Sierra Leone.[18]

The drafting of these three 'gender justice' laws began in 2005 through parallel processes within Sierra Leone's Parliamentary Human Rights Committee (with donor support from the United Nations Development Program) and the Law Reform Commission (in conjunction with the Ministry of Social Welfare, Gender and Children's Affairs).[19] Unfortunately, the two groups did not coordinate their drafting and produced two different versions of the bills, which needed to be combined.[20] Additionally, the Ministry did not take the management role that many expected in terms of championing the bills.[21] The result was that the bills sat with the Attorney General's Office, delayed due to an 'absence of leadership and commitment to take the bills forward'.[22] This led to frustration within civil society and international organizations, resulting in the creation of the 'Taskforce on the Gender Bills' to press for the conclusion and entry into force of the bills.[23] This coalition included local NGOs such as GEMS (Grassroots Empowerment for Self-Reliance), SLANGO (Sierra Leone Association of Non-Governmental Associations), LAWYERS (Legal Access through Women Yearning for Equality Rights and Social Justice) and the Sierra Leone Court Monitoring Program (which played a central role),[24] as well as international organizations like Action Aid, the International Rescue Committee, Oxfam and the United Nations Integrated Office in Sierra Leone.[25] Its actions were supplemented by the efforts of United Nations Development Fund for Women (UNIFEM) and United Nations Children's Fund (UNICEF) to promote law reform for gender equality.[26] The Taskforce members mounted a strong lobbying campaign, relying on the TRC recommendations and pressing Members of Parliament to

pass the bills.[27] The bills were passed just prior to the recess for the 2007 Parliamentary elections.[28]

The first 'gender justice' bill adopted in 2007 was the Recognition of Customary Marriage and Divorce Act (not signed into law until 2009).[29] This Act governs customary marriage in Sierra Leone, which accounts for more than half of the marriages in the country.[30] The Act sets the legal age to marry at 18, requires consent of both spouses and requires the registration of customary marriages.[31] This Act was meant to change the past practice in Sierra Leone relating to consent: under customary law, only the consent of the bride's family, and not the bride herself, was required.[32] Under section 2(1) of the Act, the bride's consent is now necessary. Lack of consent of women and girls to forcible 'bush marriages' (which were not forms of legal marriage) during the civil war served to highlight the importance of requiring spousal consent in peacetime marriages. As highlighted below, the SCSL was instrumental in raising awareness of the non-consensual nature of the 'bush wife' phenomenon.

Second, the Devolution of Estates Act was also passed in 2007.[33] This Act gives wives and daughters equal inheritance rights, as had been recommended by the TRC.[34] It applies regardless of whether their husband or father died with or without a will,[35] but is especially helpful in intestate situations. The Act introduced 'considerable changes to the economic standing of women, as most wealth in Sierra Leone is inherited'.[36] Specifically, it changed the previous regulations, which, under formal law provided wives with only 30 per cent of their deceased husband's property (while a husband would receive 100 per cent of his wife's property), under Muslim law did not permit women to administer estates and, under customary law, largely reverted all property to the husband's family.[37] Under customary law in certain areas, widows wishing to remain in the family home were required to marry their husband's brother.[38] The Devolution of Estates Act brings legal equality in that husbands and wives can inherit property from each other equally, and both female and male children inherit equally when a parent dies intestate.[39] In addition, the Act gives rights to the surviving spouse and children, such that they cannot be ejected from the matrimonial home prior to the settling of the estate.[40]

The third of the 'gender bills' was the 2007 Domestic Violence Act. Prior to the adoption of this Act, domestic violence could be prosecuted under the Offenses Against the Person Act as wounding or grievous bodily harm; however, domestic violence was not a criminal offense in itself.[41] This meant that prosecutions for domestic violence were rare.[42] The TRC noted that '[d]omestic violence against women intensified

during the civil war and endures in the post-conflict period' and that the pre-conflict laws were inadequate.[43] It therefore called on the government to 'work towards the enactment of specific legislation to address domestic violence' to 'facilitate the prosecution of offenders and empower women to access protection orders'.[44] The Domestic Violence Act responded to the TRC's recommendation, designating violence within a family or within a household/institution as an offence, defining such violence as physical or sexual abuse; economic abuse; emotional, verbal or psychological abuse; harassment (including sexual harassment); and conduct that endangers the safety, health or well-being of a person, undermines a person's privacy, integrity or security, or detracts from a person's dignity or worth as a human being.[45] A victim of domestic violence, including a child, may file a complaint.[46] Police are to respond promptly to a request for protection from domestic violence, and the Act lists a number of actions that the police and the courts may take.[47]

In 2012, another act was added to this array of reform legislation in response to TRC recommendations: the Sexual Offences Act.[48] The act criminalizes sexual offences, including those against children, which include rape, non-consensual sexual touching, targeting of especially vulnerable people for sexual activity,[49] incest, harassment, indecent exposure, voyeurism, bestiality, causing or controlling prostitution, producing, distributing or possessing child pornography and organizing or promoting child sex tourism.[50] The Sexual Offences Act explicitly states that rape within marriage is criminal, thereby signalling opposition to practices under which marriage was (and often still is, outside the formal justice system) seen as a defence to rape.[51] Apart from the TRC calling for legal reform for sexual offences, the need for such an Act was evident when the outdated Prevention of Cruelty to Children Act provisions included in the SCSL's own statute were compared to the statute's crimes imported from international criminal law.[52]

The United Nations Security Council commended Sierra Leone for the adoption of the Sexual Offences Act,[53] although there were delays in implementing the Act.[54] Prior to the enactment of the Act, the maximum penalty for rape was two years in prison and perpetrators would often settle out of court (including by agreeing to marry the victim).[55] Under the Act, the maximum penalty is 15 years of imprisonment and out-of-court settlements are not permitted.[56]

While the TRC report was a key driver behind these law reform efforts, it was not the only factor. Lobbying and guidance provided by domestic and international civil society organizations, UN Women and its precursors, and UNICEF were also influential.[57] In addition, the SCSL's

consideration of SGBV was important, as it occurred during the time period of the drafting and adoption of the 2007 and 2012 gender-related legal reforms. The SCSL's substantive consideration of such violence is examined in the next section.

Sexual and gender-based violence examined by the Special Court for Sierra Leone

Given the prevalence of sexual and gender-based violence during the war, it is not surprising that the SCSL Statute provided for the prosecution of 'rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence' as crimes against humanity, 'outrages upon personal dignity' (including rape and enforced prostitution) as a war crime and abuse of girls as a domestic crime.[58] As a result, the SCSL Office of the Prosecutor worked to ensure that SGBV was 'surfaced'[59] from the beginning, unlike the initial gender-blind experiences at the International Criminal Tribunals for the Former Yugoslavia and Rwanda.[60] In his initial indictments, the Prosecutor brought charges for rape, sexual slavery 'and any other form of sexual violence', and outrages upon personal dignity against Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu of the Armed Forces Revolutionary Council (AFRC), Issa Hassan Sesay, Morris Kallon and Augustine Gbao of the Revolutionary United Front (RUF) and Charles Taylor.[61] These charges were later amended in the AFRC and RUF cases to also include the crime against humanity of 'other inhumane acts' to capture forced marriage.[62] The Prosecutor described forced marriage as a condition in which the victim is exclusively assigned to a particular soldier and expected to provide sex, cooking, cleaning and other 'wifely' services on demand.[63] The Prosecutor also attempted, but failed, to bring charges relating to SGBV against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa of the Civil Defence Forces (CDF).[64] Apart from the charges mentioned above, the accused in the RUF, AFRC and *Taylor* cases were also charged with the war crime of committing acts of terror through, among other methods, the use of SGBV.[65]

The first case to be completed by the SCSL was the AFRC case. The AFRC trial began on 7 March 2005 and the trial judgment was issued on 20 June 2007.[66] The judgment is notable for its consideration of the forms of rape that had taken place in AFRC-controlled territory during the conflict, its legal characterization of sexual slavery and its debate over the legal nature of forced marriage. In the judgment, the Trial Chamber found that AFRC fighters had committed rape, including gang

rape, against women and girls.[67] It also concluded that rape was tolerated and institutionalized within the AFRC.[68] However, the AFRC Trial Chamber held that sexual violence was not undertaken as part of the war crime of spreading terror among civilians and was, rather, 'committed by the AFRC troops to take advantage of the spoils of war, by treating women as property and using them to satisfy their sexual desires and to fulfil other conjugal needs'.[69]

The AFRC judgment did not convict any of the indictees for the crime against humanity of sexual slavery. The Prosecutor had framed the charge as relating to 'sexual slavery and any other form of sexual violence', thereby unacceptably charging two offences under the same count.[70] The Prosecutor had been warned earlier in the case that this duplication could not stand,[71] but failed to take action to address the issue. In response, a majority of the judges adopted a rather draconian remedy: dismissal of the charge in its entirety.[72] This dismissal had the consequence of also dismissing consideration of all of the forced marriage evidence, which had been deemed, also by a majority, to amount to sexual slavery and nothing more.[73] As a result, the AFRC trial judgment did not result in any convictions for forced marriage or sexual slavery.

The majority's approach was rejected by the Appeals Chamber, which defined forced marriage as 'a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim'.[74] Despite the Appeals Chamber's reversal of the Trial Chamber's findings, it chose not to convict any of the indictees on forced marriage charges.[75] This decision meant that victims of forced marriage did not receive the expressive benefits of convictions: while the judges at both levels acknowledged that women and girls were forced into serving as 'bush wives', they did not confirm for each victim that what happened to her was a crime for which the accused was being held accountable.

In contrast, the RUF trial judgment resulted in the first-ever international convictions for the crime against humanity of sexual slavery and forced marriage (as an inhumane act).[76] The RUF trial began 8 months before the AFRC trial, on 5 July 2004, and the trial judgment was issued on 2 March 2009, 21 months after the AFRC trial judgment.[77] The RUF trial judgment pushed the boundaries of international criminal law's consideration of SGBV in a number of ways. First, it explored the patterns of SGBV in somewhat more detail than did the AFRC trial

judgment, concluding that rape in RUF-held areas took the forms of gang rape, multiple rapes, rape with weapons and other objects, public rape, rape before family members and rape in which civilians or family members are forced to rape each other.[78] The Trial Chamber concluded that '[t]he deliberate and concerted campaign to rape women constitutes an extension of the battlefield to women's bodies'.[79] Unlike the AFRC trial judgment, the RUF trial judgment identified rape and other forms of sexual violence as a means to terrorize the civilian population into submission.[80] These 'acts were not intended merely for the personal satisfaction or as a means of sexual gratification for the fighter'.[81] Rather, they were carried out in a 'calculated and concerted pattern' in order to 'deliberately destroy . . . the existing family nucleus' through reliance on pre-conflict patterns of stigmatization of rape victims.[82] As a result of the violence, '[v]ictims of sexual violence were ostracized, husbands left their wives, and daughters and young girls were unable to marry within their community'.[83] These findings were upheld on appeal.[84]

Second, the RUF trial judgment varied from the other SCSL judgments in that it provided some visibility for male victims of sexual violence. The Prosecutor originally restricted the indictments to sexual violence directed against women in the AFRC, RUF and *Taylor* cases.[85] In the AFRC and *Taylor* judgments, Trial Chamber II found that the indictments had to be followed and disallowed evidence of male sexual violence.[86] However, the RUF Trial Chamber found that the limitation in the indictment was cured by notice consistently given to the defence from an early stage.[87] As a result, the RUF trial judgment discussed sexual violence directed against men and boys, such as forced public sex among male and female civilians, forced witnessing by a husband of the rape and death of his wife, mutilation of male sexual organs and forced male nudity.[88]

Third, it confirmed the systematicity of SGBV in RUF-held areas. It found that the RUF did not discipline fighters who sexually enslaved women and girls: instead, the evidence demonstrated that RUF slaveholders punished their slaves when they refused to have sex, or would seek out RUF officials to ask that their sex slaves be disciplined when they had 'overlooked their commanders'.[89] The RUF trial judgment validated the AFRC appeals judgment finding that there was an organized 'pattern of conduct' in the way in which forced marriages occurred during the Sierra Leone conflict.[90] The judges also considered the deliberate choice of the term 'wife', which was strategic and used in order to psychologically manipulate the women and girls.[91]

The *Taylor* judgments took the gender analysis developed in the AFRC and RUF cases even further. The *Taylor* trial began on June 4, 2007 and the trial judgment was issued on 26 April 2012. The judgment built upon the AFRC and RUF findings on rape by holding that the RUF, AFRC and other affiliated fighters often abducted civilian women and girls prior to raping them, and that all women and girls were at risk of rape, including breastfeeding mothers, older women and especially girls.[92] Rape occurred in many ways and locations: the Trial Chamber highlighted incidents of gang rape, public rape, rape of civilians in the midst of other captives, rape accompanied by beatings on the genitals and the rest of the body, and sexual mutilation with sticks.[93] The *Taylor* trial judgment also confirmed the RUF trial judgment's approach on the war crime of committing acts of terror, highlighting the often public nature of the SGBV and demonstrating its corrosive effects on wartime Sierra Leonean society.[94] The *Taylor* appeals judgment supported the Trial Chamber's view that sexual violence was part of the RUF's operational strategy.[95] This is a positive precedent for other tribunals, which have unfortunately sometimes ruled that sexual violence was not a foreseeable aspect of military campaigns.[96] Importantly, the Trial Chamber rejected the defence argument that the women had sex out of gratitude: '[T]he Trial Chamber finds that the witness' statements that abducted women were treated with "love" and not forced to have sexual relations . . . to be contrary to the overwhelming volume of evidence and to be disingenuous and unreliable.'[97]

Even though Charles Taylor was not charged with forced marriage, the Trial Chamber opined on the issue in its judgment. It observed that the evidence showed that 'bush wives' were generally very young, generally ranging in age from 8 to 20 years.[98] It also spoke directly to the legal issue of nomenclature, concluding that the better term is 'forced conjugal association' because marriage does not actually take place.[99] In the Trial Chamber's view, forced conjugal association is composed of two already-existing international crimes: sexual slavery plus forced domestic labour (such as cooking and cleaning).[100]

Given the developments outlined, the SCSL has contributed in a significant manner to a deeper and more nuanced understanding within international criminal law of the legal contours of, and role played by, rape, sexual slavery and forced marriage/conjugal slavery within crimes against humanity and war crimes. At the same time, in breaking new ground, it also missed certain opportunities. For example, the AFRC, RUF and *Taylor* trial judgments took differing approaches to defining the harms associated with forced marriage, and it cannot be said that the

Appeals Chamber promulgated a cohesive overarching approach to the issue.[101] Moreover, the Prosecution's framing of sexual violence victims as only female unfortunately led to lack of consideration of male victims of sexual violence in the AFRC and *Taylor* trial judgments.[102]

The developments on SGBV described in this section provided crucial material for discussions in Sierra Leone relating to rape, sexual slavery, forced marriage and other forms of SGBV. These discussions happened in SCSL Outreach section events around the country from 2004 onwards,[103] as well as within local non-governmental organizations and in the media. These discussions occurred at the same time the law reform initiatives described above were under way to address gender inequality.

Influence of the SCSL on domestic 'gender' legislation

International criminal tribunals such as the SCSL have had a dramatic effect on international law: they have produced some groundbreaking legal precedents, 'played an educational role in focusing world attention on fundamental rules of international law prohibiting genocide, crimes against humanity, and war crimes', 'established an official record of the horrendous crimes committed' and held individuals criminally responsible.[104] However, have they had domestic impact in 'influencing public perceptions of – and confidence in – fair justice' or contributed 'to building domestic capacity for justice and the rule of law'?[105] One way in which the legacy of the SCSL on sexual violence might be measured is through its impact on law reform in Sierra Leone with respect to the 2007 'gender justice' bills and the 2012 Sexual Offences Act.[106]

The drafting and adoption of the 2007 gender bills 'cannot be linked in any direct sense' to the SCSL.[107] The International Center for Transitional Justice noted in 2006 that '[l]egal reform is taking place, but not necessarily with the direct involvement of Special Court officials'.[108] Rather, the Center argues that this law reform was largely influenced by local activists working with parliamentary representatives.[109] However, the Center does trace *indirect* contributions of the SCSL through the involvement of SCSL lawyers in the legal reform initiatives, including through the donation of time by two members from the SCSL's Office of the Prosecutor at the outset.[110] The Center explains the limited direct influence of the SCSL on the domestic law reform as related to strong pressures on the Court 'to stick to its "primary mandate" of trials of those bearing the greatest responsibility'.[111] Lotta Teale also posits a similar message of little direct influence on the 'gender bills'.[112]

The timing of the AFRC judgment did not permit it to influence the drafting of the gender bills: the text of the bills had been settled between 2005 and mid-2007, the trial judgment was released on 20 June 2007, and the gender bills were passed on 26 July 2007. However, the indictments and witness statements made in the RUF and AFRC trials – which included testimony related to rape, sexual slavery and forced marriage – were ongoing during the drafting of the gender bills.[113] During that time, the SCSL's Outreach section conducted numerous events in various parts of the country, engaging the general population and civil society organizations, among others, in discussions of the gender-related charges and public testimony in the AFRC and RUF cases.[114] It also 'pioneered a gender outreach programme',[115] which was directed at the concerns and interests of women and girls.[116] This programme trained women's groups to carry out sensitization of rural women on 'gender issues, particularly in relation to the rule of law, human rights, and the Special Court's mandate'.[117] These discussions were wide-ranging and included several of the equality issues at stake in the gender bills.[118] The Outreach section also conducted capacity-building training with local court and governmental representatives on 'the rights of women in the native administration process'.[119] Similarly, discussions of gender-based violence also took place in the Special Court Interactive Forum and in Accountability Now Clubs.[120] The SCSL also engaged with a local theatre troop presenting a play on forced marriage during war and in peace.[121] Many of the organizations involved in SCSL activities were the same ones also pressing for legislative reform (such as the Sierra Leone Court Monitoring Programme and LAWYERS).[122]

Additionally, in 2005, the SCSL co-hosted a National Victims Commemoration Conference, in conjunction with the Inter-Religious Council, the Forum for African Women Educationalists and the International Center for Transitional Justice, involving 250 delegates.[123] In their deliberations, the delegates concluded that the Court had contributed to the promotion of women's issues in Sierra Leone, including on rape and forced marriage.[124] In turn, the SCSL's work in this respect was assisted by other gender sensitization efforts taking place at the same time.[125]

These various gender-sensitive outreach efforts served to reach some who might not otherwise have engaged with the SCSL,[126] raised awareness and built capacity on gender issues among civil society in Sierra Leone.[127] In particular, the SCSL's work – both in the courtroom and in the outreach events – helped to provide information and context to civil society groups on international criminal law and other international

obligations owed by Sierra Leone on women's human rights.[128] These efforts prompted Sierra Leonean market women to tell Human Rights Watch that 'they stand up for women there' [at the SCSL].[129] That said, some in civil society have criticized the SCSL's interaction on gender issues during this time period as being 'out of touch with the common people' and as disconnected from practical application in domestic activism.[130]

The SCSL's widely publicized work, combined with its extensive outreach to civil society, also contributed indirectly to the opening up of domestic discourse on gender inequality, rape, forced marriage and other related topics.[131] The SCSL's high-profile focus on SGBV helped local organizations to 'find their voices', including on the national stage.[132] As Alison Smith describes, the SCSL's focus on SGBV issues assisted in increasing understanding within civil society that 'Sierra Leone has international obligations on these matters', thereby bringing a level of attention to the issues, and an ability to raise these issues in both public and private settings, which was not necessarily present or possible beforehand.[133] Together, the SCSL and civil society groups leveraged certain events, such as the expert evidence given in October 2005 by Zainab Bangura in the AFRC trial on the 'bush wife' phenomenon.[134] Bangura testified publicly, which allowed her expert evidence to be disseminated and discussed by civil society.[135] Justice Doherty of the SCSL identifies another link: in the SCSL courtroom, women were able to be heard on issues involving SGBV in ways they never had been before in Sierra Leone.[136] In Smith's view, not only did the SCSL enlarge the political space in which discussion of sexual violence could take place, 'it was in many ways a catalyst that helped push other actors to address gender-related issues'.[137]

It is likely that for this combination of reasons – the SCSL's extensive outreach on gender issues and the expansion of the national conversation on gender inequality – the President of the SCSL, Renate Winter, reported to the United Nations Security Council in 2009 that the SCSL's efforts on gender issues had indeed influenced the gender bills.[138]

The indirect link between the SCSL and law reform is perhaps more evident with respect to the adoption of the 2012 Sexual Offences Act. At the time of the drafting and adoption of that Act, the AFRC and RUF trial and appeals judgments had been released, and the *Taylor* trial judgment had been issued. Given the convictions of certain accused in those cases for gender-based acts such as rape, sexual slavery and forced marriage, it is not surprising that this jurisprudence, plus the crimes listed in

the SCSL Statute, were referred to by groups lobbying for the adoption of the Act.[139] Indeed, Sierra Leone's Attorney General has credited the SCSL's jurisprudence for having influenced the adoption of the Act.[140]

The influence of the SCSL's jurisprudence – as well as that of the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the International Criminal Court – can be seen in the wording of the Sexual Offences Act. For example, the offence of rape is defined in gender-neutral terms, so as to include both female and male victims, as was done in the SCSL.[141] The offence of rape in the Act includes an element of non-consent, which is defined in terms reflective of those identified in the RUF trial judgment to include the use or threat of force against the victim or someone else, coercion and incapacity.[142] As in the *Taylor* trial judgment, sexual violence committed in a public manner (with others around) is considered an aggravating factor for the purposes of sentencing.[143]

Arguably, the SCSL also contributed in another indirect way to the Sexual Offences Act. The SCSL's Office of the Prosecutor trained Sierra Leone police personnel and officers who prosecute criminal cases within the magistrate's court, including in the investigation and prosecution of crimes of SGBV.[144] The Office of the Prosecutor also assisted in the development of a national witness protection programme.[145] This helped to demonstrate that the national system had potential or actual capacity to implement the victim and witness protection aspects of the Act and to otherwise apply the Act in the Saturday (sexual violence) Courts.[146]

The SCSL was not the main influence behind the adoption of the gender bills in 2007 or the Sexual Offences Act of 2012. Rather, the TRC recommendations were central, as was activism by local, national and international organizations.[147] However, the SCSL can be credited with having an indirect – perhaps even a catalytic – influence. Some of this was achieved through awareness-raising and education about gender discrimination conducted by the SCSL using examples and themes drawn from the AFRC, RUF and *Taylor* cases. That work, along with the high-profile nature of the court's cases, contributed – alongside the work of many other international and domestic actors – to enlarging the domestic dialogue on gender equality, which, in turn, supported the 2007 and 2012 domestic law reform. These various changes to domestic law may influence law reform elsewhere: the UN Special Representative of the Secretary General on Sexual Violence in Conflict has undertaken a programme to share the legal experience in Sierra Leone in addressing sexual violence with the government and organizations in Côte d'Ivoire.[148]

Conclusion

This chapter began by exploring national law reforms aimed at reducing gender-based discrimination and violence in Sierra Leone, linking these efforts to the recommendations of the TRC. Second, it examined the SCSL's complex gender-related jurisprudence in the AFRC, RUF and *Taylor* cases, which unfolded contemporaneously with the drafting and adoption of Sierra Leone's 2007 gender bills and the 2012 Sexual Offences Act. The third section argued that, while the TRC was a central influence in Sierra Leone's domestic law reform, the SCSL also played a role, albeit indirect. The SCSL assisted in raising awareness within civil society of the legal aspects of gender discrimination, especially violence directed against women and girls. The profile of SGBV within the work of the SCSL also helped to amplify public discourse on gender inequality in Sierra Leone. Additionally, certain sections of the Sexual Offences Act reflect approaches taken by the SCSL (as well as other international tribunals) in defining sexual crimes.

Can such an indirect path from the SCSL to domestic law reform be seen as a form of legacy? Stromseth posits that the answer is 'yes' where 'supply side' and 'demand side' capacity-building can be traced.[149] By 'supply side' she means creation of expertise, such as through the SCSL's training of domestic police investigators to build their skills in investigating gender-based crimes and in protecting witnesses to such acts.[150] By 'demand side' she means the empowerment of civil society – both individuals and groups – 'to insist upon justice and accountability from domestic legal and political institutions'.[151] The SCSL's Outreach section engaged with local actors in innovative ways on a wide variety of gender issues going beyond the specifics of crimes against humanity and war crimes in the civil war. This breadth of engagement helped demonstrate the legal linkages between gender discrimination in wartime and peacetime, and gave some in civil society helpful information, encouragement or legal language to press for changes in domestic law. The SCSL was never the sole, or even the main, actor in prompting legislative change in Sierra Leone. But it was a contributing factor.

While the SCSL's indirect impact on legislative reform may be counted as a legacy issue, it certainly cannot be said that the legislative reform itself has yet contributed to measureable societal change in reducing SGBV. Overall, the situation of women and girls in Sierra Leone remains mired in inequalities, though the end of the conflict has brought some small improvement. For example, the 2000 Human Development Report ranked Sierra Leone generally at the very bottom of the index (162 out of 162 countries), with it slightly increasing by

2014 (183 out of 187 countries).[152] A very slight gain can be seen in equality in the Gender Inequality Index between 2005 and 2014 but, as with the Human Development Index, Sierra Leone still ranks near the bottom at 183 out of 187 states.[153] These slight post-conflict gains are belied by the nature and extent of peacetime SGBV.[154] For example, Albrecht and Jackson have noted that rates of violence against women are higher in the east of Freetown where large numbers of former combatants have settled.[155] A nurse at a rape counselling and treatment centre in Sierra Leone notes that '[s]ome of the perpetrators [of rape] were children during the war and were exposed to rape and sexual violence then and just carried on doing it'.[156] In addition, since the end of the war, societal discourse on women's equality and empowerment has advanced,[157] but some men have felt threatened by it and have reacted using gender-based violence.[158]

A large proportion of the population in Sierra Leone still resorts to means other than the law to address this violence: '[L]ocal chiefs often adjudicate cases of sexual violence through out-of-court settlements and marriages between the perpetrator and the victim, including in cases where the survivor is under the legal age of consent.'[159] Despite the Domestic Violence Act and the Sexual Offences Act, there is still a widely held belief in Sierra Leone that rape is acceptable in marriage and that prosecution should only take place if the violence was directed against young girls.[160] Overall, sexual violence is still persistent, police Family Support Units (to which sexual violence can be reported) are underfunded and there are still relatively few prosecutions (though the numbers appear to be increasing).[161]

The reality is that, while more legal attention is being paid to SGBV in Sierra Leone, and while this may be seen as a direct legacy of the TRC and an indirect legacy of the SCSL, the post-conflict phase is still marked by lack of accountability for such crimes, making it difficult to change attitudes and practices.[162]

Notes

1 I thank Kimberley Ruiter and Kirsten Stefanik for their research assistance, Margaret Martin and Kirsten Ainley for their helpful comments and my law faculty for its research funding. Any errors are my own.

2 For instance, SCSL Office of the Prosecutor (OTP) (2009) 'Special Court Prosecutor Hails RUF Convictions', Press Release, 25 February, available at: http://www.rscsl.org/Documents/Press/OTP/prosecutor-022509.pdf; SCSL OTP (2009) 'Prosecutor Welcomes Convictions in RUF Appeals Judgment', Press Release, 26 October, available at: http://www.rscsl.org/Documents/Press/OTP/prosecutor-102609.pdf

3 V. Oosterveld (2009) 'Lessons from the Special Court for Sierra Leone on the Prosecution of Gender-Based Crimes', *American University Journal of Gender, Social Policy & the Law* 17(2), 407–430; V. Oosterveld (2011) 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments', *Cornell International Law Journal* 44(1), 49–74; and V. Oosterveld (2012) 'Gender and the Charles Taylor Case at the Special Court for Sierra Leone', *William & Mary Journal of Women and the Law* 19(1), 7–33.
4 Sierra Leone Truth and Reconciliation Commission Report (2004) *Witness to Truth*, Vol. 3(b), Chapter 3 'Women and the Armed Conflict' (Accra: Truth and Reconciliation Commission, Sierra Leone), para. 10.
5 Physicians for Human Rights (PHR) (2002) *War-Related Sexual Violence in Sierra Leone: A Population-Based Assessment* (Boston: Physicians for Human Rights), p. 2. Note that, while studies such as this use the term 'sexual violence', it is better to refer to sexual *and* gender-based violence (SGBV) when considering forced marriage, which includes non-sexual forced domestic labour.
6 Human Rights Watch (HRW) (2003) *'We'll Kill You If You Cry': Sexual Violence in the Sierra Leone Conflict* (New York: Human Rights Watch), p. 42.
7 T. ten Bensel (2014) 'Framing in the Making: The Evolution of Sex Offender Motivation in Sierra Leone', *International Criminal Justice Review* 24(1), 60, 75–76.
8 PHR, *War-Related*, p. 3.
9 PHR, War-Related, p. 2.
10 PHR, *War-Related*, pp. 3–4.
11 HRW, *We'll Kill*, p. 3; Amnesty International (2000) *Sierra Leone: Rape and Other Forms of Violence against Girls and Women* (London: Amnesty International Index, AFR/51/35/00), pp. 1–5, 7. MacKenzie has critiqued the focus on women and girls as victims of SGBV, noting that this has created a general picture of women and girls as passive victims, even though they also served as soldiers and perpetrated crimes, commanded groups, spied, looted, raped and burned houses: M. MacKenzie (2009) 'Securitization and De-securitization: Female Soldiers and the Reconstruction of the Family in Post-Conflict Sierra Leone', *Security Studies* 18(2), 245.
12 TRC Report, Vol. 3b, Chapt. 3, para. 10.
13 TRC Report, Vol. 3b, Chapt. 3, paras 200–387.
14 TRC Report, Vol. 3b, Chapt. 3, paras 388–413.
15 TRC Report, Vol. 3b, Chapt. 3, para. 326.
16 TRC Report, Vol. 3b, Chapt. 3, para. 250.
17 TRC Report, Vol. 2, Chapt. 3, Recommendations, paras 111, 330, 333, 334, 342, 370–371.
18 The Child Rights Act was also introduced in 2007, but it is not explored in this chapter.
19 A. Zureick (2008) 'Implementing the Gender Acts in Sierra Leone' (Skoll World Forum), 29 January, available at: http://skollworldforum.org/2008/01/29/implementing-the-gender-acts-in-sierra-leone/; Centre for Accountability and Rule of Law (CARL) (2007) 'Sierra Leone Parliament Passes the Gender Bills into Law', available at: http://www.carl-sl.org/home/reports/298-sierra-leone-parliament-passes-the-gender-bills-into-law; J. Kamara (2006) 'Addressing Gender Disparity

in Sierra Leone', Sierra Leone Court Monitoring Program, 26 September, available at: http://www.carl-sl.org/home/index.php?view=article&catid=4%3Aarticles&id=85%3Ajeneba-kamara&format=pdf&option=com_content&Itemid=23

20 Zureick, 'Implementing'; Social Development Direct and Oxford Policy Management (2008), 'Making Aid More Effective through Gender, Rights and Inclusion: Evidence from Implementing the Paris Declaration, Sierra Leone Case Study', p. 12, available at: http://www.opml.co.uk/sites/default/files/Making%20Aid%20More%20Effective%20-%20Sierra%20Leone.pdf.
21 Zureick, 'Implementing'.
22 Social Development Direct, 'Making Aid', p. 12.
23 Commonwealth Foundation (2013) 'National Report: Sierra Leone, a Civil Society Review of Progress Towards the Millennium Development Goals in Commonwealth Countries', p. 14, available at: http://www.commonwealthfoundation.com/sites/cwf/files/downloads/MDG%20Reports%20Sierra_Leone_FINAL_1.pdf
24 Commonwealth Foundation, 'National Report', p. 14.
25 Zureick, 'Implementing'; Social Development Direct, 'Making Aid', p. 12.
26 Social Development Direct, 'Making Aid', p. 11.
27 Zureick, 'Implementing'.
28 Zureick, 'Implementing'.
29 The Registration of Customary Marriage and Divorce Act, 2009, Sierra Leone.
30 TRC Report, Vol. 3b, Chapt. 3, p. 98.
31 The Registration of Customary Marriage and Divorce Act, sections 2(1), 7. Note that there is an exception to the age of marriage, if the parents or guardians consent (section 2(2)).
32 K. Belair (2006) 'Unearthing the Customary Law Foundations of "Forced Marriages" during Sierra Leone's Civil War: The Possible Impact of International Criminal Law on Customary Marriage and Women's Rights in Post-Conflict Sierra Leone', *Columbia Journal of Gender & the Law* 15, 568.
33 The Devolution of Estates Act, 2007, Sierra Leone.
34 The Devolution of Estates Act, sections 5–9, 17, 18, 22, 23, 28, 33; TRC Report, Vol. 2, Chapt. 3, paras 316–322, 342, 345.
35 The Devolution of Estates Act, Parts II and III.
36 CARL, 'Gender Bills'.
37 Zureick, 'Implementing'.
38 Zureick 'Implementing'; TRC Report, Vol. 2, Chapt. 3, para. 370.
39 Devolution of Estates Act, sections 3, 5–9, 17, 18.
40 Devolution of Estates Act, section 33. The Act deems a violation of this section to be an offence liable to a fine or a term of imprisonment: 33(4).
41 Zureick, 'Implementing'.
42 TRC Report, Vol. 3b, Chapt. 3, paras 136–137.
43 TRC Report, Vol. 2, Chapt. 3, para. 328.
44 TRC Report, Vol. 2, Chapt. 3, para. 328.
45 Domestic Violence Act, section 2.
46 Domestic Violence Act, section 5.
47 Domestic Violence Act, sections 6–19.
48 TRC Report, Vol. 2, Chapt. 3, paras 330, 333, 336; Sexual Offences Act 2012, Sierra Leone.
49 This includes individuals with a mental disability: sections 8 and 9.

50 Sexual Offences Act, sections 6–23, 25–32, 34.
51 Sexual Offences Act, section 5; L. Denney and A. Fofana Ibrahim (2012) *Violence Against Women in Sierra Leone: How Women Seek Redress* (London: Overseas Development Institute), p. 9.
52 Statute of the SCSL (2002) 2178 UNTS 145, articles 2(g) and 5(a).
53 UNSC Res. 2065, UN Doc. S/RES/2065 (2012), preambular para. 9.
54 Amnesty International (2013) *Amnesty International Report 2013: The State of the World's Human Rights* (London: Amnesty International), p. 233.
55 N. de Vries (2013) 'Sierra Leone Media Criticized for Rape Case Reporting' (Voice of America), available at: http://www.voanews.com/content/sierra-leone-media-criticized-for-rape-case-reporting/1757440.html; TRC Report, Vol. 2, Chapt. 3, para. 336.
56 Sexual Offences Act, sections 6–10, 19, 20, 25, 28, 30–32, 34.
57 See notes 23–27.
58 SCSL Statute, articles 2(g), 3(e) and 5(a).
59 This term comes from R. Copelon (1994) 'Surfacing Gender: Re-engraving Crimes against Women in Humanitarian Law', *Hastings Women's Law Journal* 5, 243–265; Interview, D. Crane, 25 August 2014.
60 The SCSL OTP had two full-time investigators working on gender-based crimes: L. R. Jefferson (2004) 'In War as in Peace: Sexual Violence and Women's Status', in HRW (ed.) *World Report: Human Rights and Armed Conflict* (New York: Human Rights Watch), p. 342.
61 Each accused was initially indicted individually, with indictments later joined: *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-PT, Indictment (SCSL, Trial Chamber, 5 February 2004), paras 51–57; *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-PT, Indictment (SCSL, Trial Chamber, 5 February 2004), paras 54–60; *Prosecutor v. Taylor*, Case No. SCSL-03-01-PT, Prosecution's Second Amended Indictment (SCSL, Trial Chamber 1, 29 May 2007), paras 14–17 [*Taylor*, Final Indictment]. Sam Bockarie, Foday Sankoh and Johnny Paul Koroma were also similarly charged, but Bockarie's and Sankoh's indictments were withdrawn after their deaths. Koroma's indictment still stands, but he is presumed dead.
62 *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-PT, Further Amended Consolidated Indictment, (SCSL, Trial Chamber II, 18 February 2005), paras 51–57 [AFRC Final Indictment]; *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Corrected Amended Consolidated Indictment (SCSL, Trial Chamber I, 2 August 2006), paras 54–60 ['RUF Final Indictment'].
63 *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-T, Prosecutor Trial Brief (SCSL, Trial Chamber II, 6 December 2006), paras 1868–1918.
64 *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-PT, Decision on Prosecution Request for Leave to Amend the Indictment (SCSL, Trial Chamber, 20 May 2004).
65 AFRC, Final Indictment, para. 41; RUF, Final Indictment, para. 44; *Taylor*, Final Indictment, para. 5.
66 *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-T, Judgment (SCSL, Trial Chamber II, 20 June 2007), para. 10 [AFRC Trial Judgment].
67 AFRC Trial Judgment, paras 1031–1035, 1728, 1926–1927, 2040 and 2043.
68 AFRC Trial Judgment, para. 1741.

69 AFRC Trial Judgment, para. 1459.
70 AFRC Trial Judgment, paras 92–95.
71 *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-T, Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98 (SCSL, Trial Chamber II, 31 March 2006) at Justice Sebutinde's Separate Concurring Opinion, para. 9.
72 AFRC Trial Judgment, para. 95.
73 AFRC Trial Judgment, para. 713.
74 *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-A, Judgment (SCSL, Appeals Chamber, 22 February 2008), para. 196 [AFRC Appeals Judgment].
75 AFRC Appeals Judgment, para. 202.
76 See note 2.
77 *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Judgment (SCSL, Trial Chamber I, 2 March 2009), Annex B, para. 32, note 64 [RUF Trial Judgment].
78 RUF Trial Judgment, paras 1181, 1185, 1193–1194, 1205–1207 and 1289.
79 RUF Trial Judgment, para. 1602.
80 RUF Trial Judgment, para. 1348.
81 RUF Trial Judgment, para. 1348
82 RUF Trial Judgment, paras 1347–1349.
83 RUF Trial Judgment, para. 1349.
84 *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-A, Judgment (SCSL, Trial Chamber I, 26 October 2009), para. 990 [RUF Appeals Judgment].
85 AFRC Final Indictment, para. 51; RUF Final Indictment, para. 54; *Taylor*, Final Indictment, para. 14.
86 AFRC Trial Judgment, paras 968–969; *Prosecutor v. Taylor*, SCSL-03-01-T, Judgment (SCSL, Trial Chamber II, 18 May 2012), paras 124–134 [*Taylor*, Trial Judgment].
87 RUF Trial Judgment, paras 1303–1304.
88 RUF Trial Judgment, paras 1067, 1194, 1207, 1208, 1210, 1307, 1347.
89 RUF Trial Judgment, paras 1063–1064.
90 RUF Trial Judgment, paras 1293, 1412–1413, 1466; AFRC Appeals Judgment, paras 191, 201.
91 RUF Trial Judgment, para. 1466.
92 *Taylor*, Trial Judgment, paras 889, 891, 894, 895, 898, 903–905, 919, 930, 961, 967, 997, 980, 981, 983, 984, 989, 992, 995, 1002, 1008.
93 *Taylor* Trial Judgment, paras 895, 898, 903, 927, 989, 992.
94 *Taylor* Trial Judgment, paras 1196, 2034, 2036, 2037, 2051, 2052, 2175, 2177.
95 *Prosecutor v. Taylor*, Case No. SCSL-03-01-A, Judgment (SCSL, Appeals Chamber, 26 September 2013), paras 271–273 [*Taylor*, Appeals Judgment].
96 For example, *Prosecutor v. Đordević*, Case No. IT-05-87/1-T, Public Judgment with Confidential Annex Volume I of II (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II, 23 February 2011), paras 1796, 1797; overturned on appeal, *Prosecutor v. Đordević*, Case No. IT-05-87/1-A, Judgment (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, 27 January 2014), paras 877, 901, 929.
97 *Taylor*, Trial Judgment, para. 1038.
98 *Taylor*, Trial Judgment, para. 1101.

99 *Taylor*, Trial Judgment, paras 425, 426. The Appeals Chamber did not rule on this issue, but did refer to 'conjugal servitude': *Taylor*, Appeals Judgment, para. 266. Haenen feels that this gets to the heart of the matter: I. Haenen (2014) *Force & Marriage: The Criminalisation of Forced Marriage in Dutch, English and International Criminal Law* (Antwerp: Intersentia), p. 281.
100 *Taylor*, Trial Judgment, paras 424, 425, 427, 428. Therefore, forced conjugal association is not a new crime (and therefore does not violate the principle of legality): para. 430.
101 Thompson expresses concern that this variation may diminish the legitimacy of the process and undermine 'the value of the project itself' and 'weaken the quality of justice provided to these victims' of forced marriage: S. Thompson (2014) 'Forced Marriage at the Special Court for Sierra Leone: Questions of Jurisdiction, Legality, Specificity, and Consistency', in C. Jalloh (ed.) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (Cambridge: Cambridge University Press), p. 233.
102 This also means a missed opportunity to raise the profile of this issue within national discussion in Sierra Leone.
103 Interview with SCSL official, 11 June 2014; for example, Special Court for Sierra Leone (2005) *Second Annual Report of the President of the Special Court for Sierra Leone, 1 January 2004–17 January 2005* (Freetown: SCSL), p. 34.
104 J. Stromseth (2009) 'Justice on the Ground: Can International Criminal Courts Strengthen Domestic Rule of Law in Post-Conflict Societies?', *Hague Journal on Rule of Law* 1, 87.
105 Stromseth, 'Justice', p. 88.
106 Dittrich notes that many different factors compose the legacies of the SCSL: V. Dittrich (2014) 'Legacies in the Making: Assessing the Institutionalized Legacy Endeavor of the Special Court for Sierra Leone', in Jalloh (ed.), *The Sierra Leone Special Court*, pp. 668, 679–688.
107 L. Teale (2009) 'Addressing Gender-Based Violence in the Sierra Leone Conflict: Notes from the Field', *African Journal on Conflict Resolution* 9(2), 81.
108 T. Perriello and M. Wierda (2006) *The Special Court for Sierra Leone Under Scrutiny* (New York: International Center for Transitional Justice), p. 39.
109 Perriello and Wierda, *Scrutiny*, p. 39.
110 Perriello and Wierda, *Scrutiny*, p. 39, note 133.
111 Perriello and Wierda, *Scrutiny*, p. 39.
112 Teale, 'Addressing', p. 81.
113 AFRC Trial Judgment, para. 10.
114 Interview with SCSL official, 11 June 2014. This can be traced through the annual reports, for example, Special Court for Sierra Leone (2006) *Third Annual Report of the President of the Special Court for Sierra Leone, January 2005–January 2006* (Freetown: SCSL), p. 37 [SCSL, *Third Annual Report*].
115 Perriello and Wierda, *Scrutiny*, p. 37.
116 Interview, SCSL judge, 12 June 2014.
117 SCSL, *Third Annual Report*, p. 38; Special Court for Sierra Leone (2007) *Fourth Annual Report of the President of the Special Court for Sierra Leone, January 2006–May 2007* (Freetown: SCSL), p. 53. The Sierra Leone Market Women's Association organized countrywide seminars, targeting 5000 market women.
118 Interview with SCSL official, 11 June 2014.

119 SCSL, *Fourth Annual Report*, p. 54.
120 Interview with SCSL official, 11 June 2014.
121 Interview with J. Johnson, 26 August 2014.
122 Interview with SCSL official, 11 June 2014.
123 SCSL, *Third Annual Report*, p. 37.
124 M. Wierda (2009) 'National Victims Commemoration Conference Report', p. 3, available at: http://www.carl-sl.org/home/index.php?view=article&catid=5%3Areports&id=269%3Anational-victim-commemorations-conference-in-sierra-leone&format=pdf&option=com_content&Itemid=20
125 For example, see the UN Women and UNICEF projects described in C. Chikoore (2011) 'Evaluation Report: Supporting Gender and Capacity, Women's Rights Protection and Child Protection in Recovery and Peacebuilding in Sierra Leone', available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fgate.unwomen.org%2Funifem%2Fevaluationadmin%2Fdownloaddocument.html%3Fdocid%3D3472&ei=hPFWVIbxA8ityAT_6oHwDg&usg=AFQjCNE9SLsfcfGnD4tjow8T-thn40ttNQ
126 Interview with SCSL judge, 12 June 2014.
127 It should be noted that the SCSL's role was not limited to awareness-raising; it also included gender-sensitive approaches to witness support carried out in partnership with local women's organizations: Statement by Ambassador Michael Tatham of the UK Mission to the UN to the Security Council briefing by the President and Prosecutor of the Special Court for Sierra Leone (9 October 2012), available at: http://webarchive.nationalarchives.gov.uk/20130217073211/http://ukun.fco.gov.uk/en/news/?view=PressS&id=820146782
128 Email correspondence with A. Smith, No Peace Without Justice (7 July 2014).
129 HRW (2005) *Justice in Motion: The Trial Phase of the Special Court for Sierra Leone* (New York: Human Rights Watch), p. 35.
130 Teale, 'Addressing', pp. 79–80.
131 Interview with SCSL official, 11 June 2014.
132 A. Bates (2010) 'Transitional Justice in Sierra Leone: Analytical Report' (ATLAS Project, British Institute of International and Comparative Law and Seventh Framework Programme), available at: http://projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_SL_Final_Report_FINAL_EDITS_Feb2011.pdf. As Cassese noted in general, the SCSL's 'impact on the Sierra Leonean civil society is a fact of enormous importance, the significance of which is not matched by any other international criminal tribunal'. A. Cassese (2006) 'Report on the Special Court for Sierra Leone, Submitted by the Independent Expert', para. 291, available at: http://www.rscsl.org/Documents/Cassese%20Report.pdf
133 Email correspondence with A. Smith, No Peace Without Justice (7 July 2014).
134 AFRC Trial Judgment, Separate Concurring Opinion of the Hon. Justice Julia Sebutinde Appended to Judgment Pursuant to Rule 88(c), paras 8, 11, 13–15, and Partially Dissenting Opinion of Justice Doherty on Count 7 ('Sexual Slavery') and Count 8 ('Forced Marriages'), paras 23, 24, 27, 30, 33.
135 Discussion with Z. Bangura, 25 August 2014. This research and the later SCSL convictions contributed to changing the national discourse on rape: Z. Bangura, 'Sexual Violence: A Crime of War' (25 August 2014), available at: http://ilg2.org/2014/09/03/srsg-bangura-sexualviolence-a-crime-of-war/

136 Justice Doherty, speech at 'Exploring the Legacy of the SCSL', Freetown (6 February 2013), author notes.
137 Email correspondence with A. Smith, No Peace Without Justice (7 July 2014). The same term – catalyst – is used by the UN Office of the High Commissioner for Human Rights (2008) 'Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts', p. 6.
138 United Nations Meetings Coverage and Press Releases (16 July 2009), 'Top Officers of Special Court for Sierra Leone Describe Trial of Charles Taylor as Critical for Fragile Peace, Stability in West Africa', UN Doc. SC/9707, available at: http://www.un.org/press/en/2009/sc9707.doc.htm
139 Christiana Davis-Cole (6 February 2013), Lawyers, speech at 'Exploring the Legacy of the SCSL', Freetown author notes.
140 Franklyn Bai Kargbo, Attorney General and Minister of Justice (6 February 2013), speech at 'Exploring the Legacy of the SCSL', Freetown author notes.
141 Sexual Offences Act, section 6; RUF Trial Judgment, para. 145.
142 Sexual Offences Act, sections 2(2) and 6; RUF Trial Judgment, paras 147, 148.
143 Sexual Offences Act, section 35(a); *Taylor*, Trial Judgment, para. 1196.
144 M. A. Bangura (2104) 'Delivering International Criminal Justice at the Special Court for Sierra Leone: How Much Is Enough?', in Jalloh (ed.), *The Sierra Leone Special Court*, p. 695; Interview with SCSL official, 11 June 2014; Special Court for Sierra Leone Press Release (7 November 2005) 'Special Court, Canadian Government, Train Police Investigators in Sierra Leone', available at: http://www.rscsl.org/Documents/Press/2005/pressrelease-110705.pdf
145 Bangura, 'Delivering', p. 695; SCSL Press Release, 'Special Court Launches Witness Protection Training Programme' (6 November 2009), available at: http://www.rscsl.org/Documents/Press/2009/pressrelease-110609.pdf
146 Sexual Offences Act, sections 38–42; Interview with SCSL official, 11 June 2014. The SCSL was not the only organization doing relevant training: UN Development Programme, 'Sierra Leone: Saturday Courts Tackle Gender-Based Violence' (7 March 2012), available at: http://www.undp.org/content/undp/en/home/presscenter/articles/2012/03/07/sierra-leone-saturday-courts-tackle-gender-based-violence-case-back-log-/
147 Denney and Fofana Ibrahim, *Violence*, p. 7, note the 'massive human rights sensitization across the country' since the end of the war.
148 Report of the Secretary General, 'Conflict-related Sexual Violence', UN Doc. S/2014/181 (13 March 2014), para. 77 [UNSG Report].
149 Stromseth, 'Justice', pp. 95–97.
150 Stromseth, 'Justice', p. 95; Interview with SCSL official, 11 June 2014; Saleem Vahidy, speech at 'Exploring the Legacy of the SCSL', Freetown (6 February 2013), author notes.
151 Stromseth, 'Justice', p. 96.
152 UN Development Programme (2000) *Human Development Index*, p. 160, available at: http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf; UN Development Programme (2014) *Human Development Index*, available at: http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components
153 UN Development Programme (2014) 'Sierra Leone Gender Inequality Index', available at: http://hdr.undp.org/en/content/gender-inequality-index

154 K. Barnes, P. Albrecht and M. Olson (2007) *Addressing Gender-Based Violence in Sierra Leone: Mapping Challenges, Responses and Future Entry Points* (London: Irish Aid and International Alert), p. 2.
155 P. Albrecht and P. Jackson (2009) 'Security System Transformation in Sierra Leone, 1997–2007' (Birmingham: Global Facilitation Network for Security Sector Reform, Birmingham University), p. 39.
156 IRIN (2008) 'Sierra Leone: Sex Crimes Continue in Peacetime', http://www.irinnews.org/report/78853/sierra-leone-sex-crimes-continue-in-peacetime
157 Denney and Fofana Ibrahim, *Violence*, p. 5.
158 Denney and Fofana Ibrahim, *Violence*, p. 5, 7–8; International Rescue Committee (2012) *'Let Me Not Die Before My Time': Domestic Violence in West Africa* (Geneva, IRC), p. 12.
159 UNSG Report, para. 76.
160 Denney and Fofana Ibrahim, *Violence*, p. 9.
161 Denney and Fofana Ibrahim, *Violence*, pp. 3, 9, 13.
162 Barnes et al., *Addressing*, p. 12.

8

Taylor Is Guilty, Is That All There Is? The Collision of Justice and Politics in the Domestic Arena

David Harris and *Richard Lappin*

Introduction

On 26 April 2012, the Special Court for Sierra Leone (SCSL) in The Hague found 'beyond reasonable doubt' that former Liberian President Charles Taylor 'is criminally responsible . . . for aiding and abetting the commission of the crimes 1 to 11 in the indictment'.[1] Taylor had substantial influence over, and provided military support for, the Sierra Leonean Revolutionary United Front (RUF), which had committed the war crimes and crimes against humanity for which Taylor was convicted, but his contribution was judged to have fallen short of effective command and control. The majority of the reactions to the judgment around the world were effusive in their praise of the SCSL and, on the face of it, the judges' conclusions about Taylor's liability were reasonable. The judgment acknowledged some RUF independence in decision-making and unintentionally emphasised the point that the conflict may be too complex to reduce to a black-and-white legal process. Indeed, seeing the war purely in terms of criminality hides a whole terrain of political textures. Impunity has been marginally reduced by the Taylor trial, but at what political costs in Sierra Leone and neighbouring Liberia? And at what ongoing costs elsewhere? This chapter looks at how justice affects politics and politics affects justice with regard to the SCSL and the contemporaneous Truth and Reconciliation Commission (TRC), and contrasts this with the primarily realpolitik approach to conflict resolution in neighbouring Liberia. It argues both that there are considerable (although fortunately not catastrophic) effects of justice upon politics in this corner of West Africa and also that domestic politics affects the prosecution of atrocity crimes and truth and reconciliation processes. In examining these effects, the way the justice narrative in Sierra Leone

was underpinned by liberal discourse is taken seriously, in particular the assumption that establishing retributive and purportedly apolitical courts is the best solution to conflicts, which are still – despite mercenerism, brutality and lack of clear political definition – political struggles to a great extent.

From political to judicial conflict resolution

The conflict resolution discourse changed substantially around the turn of the millennium. During the early 1990s, emphasis was placed on political notions of negotiation.[2] Conflict and peace in Cambodia, Mozambique, Angola, El Salvador, Sierra Leone and Liberia were, until the late 1990s, approached from the point of view of persuading all groups to the table: the goal of negotiators being to include rather than to exclude, even where this meant providing amnesty for mass human rights abuses.[3] The US-led intervention in Somalia in 1992, which sought a military resolution to the civil conflict, bucked this trend, but that case is an anomaly in early 1990s practice.

The Yugoslav and Rwandan tribunals were the front runners of change in the twilight of the twentieth century, followed in the new millennium by the International Criminal Court (ICC), the SCSL and further international or hybrid courts in East Timor, Cambodia and Lebanon. The establishment of these courts marks a change in thinking about ending conflict and achieving peace, towards the judicial and retributive rather than the political and reconciliatory.[4] Pointedly, the UN Secretary General Kofi Annan stated in 2004 that we should 'reject any amnesty for genocide, war crimes or crimes against humanity . . . and ensure that no such amnesty previously granted is a bar to prosecution before any UN-created or assisted court'.[5] Impunity became the number-one enemy of peace, with a growing emphasis placed on rule of law and accountability. Robertson notes approvingly the 'millennial shift from appeasement to justice', while Branch is concerned that an 'international law fundamentalism' is now at work.[6]

The claimed benefits of international criminal trials are multiple.[7] It is argued that the punishment of those responsible for mass abuses of human rights can serve as a powerful example of the rule of law and deter others from committing similar abuses in the future. International trials are also claimed to help advance the domestic legal foundations for the protection of universal human rights by establishing the norm that perpetrators of gross human rights abuses will be held individually criminally responsible. Offering victims the opportunity to testify, it is

suggested, can also be a powerful means of closure and allow individuals to move towards national reconciliation.

However, such trials may at the very least work against peace, especially in the short term. There is little evidence to suggest that the threat of prosecution will have a restraining influence on persons committing abuses.[8] In Liberia, for example, the signing of a 2003 peace agreement was effectively thwarted by the decision of the SCSL Chief Prosecutor, David Crane, to issue a press release on the same day that revealed an indictment of Taylor for crimes against humanity and war crimes in Sierra Leone.[9] The timing of the announcement was criticised by several international leaders, including Nigerian President Olusegun Obasanjo, who noted that the announcement 'had complicated the efforts of sub-regional leaders to persuade him to leave office peacefully'.[10]

The shift in emphasis from political negotiation to legal trials accompanied a general move away from Cold War era notions of the sanctity of sovereignty, as heavily supported by the Organisation of African Unity (OAU), towards a more interventionist approach in global politics. Discursive shifts, such as the Responsibility to Protect (R2P) movement, further pushed an interventionist agenda with the claim that the international community has a responsibility to protect another nation's citizens when its government has clearly forfeited that duty.[11] Even if the results of certain interventions, for instance, in Iraq and Libya, called the move towards interventionism and trials into question, these developments have had a clear and lasting normative impact on the foreign policies of Western powers.

Indeed, Sierra Leone was an early recipient of this new thinking and the UK was a leading state in advancing it, with key policy decisions taken during the Tony Blair–led New Labour Government. From 1997, the UK was involved in supplying arms to international peace-enforcing and pro-government forces in Sierra Leone, providing aid for the Ahmad Tejan Kabbah government in exile and then back in power, sending the British Army on a unilateral venture to prop up Kabbah's regime and the UN deployment.[12] In 2002, a large and unprecedented 10-year aid agreement was signed between the Department for International Development and the government of Sierra Leone, which has continued through two incumbents and beyond the ten-year schedule.[13] Finally, in 2013, British support for Sierra Leone culminated in the offer of incarceration on British soil of the final indictee to be found guilty at the SCSL, Charles Taylor.

The move towards justice can be seen within the concurrent liberalisation of global discourse. Since the end of the Cold War, economic

and political liberalisation have been identified as the parallel tracks of development for poor and post-conflict countries. As early as 1996, UN Secretary General Boutros-Ghali proclaimed that 'peace, development and democracy are inextricably linked'.[14] From this perspective, free markets and privatisation are aligned with democratisation, accountability, promotion of civil society, good governance and the Millennium Development Goals.[15] Indeed, initially within Structural Adjustment Programmes and later within the more tailored Poverty Reduction Strategy Papers, these ideas have been to a large extent imposed on African states through conditionalities on aid.[16] These are large programmes involving many Western institutions and with significant funding, longevity and ideological underpinning.[17] These liberalising programmes, essentially, demanded a shift away from the communalist obligations and 'traditional' structures common in African society towards individualist thinking and respect for a 'modern' state and 'modern' societal structures: the creation of '*homo economicus*', an ideal of a liberal capitalist economic being, and '*homo democraticus*', a similar political, democratic being.[18]

Justice can be seen as another plank in this liberal construction: the fashioning of what could be termed '*homo justus*'. Justice here is largely a 'black-and-white' concept encompassing individual blame and retribution formed within a Western societal historical process. This conception may not always fit the broadly communal African societal environment. Essentialising African society is equally unhelpful and notions of more restorative forms of African justice are also problematic, but the question of the understanding and legitimacy in Africa of the Western version lingers.[19] Indeed its fitness for any fragile post-conflict political circumstances is also raised. Peace, democracy, free markets and justice are thus seen as interlinked, with 'one-size-fits-all' policies assumed appropriate to many post-conflict environments.[20]

The point here is to note the shift in the international community towards the wholesale export of liberalism in many forms, including justice, and to recognise, that however successful or unsuccessful the processes might seem, this export remains an ideological endeavour. On the other hand, there is a realist argument that it merely underpins Western interests and this may be the case to a greater or lesser extent depending on the country in question. However, the scale of the endeavour suggests that we must take it seriously on its own terms, that is, assume Western institutions, including judicial entities, are trying to do what they say they are trying to do – spread liberal notions around the globe for the betterment of all. The following analysis of the reciprocal relationship

of justice and domestic politics in Sierra Leone endeavours to identify the fault lines in this project. It further aims to cast light on the extent to which transitional justice processes in Sierra Leone can be said to be successful in light of this underlying project, contrasting this with the primarily realpolitik approach to conflict resolution in neighbouring Liberia.

The effects of justice on politics in Sierra Leone

Despite the assumption in some quarters that justice would transcend politics and produce uniformly positive results, there are indeed political consequences of justice and judicial consequences of politics. But before identifying them here, it is worth first examining the post-war political climate in Sierra Leone to understand why the justice processes took their particular forms. The government of Sierra Leone's appeal to the UN for a court in 2000 was made while the war still raged and would have been difficult to push forward. However, the manner in which the war ended led to a situation relatively conducive to an international judicial process. The main rebel force, the RUF, was in considerable disarray and lacked military and political power. Militarily, the RUF had suffered significant setbacks in the latter stages of the war in 2000 and 2001 against Guinean and British forces. Politically, the RUF project had failed. Despite some views to the contrary, the group was political in the sense that purposes beyond exclusive mercenarism were driving its rebellion: urban and rural marginalisation, particularly of youth, emerging out of colonialism and the Siaka Stevens and All People's Congress (APC) regime of the late 1960s, 1970s and 1980s. However, the group did not have the cadres, organisation or political will to push their agenda forward in a manner that would win them broad support.[21] Indeed, many inside and outside Sierra Leone saw them as simply brutal – especially after the highly destructive 1999 invasion of Freetown. The political party of the RUF, the RUFP, performed very badly in the 2002 elections. Their leader Foday Sankoh remained jailed, and the replacement military and political leaders, Issa Sesay and Almami Pallo Bangura respectively, were unable to maintain any coherence. It appeared that there would be few direct political repercussions if RUF leaders were tried.

Equally, the rebel factions of the Sierra Leone Army (SLA) – in particular, the Armed Forces Revolutionary Council (AFRC) junta and the West Side Boys – had either suffered military defeats or had relatively small political constituencies, so, again, trials would not be seen as threatening either a sustainable peace or political stability. Taylor is Liberian, although the possible ramifications in Liberia were put to one side.

The Kamajor militia who formed the Civilian Defence Force (CDF) were a more complex case, which we discuss below. However, in comparison to other African conflicts, such as in the Democratic Republic of the Congo (DRC), Côte d'Ivoire or Sudan, most of the potentially indictable former combatants did not have significant domestic support or military capability.

However, the indictment in 2003 of some of the 13 individuals (5 from the RUF, including Sankoh, Sesay and Sam 'Maskita' Bockarie, 4 from the AFRC and West Side Boys, including Johnny Paul Koroma, 3 from the CDF, including Sam Hinga Norman, and, in a slightly later unveiling, Liberian President Taylor) did cause direct political problems. Almost no repercussions emerged from the indictment of the RUF leaders, except that Bockarie was killed in Liberia a suspiciously short time after his indictment in May 2003. Bangura did see the impending indictments as a 'Sword of Damocles' over the heads of the RUF in the 2002 elections that probably did not much help their cause, but this was an already ailing cause in any case.[22] In the long term some, including Kabbah, questioned the wisdom of trying and incarcerating a leader, Sesay, who was part and parcel of the peace process, although it remains difficult to directly link the SCSL's decisions over Sesay to, for instance, the reluctance of rebel leaders in countries such as Uganda to come to the negotiating table for fear of prosecution.[23]

Johnny Paul Koroma, however, was different. He had led the AFRC junta in 1997–1998 but had come back over to the government side in 1999. He became Chairman of the post-Lomé Accords Commission for the Consolidation of the Peace. In this capacity, he had distanced himself from the continued violent and mercenary activities of the West Side Boys and encouraged loyalists in the SLA. In the 2002 elections, he had won third place in the presidential elections – admittedly with just 3 per cent of the votes, but his party was one of only three to take seats, winning two Freetown constituencies. The concern for stability if he was to be indicted was that those two constituencies were home to army and police barracks and the leaked results of the early special elections for election staff – mostly from the security services – had seen Koroma's party take a majority of the votes. He went missing shortly before his indictment and shortly after his alleged involvement in a failed coup plot. His whereabouts and status remain unknown, although rumours and allegations raised in Taylor's trial and elsewhere point towards Taylor's involvement in his execution.

Different still was the CDF, in particular its leader, Sam Hinga Norman. The Kamajors were groups originally assembled as self-defence militia

against the predations of both the RUF and SLA, with Hinga Norman widely seen as responsible for establishing and leading the groups. Crucially, and despite the allegations of abuse and their composition as an ethnic Mende force, the Kamajors were seen in the South, East and beyond as fighting for their communities. These were local forces, based around chieftaincies and local beliefs, including the extensive use of magic, and the groups were viewed as much more legitimate than the RUF, SLA or AFRC. That legitimacy only increased when the CDF was involved in the fall of the unpopular ARFC junta and the intense fight back against the RUF's 1999 Freetown invasion.[24]

There was a latent security threat to Sierra Leonean politics here as well, particularly, but not only, while the Kamajors continued to occupy the Brookfields Hotel in the capital in 2002. Most importantly, it was later when the death of Hinga Norman in an SCSL jail in the run-up to the Kamajors verdict in August 2007 coincided with the period before and during the campaign for the national elections. A major contributor to the relative success of Charles Margai and his Sierra Leone People's Party (SLPP) breakaway party, the People's Movement for Democratic Change (PMDC), was the feeling that President Kabbah's SLPP had betrayed all three Kamajors and had effectively murdered Hinga Norman. The latter was often seen as the one who had done most to fight for the SLPP cause but was also viewed as a rival by Kabbah. Kabbah's relationship with Hinga Norman had faltered many years before and the latter had instructed followers to vote for PMDC before his death. Margai made significant political capital of his one-time association with Hinga Norman and partly for this reason the PMDC took ten seats and many votes off the SLPP in its stronghold, while Margai took 14 per cent of the vote in the first round, thus forcing a presidential run-off in which he held considerable sway. One of the other Kamajors on trial came from Bonthe District, where both the PMDC and Margai were most successful.[25] In its endeavour to prosecute leaders of all groups involved in war crimes, the SCSL had charged some who were seen by a large proportion of the population as heroes, not villains, and this had palpable effects on the domestic political process.

The direct domestic political consequences were not in the end terribly destabilising. However, it was not clear in 2002–2003 that this would be the case. Post-war fears were very much in evidence when the indictments of Koroma and Hinga Norman were announced. Also, there were political implications that did not concern stability. The electoral success of Margai and the PMDC led directly to the turnover at the ballot box in 2007. The SLPP was stung by the defections in its southern heartlands,

but was mortified by Margai's alliance with Ernest Koroma's APC in the presidential run-off, which Koroma went on to win. Koroma won over 50,000 extra votes in just the south – a region where he would have been expected to win none – and these votes constituted a significant proportion of Koroma's eventual 160,000 vote lead. Finally, one should not learn a lesson from Sierra Leone that the political consequences of justice are not destabilising – this was a special case. When an environment so conducive to retributive justice mechanisms still produces these political consequences, elsewhere such mechanisms might be considerably more explosive. Liberia, considered below, is a case in point, as are the ICC indictments of the Lord's Resistance Army from Uganda, Laurent Gbagbo of Côte d'Ivoire, President Omar el-Bashir of Sudan and President Uhuru Kenyatta of Kenya, all of whom have the continued ability to obstruct peace and/or a sustained and large support base. The African Union – an increasingly formidable regional organisation – has objected to the prosecution of incumbent Presidents, el-Bashir and Kenyatta, and expressed serious concern that all eight cases prosecuted at the ICC thus far have been against Africans. Indeed, Kenyatta used and appeared to benefit from his indictment at the ballot box in 2013.

The discussion above covers the direct effects of the SCSL on Sierra Leonean politics. However, there were also indirect effects, for instance, upon impunity. In an expensive and remarkable process, nine men have been tried, found guilty and incarcerated by the SCSL.[26] Impunity for war crimes has thus been somewhat lessened. Before being too celebratory about this, there are two points to note. The first concerns the long-term effects of reducing impunity: it cannot yet be known whether courts deter conflict or abuses as some would argue.[27] Given that the structural conditions in many African countries – weak states and divided nations held together largely by patron–clientelism – make violence relatively common, and that civil conflicts have been historically abusive due to their intimate nature, one would have to be cautious. Second, there are potential indirect drawbacks, which may outweigh the possible gains in reducing impunity or deterring future crimes.

Broadly, these indirect drawbacks are in the creation of a narrative of the war and its aftermath, and the ownership of the judicial process. The 13 perpetrators of the conflict have been named by the SCSL, even if only 9 made it to trial. Hence, the dominant narrative of the war is that it was the fault of a very small number of individuals. This is problematic in several ways. First, it reinforces the idea that war is for individual gain and largely caused by individuals, often seen, particularly in Taylor's case, as puppet masters. This is then a narrative of agents, not

structure. Less space is given to other narratives of, for instance, the marginalisation of a broad range of people, particularly youth, or the structural conditions. Less consideration is also given to those who created these conditions: none who were part of the pre-war APC governments or the colonial regime or foreigners beyond Taylor – such as Muammar Gaddafi in Libya or Blaise Compaoré of Burkina Faso who played large roles in bankrolling, supporting and training the rebels – was indicted. Second, civil wars are indeed brutal and messy affairs. Universalising international legal prescriptions and the criminalisation of all combatants alleged to have been involved in abuses are ill-suited solutions to mostly domestic political and social struggles. It assumes mercenary intentions and criminalises war whatever agenda is being pursued and within whatever conditions it is launched.

Finally, the imposition of international courts (even if hybrid) can lead to disjunctures with the people they are supposed to serve. One report notes the early loss of public support for the SCSL, partly due to the perception of 'limited Sierra Leonean input'.[28] There was little Sierra Leonean law brought to bear. Most importantly, it failed to adjust to local culture: the Court was severely hampered by 'different ideas of social space and time, of causation, agency, responsibility, evidence, truth and truth-telling from those employed by international criminal courts'.[29] As a result of the disconnect between the international and local levels, the local justice system in Sierra Leone remains moribund. It is not clear what the trials meant to Sierra Leoneans, except that the final Taylor verdict was received with little fanfare in Freetown.[30] It is clearer that a 'one-size-fits-all' approach is the one being adopted and this approach is based on Western liberal retributive interpretations of law. Most other possibilities such as TRCs or other approaches to justice are crowded out when a court is put in place.

The Sierra Leonean TRC is a good example of this. It has been noted that TRCs can be based on a less retributive, more reconciliatory notion of post-conflict justice. In South Africa, where there was no court, the TRC Chairman, Archbishop Desmond Tutu, emphasised religious redemption married with supposed 'traditional' African notions of *ubuntu* (restoration to the community) rather than punishment, although this was not an uncontested idea.[31] *Mato oput* emerged in northern Uganda as a purportedly culturally sensitive means of reconciliation, although, as in South Africa, the authenticity of the practice is questioned.[32] In Sierra Leone it has been noted that 'social forgetting' has long been a cornerstone of reintegration and healing.[33] There were also local Sierra Leonean reconciliatory processes, but these received miniscule attention

or funding compared to the Court.[34] However, 'traditional' reconciliation may also be problematic due to arbitrariness, harshness and a proliferation of processes, or ceasing to be traditional and flexible when codified.[35] It was noted that the Sierra Leonean TRC may have had little to do with truth but did sometimes act as a ritual of repentance and forgiveness, which may have laid some foundations for reconciliation.[36]

The Sierra Leonean TRC was, however, completely overshadowed by the SCSL, a situation which also appears to be happening to Kenya's Truth, Justice and Reconciliation Commission (TJRC) in relation to the ICC. The Sierra Leonean TRC operated between 2002 and 2004 with minimal funding. Perpetrators' fears of being turned over to the SCSL undermined the TRC and led many to stay away.[37] The Commission's report endeavoured to present a complex narrative of the war and its causes and made many related recommendations. In a sign of its lack of political influence, though, most were not implemented, although some reparations for victims were disbursed.

The effects of politics on justice in Sierra Leone

In contrast to liberal assumptions of apolitical liberalism, the judicial processes in Sierra Leone were significantly affected by both domestic and international politics. The selection of who exactly was to be indicted was of key importance. Following former US President George W. Bush's assertions of a clear distinction between good and evil on many occasions after 11 September 2001, his notion was repeated by the first SCSL Prosecutor, David Crane,[38] and in Crane's view, 'the good guys [Kabbah and the British government] won'.[39] The President of the SCSL, Geoffrey Robertson, was removed from the trials in 2004 as he had pre-empted the Court in already denouncing the RUF for 'grotesque crimes against humanity' in his book.[40] Hence, the RUF and the AFRC were obvious indictees as they were on the losing side. The Kamajors might be seen as an odd selection, but not so much when one acknowledges that Hinga Norman was a political rival to President Kabbah. Kabbah himself had powerful political allies such as UK Prime Minister, Tony Blair, despite his role during the latter half of the war as Minister of Defence and therefore Deputy Defence Minister Hinga Norman's direct superior.[41]

The effects of international politics are not considered at length here as they are covered in the chapter by Mahony in this book. However, it would be remiss not to mention the tension between realist politics and liberal ideology. We argue here that justice mechanisms in Sierra Leone

were broadly an ideological project rather than one based on states pursuing their national interests. International post-conflict retributive justice is seen within the dominant liberal discourse as the way to end impunity and discourage further conflict, and should be implemented regardless of state interests. As the arguments above have shown, this is most often neither feasible nor likely, but it does seem that the political steps taken by outside states were largely to bolster the project rather than to achieve their own interests. Significantly, as noted above, Taylor's indictment was served in the middle of a peace conference in Accra and was an embarrassment to the hosts and the Nigerians. Taylor's subsequent agreement in 2003 by which he could stay in exile in Nigeria as long as he did not interfere in Liberian or Nigerian politics was then largely set aside in the pursuit of criminal justice. Presidents Obasanjo and Johnson-Sirleaf of Nigeria and Liberia were 'persuaded' by the US and the EU, despite no systematically documented evidence of a breach of conditions, to send Taylor to the SCSL at a time when the only big fish being tried was the relatively popular Hinga Norman. Exile agreements, which may avoid bloodbaths in the future, had been sacrificed on the altar of justice. In essence, the ideological thrust behind criminal justice is sufficiently strong to counter not only many considerations of national interest, but also potentially highly destructive outcomes.

Liberia: a counter example?

In the same time period that the judicial usurped the political in the global post-conflict discourse, there emerged a parallel discourse in Africa supporting inclusive political deals struck by coalition governments. The Democratic Republic of Congo (DRC), Burundi, Kenya and Liberia are good examples of this trend. Indeed, there are considerable domestic political reasons why these countries embarked upon this path. The case of neighbouring Liberia is a useful comparison to Sierra Leone, as the peace processes happened at the same time and within the same global discourse, yet illustrated a reluctance to resort to criminal justice in favour of political inclusion and a realpolitik calculation of conflict resolution.

Like Sierra Leone, Liberia suffered large-scale and violent internal conflict throughout the 1990s. Numerous peace agreements were signed during this time, with a focus on power-sharing arrangements between warring factions, but despite a brief respite in fighting following the electoral victory of Charles Taylor in 1997 no agreement had a lasting impact until the 2003 Comprehensive Peace Agreement (CPA) signed

in Accra, Ghana. The treaty was negotiated after rebel forces had driven Taylor's government forces back to the two largest cities and then forced Taylor into exile. It was signed by warring factions, as well as Taylor's ministers and civil society organisations, and outlined a range of provisions related to the formation of a transitional power-sharing government; a nationwide disarmament, demobilisation, rehabilitation and reintegration (DDRR) programme for armed factions; a restructuring of national security forces; a process of refugee and Internally Displaced Persons (IDP) repatriation; elections to be held no later than 2005; and the establishment of a TRC.[42]

The CPA has been widely, and deservedly, congratulated for bringing a quick and inclusive resolution to the conflict.[43] The inclusion of all warring factions in the transitional government was a realpolitik agreement that sought to halt the fighting at the expense of good transitional leadership, as evidenced by the transitional government's blatant corruption and looting of Liberia's scarce resources.[44] The focus on DDRR and restructuring the national security forces – as well as the absence of criminal justice provisions – further highlighted the international community's desire to terminate the war rather than support any measures, such as bringing the perpetrators to justice, that may delay the peace and lead to more casualties.[45] From an early stage, the international community made it clear that the words and spirit of the CPA should not be deviated from, even when it impacted on domestic judicial processes. For example, international opposition to a Supreme Court decision on the timing of elections and their subsequent pay-off of the appellant seemingly undermined the principles of rule of law that they were ostensibly promoting.[46]

This international stance rather contradicts the liberal justice thinking. The presence of a considerable number of wartime actors with significant support, such as Prince Johnson, Adolphus Dolu a.k.a. General Peanut Butter and Alhaji Kromah, and rebel groups as signatories to the CPA and/or on the political scene made a court scenario very difficult without resurrecting the conflict. Justice would have starkly affected the political environment, severely threatening the settlement. Indeed, it was probably realpolitik calculations that allowed for a democratic opening to flourish. The peaceful election of Ellen Johnson-Sirleaf, a former UN functionary, provided relative stability and a more favourable context for democratisation and the pursuit of the rule of law. While some former wartime actors secured political representation, this was largely isolated and none of the former armed factions managed to transform themselves collectively into a viable political machine.

In a partial return of liberal justice discourse, pressure was brought to bear on the new Liberian government to arrest Taylor following earlier pressure on Nigeria to renege on its deal to provide for his safe exile. Taylor, however, proved to have limited influence on Liberian politics by this point and his arrest and trial at the SCSL had limited repercussions on the newfound stability.

Instead, the Liberian TRC (LTRC) was created in May 2005 and began its 4-year mandate in January 2008, tasked with establishing the truth about what had become a 14-year civil war (1989–2003) and providing a forum to address issues of impunity and national reconciliation. Unlike Sierra Leone, there were no concurrent criminal trials and, for the most part, the LTRC's work consisted of relatively low-key meetings across all the counties of Liberia. The LTRC collected and processed over 17,000 statements and released a draft report in June 2009 and a final version in December 2009. This was a bold attempt to document recent Liberian history and make recommendations for changes in governmental and societal practice. It also put forward one distinctly Liberian notion, the 'Palava Hut Programme', in which around 7,000 ex-combatants could face their communities and ask for forgiveness in a bid to foster local-level reconciliation.

The section of the LTRC report that received the most attention, however, was in its shift towards the judicial. It recommended that 116 people it found responsible for gross human rights violations and war crimes should be investigated and prosecuted by an extraordinary criminal court, including the high-profile political figures mentioned before: Prince Johnson and Dolu, by this point Senators, and Alhaji Kromah, twice a presidential candidate.[47] In addition, the report recommended that a further 49 persons face public sanctions and be barred from holding public office for 30 years, including current President Johnson-Sirleaf. Indeed, those recommended for political censure had no formal opportunity to respond to the claims made against them or to defend themselves – an opportunity that even those accused of war crimes would be afforded. Yet, unlike Sierra Leone, the pursuit of criminal justice was not the only aim. For instance, the report recommended that a further 36 persons it identified as perpetrators of the war be pardoned because they 'cooperated with the TRC process, admitted to the crimes committed, spoke truthfully before the Commission and expressed remorse for their prior actions during the war'. This included recommending that the infamous 'warlord', Joseph Blahyi, a.k.a. General Butt Naked, who admitted responsibility for the deaths of some 20,000 people, be pardoned because he had shown remorse.

However, politics became once again insurmountable. This was demonstrated in the indifferent reactions to the LTRC report, with both ex-'warlords' and progressive elements in Liberia, as well as the broader international community, expressing concerns about the recommendations. At the international level, Johnson-Sirleaf enjoys a strong reputation as a capable leader who has helped bring peace and stability to the chaos of Liberia.[48] The call for her political censure was met by an awkward – and revealing – silence from progressive international actors. Several organisations including Amnesty International, The Carter Center and Human Rights Watch were slow to issue a response to the TRC.[49] US Secretary of State, Hilary Clinton, who visited Liberia shortly after the report was released did not mention it, instead emphasising: 'I look at what President Sirleaf has done in the past three years, and I see a very accomplished leader dedicated to the betterment of the Liberian people.'[50]

At the domestic level, a group identifying itself as the 'Principal Signatories of the CPA', and including former 'warlords' Prince Johnson, Joe Gbala and Roland Duo, stated that they were 'saddened and disappointed by the final report'. Although their statement reiterated their commitment to the peace process, they accused the Commission of bias and a flawed methodology that did not allow them to respond directly to their accusers. Furthermore, Prince Johnson – infamous for the capture, torture and killing of former President Samuel Doe – called for 'the entire final report of the LTRC to be discarded' and stated that 'those who want to come for me should bring a bulldozer', indicating a willingness to use violence against any attempts to arrest him.[51]

The response from the Liberian authorities was more guarded, with President Johnson-Sirleaf stating her appreciation for the Commission's work and her commitment to respond to its recommendations, albeit only 'where the report lives up to its mission and mandate'. Such an evasive response was echoed by House Representative Wesseh Blamo, who stated that 'we decided as a body that we cannot take any decision on this report's recommendation until we consult our constituents for about a year where we will solicit their views on whether or not to implement the LTRC recommendations'.[52] The LTRC's proposal of judicial remedies had a significant impact on the streets of Liberia, demonstrating the sensitivity that stark quasi-judicial pronouncements can have on domestic political opinion. Several Liberian journalists reported divided opinion over the LTRC report. For example, one wrote that 'the country has even become more divided than it was during the height of the civil war'.[53]

In January 2011, the Supreme Court held that the recommendations banning individuals from holding public office was unconstitutional as they denied the right to due process, thereby allowing the listed people to stand for re-election in 2011. While the government's willingness to allow the LTRC to operate independently from beginning to end was commendable, and although the President was obliged to report to the parliament on the implementation of the LTRC recommendations every three months, there has ultimately been no meaningful follow-up to the LTRC report from the authorities.

It is arguable that the standards set by the LTRC were unduly high, to the effect that it risked depriving the country of its most competent political leaders and those who had agreed on the peace deal. Johnson-Sirleaf's support for Taylor came during the height of an oppressive government and without the benefit of hindsight as to the nature of the Taylor regime that would follow – a regime which she would stand against in the 1997 election. Tellingly, if South Africa had used a similar set of standards, Nelson Mandela would have been barred from office and unable to assume the South African presidency. Mandela is universally acclaimed as a powerful force for peace in South Africa, but he did, nevertheless, head 'Umkhonto we Sizwe', the ANC's armed wing, and continued to endorse violence even after his release from prison in 1990.[54]

Most importantly, the decision of the LTRC to opt in the end for a largely unsuccessful but nonetheless more judicial interpretation of reconciliation, rather than a carefully crafted political solution, raises questions about its long-term value in promoting peace and harmonising fraught relations.[55] Ethno-regional conflict, which became the format of hostilities from the early 1980s onwards, still simmers and occasionally boils. As in Sierra Leone, the legal route with its focus on individuals as causes of the war downgraded many other communal and systemic factors concerning intra-societal relations as well as state–societal relations where corruption and patron–clientelism remain endemic, and which the LTRC and many others have identified as requiring urgent attention.[56] Rather than pursuing quasi-judicial remedies, there may have been more value in further promoting political, indigenous Liberian notions of reconciliation and justice.

Through this narrative, we can first see that politics and justice are once again inextricably intertwined and second that it is a narrative at odds with the one in Sierra Leone. Despite the overarching discourse of liberal justice, there was no space for such endeavours given the political environment in Liberia. Indeed, there have been those, including

some members of the LTRC and the former SCSL Prosecutor, David Crane, who have argued for an urgent judicialising of the peace process, the latter continuing to do so.[57] However, these arguments have largely fallen on deaf ears. In the Liberian case, in stark contrast to Sierra Leone, justice has not been allowed to affect politics to nearly the same degree and that Liberian politics has thwarted attempts to impose judicial processes.

Conclusions

The comparison of Sierra Leone and Liberia is instructive in three key ways. First, it highlights the different political circumstances that inform which post-conflict discourses gain the upper hand. It was feasible to construct a court without destroying the peace deals in Sierra Leone, a scenario that did not exist in Liberia and indeed in many other cases. This is not to say, of course, that there were no political repercussions in Sierra Leone, only that the potential fallout was limited. Second, there were significant political pressures on the judicial processes in both countries that seriously affected the outcomes. In Sierra Leone, politics affected the workings of the Court, but in Liberia politics actually prevented the establishment of trials. The first two points emphasise that justice affects domestic politics and domestic politics affects justice, reaffirming that these are highly context-dependent processes. Third, there is no sign that either discourse is diminishing. The celebratory tones after Taylor's verdict at the SCSL and the judicialisation of the Liberian LTRC show that the retributive post-conflict justice discourse is alive and kicking, as is evidenced in Sudan, Kenya and elsewhere. The lack of a court, despite the dominant discourse and some pressure, and the presence of the post-peace deal coalition government in Liberia show that inclusive political solutions are still necessary, as is also seen in Burundi, DRC and once again Kenya, even if these are themselves flawed processes as demonstrated above in Liberia.

Finally, the idea that certain concepts – democracy, human rights and, of course, justice – are universal encourages the notion that there is a duty to transplant a particular, purportedly successful version of them in all post-conflict situations.[58] The strong belief in the universality and moral and practical superiority of Western values and norms makes, first, their exportation an imperative wherever possible, and, second, their continued presence in the discourse – if not always the practice – of very high ideological and even emotional importance, even in the teeth of severe difficulties.[59] Some notions, such as democracy, have indeed

been taken on board and then modified to the African environment; it is not clear that post-conflict retributive justice has made anything like the same impact.

Notes

1 'Trial Judgment in *Prosecutor v. Charles Ghankay Taylor*', available at: http://www.rscsl.org/Documents/Decisions/Taylor/1283/SCSL-03-01-T-1283.pdf
2 See D. Harris (2011) *Civil War and Democracy in West Africa: Conflict Resolution, Elections and Justice in Sierra Leone and Liberia* (London: IB Tauris).
3 J. Snyder and L. Vinjamuri (2003/2004) 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security* 28, 5.
4 The trend towards the judicial has lagged behind its legal foundation. Indeed, individual criminal responsibility for mass violations of human rights has its roots in the 1945 Nuremberg Charter and the 1946 Tokyo Charter and was expanded through provisions in the 1949 Geneva Conventions and the 1998 Rome Statute for the International Criminal Court.
5 UN Security Council (UNSC) (23 August 2004) *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* (New York, UN), p. 14.
6 G. Robertson (2000) *Crimes against Humanity: The Struggle for Global Justice* (New York: New Press); and A. Branch (Summer 2004) 'International Justice, Local Injustice', *Dissent*, pp. 22–26, respectively.
7 See, generally: L. J. Laplante (2009) 'Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes', *Virginia Journal of International Law* 49, 915; J. Stromseth (2009), 'Justice on the Ground: Can International Criminal Courts Strengthen Domestic Rule of Law in Post-Conflict Societies?', *Hague Journal on the Rule of Law* 1, 87; R. C. Slye and B. Van Schaack (2009) *International Criminal Law* (New York: Aspen Publishers), pp. 295–296.
8 P. Akhavan (2009) 'Are International Criminal Tribunals a Disincentive to Peace? Reconciling Judicial Romanticism with Political Realism', *Human Rights Quarterly* 31, 624.
9 'Taylor Amended Indictment', available at: http://www.haguejusticeportal.net/Docs/Court%20Documents/SCSL/Taylor_Amended%20Indictment.pdf
10 UNSC (2003) 'Report of the Security Council Mission to West Africa', 26 June–5 July, p. 9.
11 See, among others: G. Evans (2008) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings Institution Press); L. Glanville (2012) 'The Responsibility to Protect Beyond Borders', *Human Rights Law Review* 12, 1; International Commission on Intervention and State Sovereignty (2001) *The Responsibility to Protect* (Ottawa: International Development Research Centre).
12 See D. Harris (2013) *Sierra Leone: A Political History* (London: Hurst), pp. 108–110.
13 Harris, *Sierra Leone*, pp. 129–133.
14 B. Boutros-Ghali (1996) *An Agenda for Democratization* (New York: United Nations), p. 116.
15 M. Mousseau (2000) 'Market Prosperity, Democratic Consolidation, and Democratic Peace', *Journal of Conflict Resolution* 44(4), 480–481.

16 A. Fraser (2005) 'Poverty Reduction Strategy Papers: Now Who Calls the Shots?', *Review of African Political Economy* 104–105, 317–340.
17 T. Young (1995) '"A Project to Be Realised": Global Liberalism and Contemporary Africa', *Millennium* 24(3), 527–546.
18 C. Cramer (2002) '"Homo Economicus Goes to War": Methodological Individualism, Rational Choice and the Political Economy of War', *World Development* 30(11), 1845–1864; and F. Spagnoli (2003) *Homo-Democraticus: On the Universal Desirability and the Not So Universal Possibility of Democracy and Human Rights* (Cambridge: Cambridge Scholars Press).
19 See the discussion of African notions of justice in the TRC section below.
20 R. Lappin (2010) 'What We Talk About When We Talk About Democracy Assistance: The Problem of Definition in Post-Conflict Approaches to Democratisation', *Central European Journal of International & Security Studies* 4, 185; D. Chandler (2006) 'Back to the Future? The Limits of Neo-Wilsonian Ideals of Exporting Democracy', *Review of International Studies* 32, 475.
21 For differing opinions on the RUF, see P. Richards (1996) *Fighting for the Rainforest: War, Youth and Resources in Sierra Leone* (Oxford: International African Institute) and many later texts; I. Abdullah (ed.) (2004) *Between Democracy and Terror: The Sierra Leone Civil War* (Dakar: CODESRIA); and Harris, *Sierra Leone*.
22 Author's interview with Alimamy Pallo Bangura, Freetown, 21 May 2002.
23 BBC (16 May 2008) 'Kabbah Ends Honeymoon for Trial', available at: http://news.bbc.co.uk/1/hi/world/africa/7405481.stm
24 See D. Hoffman (2011) *The War Machines: Young Men and Violence in Sierra Leone and Liberia* (Durham, NC: Duke University Press); and N. Wlodarczyk (2009) *Magic and Warfare: Appearance and Reality in Contemporary African Conflict and Beyond* (Basingstoke: Palgrave Macmillan).
25 J. Kandeh (2008) 'Rogue Incumbents, Donor Assistance and Sierra Leone's Second Post-Conflict Election of 2007', *Journal of Modern African Studies* 46(4), 625.
26 By 2012, the Yugoslav and Rwandan tribunals had cost seven and six times that of the SCSL, respectively, but the SCSL costs per completed case (including all deceased but not including Taylor) and costs per conviction (not including Taylor) were actually greater than for the Yugoslav trial and just below those for the Rwandan version.
27 Snyder and Vinjamuri, 'Trials and Errors', pp. 5–44.
28 P. Douma and J. De Zeeuw (2004) *From Transitional to Sustainable Justice* (The Hague: Clingendael Conflict Research Unit), p. 2.
29 T. Kelsall (2009) *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press), p. 17.
30 Personal communication from Freetown, 26 April 2012.
31 D. Tutu (1999) *No Future without Forgiveness* (New York: Doubleday); and for criticism, R. Wilson (2001) *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press).
32 E. Baines (2007) 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', *International Journal of Transitional Justice* 1(1), 91–114.

33 R. Shaw (2005) *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone* (Washington, DC: United States Institute of Peace), p. 8.
34 L. Stovel (2008) '"There's No Bad Bush to Throw Away a Bad Child": "Tradition"-Inspired Reintegration in Post-War Sierra Leone', *Journal of Modern African Studies* 46(2), 305–324.
35 T. Allan (2008) 'Ritual (Ab)use? Problems with Traditional Justice in Northern Uganda', in N. Waddell and P. Clark (eds) *Courting Conflict? Justice, Peace and the ICC in Africa* (London: Royal Africa Society), 47–54.
36 T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27, 361–391. See also Friedman in this book.
37 Bishop Joseph Humper, Chairman of the Sierra Leonean TRC, interviewed in *The Analyst* (12 May 2006); and author's interview with UN Human Rights Officer Boubacar Dieng, Freetown, 14 April 2002.
38 *Sierra Leone Web*, 5 June 2003.
39 C. Mahony (2012) 'Prioritising International Sex Crimes before the Special Court for Sierra Leone: One More Instrument of Political Manipulation?', in M. Bergsmo (ed.) *Thematic Prosecution of International Sex Crimes* (Beijing: Torkel Opsahl Academic EPublisher), p. 75.
40 Robertson, *Crimes against Humanity*.
41 The official line is that Kabbah was not indicted as there was not enough evidence against him and Hinga Norman had declared that he was not taking orders from Kabbah. See Hollis, and Mahony and Sooka, in this book.
42 'The 2003 Comprehensive Peace Agreement', available at: http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf
43 P. Atkinson (2008) 'Liberal Interventionism in Liberia: Towards a Tentatively Just Approach?', *Conflict, Security & Development* 8, 15.
44 D. Harris (2006) 'Liberia 2005: An Unusual African Post-Conflict Election', *Journal of Modern African Studies* 44(3), 375; International Crisis Group (2005), *Liberia's Elections: Necessary but Not Sufficient* (Brussels: ICG), p. 1.
45 J. W. Blaney (2010) 'Lessons from Liberia's Success: Thoughts on Leadership, the Process of Peace, Security, and Justice', *Prism* 1, 101; S. Nelson et al. (2008) 'Liberia Elections and Political Processes Program Evaluation: Final Report' (USAID/Democracy International), p. 41.
46 European Union Election Observation Mission to Liberia (EU 2005) Statement of Preliminary Findings and Conclusions – 10 November, pp. 4, 5 and 8.
47 'The Truth and Reconciliation Commission of Liberia', available at: https://www.trcofliberia.org/. Of note, although Taylor was only charged by the SCSL in connection with offences committed in Sierra Leone, the Liberian Supreme Court ruled that the LTRC should not seek testimony about Taylor to avoid complications with his trial at the SCSL.
48 D. Peterson (2010) 'Democracy Road: Liberia's Trajectory and Its Implications', in L. Diamond and M. F. Plattner (eds) *Democratization in Africa: Progress and Retreat*, Second edn (Baltimore: Johns Hopkins University Press), 179–196.
49 D. Harris and R. Lappin (2010) 'The Liberian Truth and Reconciliation Commission: Reconciling or Re-dividing Liberia?', *Alternatives* 9, 181.

50 J. Zacharia (13 August 2009), 'Clinton Throws U.S. Backing Behind Liberian President Sirleaf (Bloomberg)', available at: http://www.bloomberg.com/apps/news?pid=20601116&sid=aPlqS2gpnPMo
51 'Sirleaf Should Be Banned from Office: Liberia Truth Commission' (AFP, 6 July 2010), available at: http://www.google.com/hostednews/afp/article/ALeqM5joAaW2DuzNDfyi8t7h4X594XcHCg
52 A. Konneh (28 August 2009) 'Liberian Parliament Delay Action on Truth Commission Findings (Bloomberg)', available at: http://www.bloomberg.com/apps/news?pid=20601116&sid=aIqClsvAY9T0
53 S. King Jr. (9 July 2009) 'The TRC's Final Report: An In-depth Look at the Implications (New Liberian)', available at: http://newliberian.com/?p=927
54 L. Graybill (2002) 'Review: Assessing South Africa's Truth and Reconciliation Commission', *Canadian Journal of African Studies* 36, 356.
55 For a wider debate, see R. Mani (2002) *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press and Blackwell).
56 See also M. Duffield (2001) *Global Governance and the New Wars: The Merging of Development and Security* (London and New York: Zed Books); and P. Gowan (1999) *The Global Gamble: Washington's Faustian Bid for World Dominance* (London: Verso).
57 D. Crane (3 June 2012) 'Seeking Justice for Liberia: Reflections of a Prosecutor', *Jurist-Forum,* available at http://jurist.org/forum/2012/06/david-crane-taylor-sentencing.php.
58 R. Lappin (2009) 'What Democracy? Exploring the Absent Centre of Post-Conflict Democracy Assistance', *Journal of Peace, Conflict and Development* 14, 1.
59 See J. Gallagher (2011) *Britain and Africa under Blair: In Pursuit of the Good State* (Manchester: Manchester University Press).

9

Harmonizing Customary Justice with the International Rule of Law? Lessons from Post-Conflict Sierra Leone

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Introduction

Transitional justice (TJ) in Sierra Leone is commonly associated with two internationalized formal institutions – the Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission (TRC). While the SCSL was mandated to hold criminally accountable those bearing greatest responsibility for atrocities committed during the country's brutal civil war (1999–2002), the TRC was established to foster restorative justice and reconciliation. But in addition to these specific mandates, both institutions were expected to demonstrate rule-of-law norms that would subsequently be replicated in the domestic justice system. For the Court, it was anticipated that the successful trial and conviction of perpetrators would restore confidence and trust in the judicial system, and ultimately stimulate respect for the rule of law among the local population. Although a non-judicial body, the TRC, as a state-mandated legal mechanism, was also expected to undertake a kind of positive social engineering in the post-war context. Whether there is a direct correlation between these long-term goals of justice reform and the legacy of the two concurrent TJ mechanisms remains in dispute. Particularly important is the question of why the Court became disconnected from the national justice system, despite its purported hybridity and close physical proximity to the war-torn society.

This chapter contends that the externally driven TJ agenda in Sierra Leone reinforced the international rule-of-law consensus. It argues that the TJ pursued placed undue premium on state capacity-building to mirror the liberal-democratic ideal type, and also compelled other forms

of legal and political order into conformity to a legal-rational logic. A somewhat unintended broader consequence of the agenda was the marginalization of traditional or customary justice systems, which ironically continue to dispense justice to the majority of the country's population.[2] Where engagement of the formal TJ mechanisms with these customary systems was evident in Sierra Leone, the objective was to subordinate them to the formal justice system and to discipline them to be consistent with international rule-of-law standards. Accordingly, traditional justice systems have been viewed as requiring a technical institutional 'fix', as was the case with their formal-legal domestic counterparts. This process took the form of official institutional (re)arrangements, such as transferring local courts from the Ministry of Local Government to the Office of the Chief Justice and rendering the judicial authority of traditional chiefs illegal. Yet little attention has been paid to how the centralization of customary justice practices in a state-constituted local court system undermines the social relevance of key conflict resolution mechanisms and alters local power relations. Additionally, informal institutions outside the state-recognized customary justice system are stigmatized as 'Kangaroo courts', thereby dissuading any meaningful engagement to enhance their capacity to settle disputes.[3]

Beyond transitional justice: reinforcing the rule of law

Sierra Leone is a useful case through which to examine the normative and political drivers of transitional justice as well as the impact of a peacebuilding agenda orchestrated largely under external tutelage.[4] Following the July 1999 Lomé Peace Accord, two major TJ mechanisms were established: a TRC aimed at restorative justice and a Special Court intended to punish those alleged to bear the greatest responsibility for atrocities committed in the civil war. Beyond their official mandates, TJ mechanisms are expected to promote a rule-of-law culture in transitional societies. As Mendez argues, 'the pursuit of retrospective justice is deemed an urgent task in transitional societies as it highlights the fundamental character of the new order based on the rule of law'.[5] From this perspective, refraining from holding violators accountable is not only morally wrong because it fails to recognize the worth and dignity of victims. It is also seen as politically incorrect because 'it sets the new political order on a weak foundation of privilege and denial of the rule of law'.[6] Such an approach places a premium on enhancing the integrity, accountability and legitimacy of an institution through 'transforming the institution's role in society and its relationship with

the population'.[7] In other words, TJ mechanisms are expected to help delegitimize the outgoing regime and define the modus operandi of the incoming legal order.

This link between transitional justice and the rule of law has become central in UN peacebuilding missions worldwide. In a 2004 report, the UN Secretary General (UNSG) underscores this connection by stating that the 'maintenance of peace in the long-term cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for peaceful settlement of dispute and fair administration of justice'.[8] Thus for the UN, positive peace and stability prevail when a population perceives that politically charged issues can be addressed in a legitimate, transparent, and fair manner. And all TJ mechanisms – be they judicial or non-judicial – have the potential to contribute to this long-term objective, provided these initiatives are strategically designed. In fact, while attempts to confront past injustices remain crucially important, the attention of practitioners, including the UN, has now shifted to the legacy of TJ mechanisms. Focusing on hybrid tribunals, the UN High Commissioner for Human Rights (UNHCHR) defines this legacy as 'the lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity while also strengthening domestic judicial capacity'.[9] The legacy is what war-crime tribunals bequeath to post-conflict societies beyond just convictions, acquittals, and brick and mortar.[10] If the physical infrastructure left behind constitutes the hardware part of court legacies, the software relates to 'policies and processes that help to ensure the domestic system operates more effectively and efficiently, consistent with its international human rights obligations'.[11] These software packages include 'substantive legal framework reform, professional development (e.g., cross-fertilization of expertise), and raising awareness of the role of courts as independent and well-functioning rule-of-law institutions, operating within a human rights framework and scrutinized by a strong civil society'.[12]

As far back as 2004, the UNSG had reiterated the need to design an exit strategy for international and hybrid tribunals in order to maximize their intended legacy in the countries concerned. A highly acclaimed strategy for implementing a legacy-sensitive TJ programme in post-conflict states is the 'demonstration effect'. That is, TJ mechanisms are expected to contribute to a 'culture shift and demands for change or increased accountability through increased rights awareness'.[13] Demonstrating rule-of-law principles, such as supremacy of law, legal certainty, legal equality, separation of powers, and legal independence

from political considerations, trials, in particular, make a crucial contribution in this respect.[14]

However, most literature on demonstration effects, particularly of the Special Court, are at best ambivalent about a lasting legacy beyond an ultramodern court building that costs an estimated $1,066,300 in yearly maintenance.[15] It is unclear to what extent the Court promoted substantive domestic law reform, professional development of the national judiciary, or public awareness of the rule of law in Sierra Leone.[16] An independent expert report authored by Antonio Cassese was sceptical about this:

> At this stage, I do not think that it is realistic to expect that the Court's legacy will directly: (a) ensure greater respect for the rule of law in Sierra Leone; (b) promote or inspire substantive law reforms; (c) improve the conditions of service and remuneration of judges in Sierra Leone; or (d) alleviate corruption allegedly existing in the judiciary. The Court may contribute to these goals, but they will only materialise as an indirect effect, in the long run, and thanks to other concomitant factors.[17]

Another report notes that the high expectations of broader rule-of-law legacy remain partly unfulfilled due to external and internal factors including: 'lack of clear political support to prioritize legacy; pressure to fulfil the court's primary mandate expeditiously; inadequate planning; the failure of the court and the national legal system to bridge the gaps between them; and the continued reliance on international staff in key posts'.[18] Similarly, Kandeh contends that 'as in other interventions, donor funds in the judiciary have done more to improve the material lot of judicial personnel than promote justice and the rule of law'.[19] He concludes that irrespective of external support, the judiciary remains a bastion of corruption, with litigants still spending years and large amounts of money seeking justice.

Perhaps it is unrealistic to expect TJ mechanisms to be the panacea of socio-political problems that have plagued Sierra Leone's domestic justice system since independence in 1961. As Reiger underscores, 'entrenched and intractable systematic problems such as corruption and lack of independence of the judiciary, or historical inequities in access to justice are not going to be solved by including some national staff in an internationally backed court in the country concerned'.[20] Likewise, the TRC could only make recommendations, which require political will and sustained resource commitment to implement. But while the debate

on the presumed and real effects ensues, there is little or no attention to broader unintended consequences of an internationalized post-conflict justice agenda. The long-term impact of externally driven post-war justice that stresses the rule of law, and the pressure the TJ mechanisms imposed upon the informal justice system, raises the following questions: What are the effects of using international rule-of-law norms and standards to engage customary justice systems in Sierra Leone? What are the implications of compelling conflict resolution mechanisms outside the formal justice system to conform to international human rights standards?

Engaging customary justice: inherent bias

Rule-of-law reform in war-torn societies is now being broadened to engage customary justice systems that have proved resilient and indispensable to delivery of justice outside the formal state system.[21] But engagement with customary systems manifests the same biases associated with mainstream rule-of-law assistance. In what she describes as a gap between rhetorical recognition and practice, Isser identifies three fundamental biases that persist. First, there is still 'the widely held tendency to see justice reform as a technical exercise of drafting laws and building institutions, the traditional preserve of legal professionals'.[22] Law is construed as instrumentalist, with the assumption that lawyers can become social engineers, transplanting modern legal institutions and instruments with relative ease.[23] Stuck in a priori deductive models, the rule-of-law movement is slow to realize that 'deficiencies in justice systems are often a reflection of social and cultural attitudes, political inequalities, distributional disparities, and power relations'.[24] This slow realization is indicative of a systemic problem because lawyers who engage customary justice systems tend to have been educated exclusively in formal English law, which makes them ill-suited for this task. Apart from lacking the background and skills to grapple with contextual complexities of customary institutions, legal practitioners often use their legal training to portray non-state practices as inferior and backward. These practitioners tend to focus only on stereotypes and caricatures, including extortionist courts or inhumane practices, such as witchcraft, female genital mutilation, and slavery. In fact, the widespread tendency is to misread culture, perceiving it as the problem and reifying a false dichotomy between culture and rights.[25]

The view that customary justice systems must become consistent with human rights leads to a second bias, this time on normative grounds.

As noted, the UN has assumed the role of moral enforcer of the rule of law and requires full compliance with international norms and standards, including the following:

> A principle of governance in which all persons, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before law, fairness in the application of law, separation of powers, legal certainty, avoidance of arbitrariness and procedural and legal transparency.[26]

In tandem with this, Kofi Annan (2004) has called for 'due regard to indigenous and informal traditions for administering justice, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition'.[27] But as Isser (2011) argues, 'this built-in normative bias poses an obvious challenge facing customary systems that are not based on the international ideal rule of law premised on Western liberal democracy'.[28] There are a number of implications of this. Customary justice institutions are subjected to the regulation of the legal state system even though the formal judiciary remains comparatively far less functional and legitimate than the institutions it is meant to regulate. Also, 'it leaves rule-of-law experts with the choice of either eradicating the deviant customary justice system or intervening to "fix" it in line with the required standards'.[29]

Lastly, post-conflict peacebuilding has largely been equated to the (re-)establishment or extension of state sovereignty, which entails inter alia ensuring state monopoly over the delivery of justice and the regulation of crime.[30] This bias towards recognizing state authority, however weak, makes rule-of-law practitioners reluctant to acknowledge that the post-conflict state cannot provide basic services such as conflict resolution.[31] In fact, there is still a dominant view that strengthening customary justice systems creates incentive for forum shopping, which in turn creates competition against the state system.[32] But preoccupation with the state is symptomatic of a broader ontological bias – a problem-solving approach to post-conflict peacebuilding. In line with Cox's (1981) critique, scholars within this orientation take the world of peacebuilding as they find it 'with the prevailing social and power relationships and the institutions into which they are organized as the given framework for action'.[33] Unlike critical theory, which calls into

question the prevailing legal order and the historical forces that brought it into being, problem-solving approaches hardly question the supposition that the modern state – based upon modern liberal values – must be the template of post-conflict reconstruction. Accordingly, engagement with customary justice systems then becomes a project of subordinating them to the state legal order without necessarily questioning the historical and political forces that created dual legal systems in the first place. Also, engagement tends to be largely concentrated on legal and legislative reforms at the state level even though these changes often do not have an impact on justice delivery at the operational level.

Customary justice systems in post-conflict Sierra Leone

Customary justice, that is, conflict resolution mechanisms outside the mainstream formal justice system, is considered a vital component of the primary justice system in Sierra Leone. There are a number of semi-formal and informal institutions that lie within customary justice. In addition to the local court system, there are chiefs' courts and a host of other auxiliary mechanisms that make use of village and tribal headmen, mammy queens, youth chairmen, traditional secret society heads, religious leaders, and other community leaders.[34] Within these institutions, conflict resolution is normally facilitated by intermediaries who are respected and influential community members with religious status, skilful negotiation skills, and expertise in community norms and genealogies. As representatives of community norms and values, mediators advocate settlements that accord with commonly accepted notions of justice 'couched in terms of customs and reflecting community judgment about appropriate behaviour'.[35] The ultimate goal of these processes is to foster social harmony; punishment is meted with a deterrent objective, especially for crimes that affect the community as a whole.[36] Social pressure on disputants to settle and abide by their agreement comes mainly from the community and supernatural sanctions.

The prevalence of customary justice systems in Sierra Leone is normally linked to the country's dual legal system, which bases administration of justice on both general law and customary law. General law comprises statutes, including those inherited from British common law, and the decisions of courts. Also known as English or state law, general law predominates in the western area of Sierra Leone, but is also applicable in the provinces where it exists concurrently with customary law.[37] Previously referred to as native law, customary law is the personal law of various tribal ethnicities; that is, practices that over time have coalesced

into acceptable rules that govern society.[38] The 2011 Local Court Act of Sierra Leone defines customary law as follows:

> Any rule other than the rule of general law, having force of law in any Chiefdom of the provinces whereby rights and correlative duties are acquired or imposed in conformity with natural justice and equity and not incompatible, either directly or indirectly with any enactment applying to the provinces.[39]

The legal authority for the application of customary law is the national Constitution, which recognizes it as a source of the country's common law.[40] Customary law is largely unwritten but it governs issues related to land tenure, marriage, divorce, succession, and debts in the provinces. Additionally, 'local customary laws encompass those regulations, which legitimate the role of customary power holders such as chiefs and chiefdom speakers, their ways to be elected, the traditional role of their [ruling] houses, and the composition of the [chiefdom] electoral authority'.[41]

As Tables 9.1 and 9.2 illustrate, it is important to note that there are two categories of customary justice systems in Sierra Leone. There is the legally constituted local court system that is the official institution for the application of customary law. Prior to 2011, these local courts (also known as customary law courts or Native Administration courts) were administered by the Ministry of Local Government. The other category of customary justice institutions constitute unofficial dispute resolution mechanisms, most notably chiefs' courts in the provinces and tribal

Table 9.1 Customary justice systems before 2011

Category	Types of dispute institutions	Administration	Degree of informality	Level of concentration	Judicial authority
Official	Local courts	Ministry of Local Government	Informal	Medium (involvement of chiefdoms' councils)	Legal
Unofficial	Chiefs' courts, tribal headmen's courts, secret society meetings, religious institutions, committee of youth leaders, and council of mammy queens	Community groups and leaders	Informal	Low (available in every community)	Illegal

Table 9.2 Customary justice systems after 2011

Category	Types of dispute institutions	Administration	Degree of informality	Level of concentration	Judicial authority
Official	Local courts	Office of the Chief Justice	Semi-formal	High (regional court committees)	Legal
Unofficial	Chiefs' courts, tribal headmen's courts, secret society meetings, religious institutions, committee of youth leaders, and council of mammy queens	Community groups and leaders	Informal	Low (available in every community)	Illegal

headmen's courts in the western area. Chiefs' and tribal headmen's courts are illegal both prior to and after 2011.

The success of transitional justice must be measured in terms of the extent to which its processes were locally owned, grounded in the customary practices described above, and aligned with the justice priorities of those directly affected by the civil war. Berg et al. have reiterated that 'the most sustained institutional changes are those simultaneously rooted in local norms and customs, and emerging from efforts to reinterpret and adapt those norms in response to new challenges'.[42] However, TJ mechanisms not only failed to achieve local ownership but also inadvertently undermined the viability and capacity of customary institutions. As the external drivers to promote rule-of-law principles took precedence over local justice practices, the TJ mechanisms' relationship with traditional institutions became contemptuous and snobbish. For example, the TRC Act authorized the Commission to 'seek assistance from traditional and religious leaders in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation'.[43] Yet many scholars have argued that reconciliation rituals during TRC closing ceremonies were 'constructed rituals' that had only superficial resonance with familiar practices such as prayers, libation, and breaking of kola nuts.[44] Kelsall has contended that ritualistic practices such as swearing would have been crucial in inducing confession and establishing the truth '[b]ut such procedures would doubtless have encountered resistance from certain TRC staff, who would have regarded them as irrational, if not abhorrent or contrary to the spirit of human rights'.[45] Alie links this inclination to eschew local rituals of swearing and cursing to the fact that the TRC was based on a liberal

peacebuilding agenda that discounted those practices as backward and primitive.[46]

The marginalization of customary practices in TJ processes was consistent with the mainstream literature on chiefdom governance in Sierra Leone, which has tended to cast traditional institutions and authorities in an extremely negative light. Some authors have even cited dissatisfaction with, and alienation from, customary justice systems, particularly among rural youth, as one of the causes of the civil war.[47] The reference point is usually Mamdani, who has argued that colonial indirect rule succeeded in transforming tribal leaders into 'decentralized despots'.[48] For instance, Maru contends that 'while the colonialists transformed chiefs from sovereign kings into colonial agents, they simultaneously put chieftaincy out of the reach of traditional sanctions such as the right of subjects to depose their chiefs'.[49] For Maru, this is 'rural governance by proxy' – the contemporary manifestation, via chiefdom governance, of indirect rule.[50] Other scholars are in agreement, arguing that the legacy of indirect rule, which bifurcated 'natives' (descendants of indigenous African population) and 'non-natives' (Europeans and Krio descendants of liberate slaves), has persisted in Sierra Leone. These scholars subscribe to the view that 'the failings of the chieftaincy system were among the root causes of the recent civil war'.[51]

However, the commitment of TJ mechanisms to promoting rule of law in Sierra Leone did not only mean undervaluing traditional justice practices. It was also about delegitimizing customary systems as part of the illiberal order to be replaced by modern liberal institutions and actors. The emphasis on a top-down TJ approach 'was aimed at limiting the role of non-state or traditional justice processes, particularly those beyond the customary [local] courts that lack official state sanction'.[52] This meant aspects of the customary system that proved incompatible with external rule-of-law norms were to be discredited while those elements deemed amenable to liberal standards were to be disciplined accordingly. The process required finding affinity between transitional justice and broader legal reform efforts, particularly those promoted by the UK through the British Council and the Department for International Development (DFID).[53]

In 2001, DFID commissioned Peter Tucker as a consultant for the Sierra Leone Customary Law Reform Project. This consultancy followed two earlier projects sponsored by DFID and managed by the British Council: the Paramount Chief Restoration Project (PCRP) and the Law Development Project. During these projects it had been realized that customary law and customary law courts were areas of great importance

in Sierra Leone and required a separate project whose terms of reference would be based on the following moral principles:

(i) The need to be accessible to all and not just the rich minority
(ii) The need to embody the rule of law – quick and accessible as well as fair and decisive
(iii) The need to fit in with but be separate from the lower tier of the English law court system
(iv) The need to become as self-financing as possible, consistent with maintaining accessibility for all including the poorest citizens[54]

The TRC also made recommendations. It found that some aspects of customary law and Islamic law contradict basic human rights, specifically of women and children, and recommended that 'while the institution, status and role of traditional rules and customs should be respected they must be subject to the Constitution [of Sierra Leone]'.[55] The repeal of sections 27 (4d) and (4e) of the Constitution was seen as imperative, as they exempt certain areas of customary law (such as adoption, marriage, and divorce) from protection against discrimination. Regarding local courts, the Commission found their interpretation of customary law was inconsistent and therefore called for the codification of customary law. The ultimate aim of codification 'must be to bring customary and Islamic law in line with the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women'.[56]

Based on these recommendations, the government of Sierra Leone (GOSL) in 2005 commissioned a leading customary law expert to develop a position paper on customary law courts in Sierra Leone.[57] In this position paper, Fofanah, Secretary of the Local Court Reform Committee, attributed the gradual degeneration of customary law courts to several factors. The most obvious was that whereas the Ministry of Justice maintained de jure control over customary courts through customary law officers, the Ministry of Local Government administered them de facto.[58] In addition, Fofanah identifies nine other challenges that inhibit the effectiveness of customary courts: no consistent criteria for appointment of personnel; political interference in appointments, promotion, transfer, and dismissal of court functionaries; no comprehensive training programme for personnel; limited jurisdiction of customary law courts; absence of legal representation even though courts apply general law; inadequate logistics; lack of judicial independence; misuse of powers of review; and unwritten customary laws that are out of step with current socio-economic realities.[59]

Consequently, in 2007 the GOSL launched the 'Justice Sector Reform Strategy and Investment Plan 2008–2010', setting out a platform for coherent, prioritized, and sequenced activities to reform the justice system.[60] This three-year investment plan, billed at Le 79,025 million (US$30 million), was to refocus justice sector priorities away from the formal system and towards the delivery of primary justice, that is, towards semi-formal and informal justice systems at the community level.[61] Acknowledging that the formal-legal system remains inaccessible to 70 per cent of the population, the strategy aimed to provide justice at the community level by ensuring that alternative systems of delivering justice are properly functional and fair. The target was to improve the level of satisfaction with the ways in which local courts, paramount chiefs, and sub-chiefs dispense justice. This strategy was deemed in consonance with the country's post-war Poverty Reduction Strategy Paper (PRSP), particularly Pillar 1, which stresses the promotion of good governance and security, and Pillar 2, which focuses on pro-poor sustainable growth.[62] It was anticipated that by enhancing the fairness and transparency of, and satisfaction with, primary justice systems, the reform strategy would contribute to the broader goal of creating a post-conflict environment conducive to private sector development, including access to land and property rights.

The key to strengthening the quality of justice provided by primary agents was to enhance formal oversight and supervision of their operations. Also, the government was to eliminate the abuses associated with customary systems through a three-pronged approach including capacity-building, enhancing effective oversight, and strengthening the demand side of justice through sensitization.[63] The most formidable step to achieve these objectives was the establishment of a Local Courts Reform Committee. Funded by the UK Justice Sector Development Project (JSDP), this committee, in partnership with the Law Reform Commission, was mandated to review the 1963 Local Court Act No. 20 and draft a revised bill for parliament. In August 2011, the Sierra Leone Parliament passed a new Local Court Act No. 10, which repealed and replaced the 1963 Act in its entirety.

Among major changes wrought by the 2011 Local Court Act is, firstly, the establishment of provincial Local Courts Service Committees for the purpose of advising the Judicial and Legal Service Commission on appointment, transfer, promotion, and dismissal of local court personnel. Under the 1963 Act, appointment was based on recommendations from the Chiefdom Council, headed by the paramount chief, to the Minister of Local Government. A second important change is removal of

local courts from the ambit of the Ministry of Local Government to the mainstream Judiciary, headed by the Chief Justice. Thirdly, expenses of local courts including salaries for chairmen and other personnel are now paid from a consolidated revenue fund. Formerly, it was the chiefdom councils that paid local court staff and such payments depended on how much revenue the court was able to raise through court fees, fines, and other charges. Now they are paid directly from the national consolidated fund, as with other members of the judiciary, and any revenue local courts collect must be deposited into that fund as well. Fourthly, the new Act makes provision for a secure tenure of service and clear eligibility criteria for appointment of court functionaries. Previously, the appointment of a local court chairman was limited to three years subject to renewal. Now court chairmen have guaranteed tenure of office, provided they do not abuse their adjudicative power or become incapable of exercising that power.

Unintended consequences

Viewed from a rule-of-law perspective, these restructurings of customary systems of justice are unprecedentedly innovative. Transferring the supervision of local courts to the judiciary is consistent with the principle of separation of powers and makes for an efficient system as court officials are now answerable to one ministry instead of two.[64] Fofanah describes the 2011 Act as a triumph for the rule of law, arguing that 'as formal judicial institutions, local courts must be restructured in a way to get them to respond to the rule of law and good governance'.[65] But while this restructuring process is in line with ideal international rule-of-law principles, little attention is paid to the political implications of institutional rearrangements, particularly power relations between local elites. Justified in terms of 21st-century modernization, no one questions why traditional conflict resolution mechanisms should be made to conform to international standards in the first place. Questions of how doing so subverts the effectiveness of institutions that are meant to be informal and accessible to local populations are completely out of the debate. Moreover, it is assumed that rule-of-law norms constitute politically neutral ideals desirable to all those using customary justice systems in Sierra Leone.[66]

Rule-of-law practitioners undertake little critical self-reflection of whether their engagement with customary institutions is itself an ethnocentric, quasi-imperial imposition, as they assume their practice is value-free. For instance, Denney (2013) attributes DFID's lacklustre

attitude towards informal institutions in Sierra Leone to the organization's liberal bureaucratic nature, which 'predisposes it to certain forms of engagement that privilege the state and simultaneously problematize illiberal actors like chiefs'.[67] But this commitment to a legal-rational bureaucratic order 'serves some social purpose or set of cultural values, even when they are shrouded in myths of impartiality and value-free technocracy'.[68] As the UK's overseas development agency, DFID's political mandate is to reduce global poverty by fostering liberal democracy and strengthening state capacity abroad. This politico-ideological commitment means traditional institutions outside the bureaucratic order are considered illiberal and engagement with them has the built-in normative objective of 'civilizing' them to become liberal and impersonal.[69]

Kangaroo courts

Couched within a liberal peacebuilding framework, the restructuring of customary justice is completely bereft of any attempt to understand the relationship among legal orders, the crux of Sierra Leone's historical legal development. Taking the relationship between the state and customary justice systems as given, rule-of-law programming has simply reinforced the subordination of traditional institutions into a hierarchical legal order that privileges Western-educated elites. It has also subsumed political and social questions of ethno-elitist domination – a perennial structural problem – into a technocratic institutional issue. Liberal human rights lawyers and activists view chiefs' courts as an affront to legality that must be shut down in order to improve the quality of justice available to the majority rural population.[70] Those supervising and operating the state-constituted local courts also consider chiefs' courts as rival mechanisms, competing for cases and undermining their ability to raise revenue for the chiefdom, dubbing them 'Kangaroo' courts.[71] The phenomenon of 'Kangaroo' courts seems an outgrowth of Section 40 (1) of the 1963 Local Court Act, now Section 44 (1) of the new Act, which makes adjudication without legal authority an offence.

But upon closer investigation these so-called illegal chiefs' courts reveal a much more complex phenomenon of unequal power relations and resistance that would take more than a mere change of law to regulate. At the core, the prevalence of chiefs' courts reflects a conflict of legal orders in a society where general English law is superimposed on customary law and some form of Islamic law.[72] There are a number of areas where this asymmetric relationship is evident. For instance, the Local Court Act (2011) stipulates that for any rule of customary law to be valid it should not be inconsistent with any rule of general law

including natural justice, equity, and good conscience. Furthermore, there has never been any provision since independence for the administration of customary law in the western area of the country, even though the majority of residents are of indigenous origin. But despite this lack of legislation extending the jurisdiction of customary law, tribal heads in the western area have always assumed the role of adjudicating customary law cases as their most important role.[73] Operating courts in the western area, for tribal leaders, is not just about asserting legal authority; it is about resisting what they perceive as ethno-elitist political domination. Heads of ethnic groups like the Temne, which are among the original indigenous inhabitants of the western area (before Freetown was founded for freed slaves and re-captives), see prohibition of the application of customary law in Freetown as indicative of elite domination, referring to the Krios, business, and political elites.[74]

There is no disputing the fact that informal courts set up by chiefs are a travesty of rule-of-law standards such as separation of powers, due process, and certainty of rules. These are not courts of record; their decisions lack any legal force and cannot be appealed in any court of law. The monies that are collected from summons, fines, and other court charges are unaccounted for as elders usually would simply distribute proceeds of the day among themselves. The penalties imposed by 'Kassi' fines do not have any transparent standards to ensure that punishment is proportional to the violation.[75] But inconsistency with rule-of-law principles does not explain the resilience and popularity of chiefs' courts. Unencumbered by rigid procedures and protocols of access, they remain unparalleled as the most flexible and accessible conflict resolution mechanisms in post-conflict Sierra Leone. Making use of flexible and largely informal dispute settlement procedures, these mechanisms outperform even the local courts in terms of delivering quick, expeditious, and cheap settlement of disputes.[76]

Yet without salaries from the government, chiefs have come to rely on customary fees (kola/bora) collected from dispute settlements as compensation for their time and, in some chiefdoms, fines have become a source of private income.[77] Additionally, the introduction of the colonial native court system presided over by paramount chiefs and the role of chiefdom councils in appointing court chairmen since 1963 has inextricably linked the institution of chieftaincy to the exercise of judicial authority.[78] In numerous consultations conducted by Tucker in the Customary Law Reform Project, paramount chiefs insisted they maintain some role in the administration of justice in their chiefdoms including conferment of limited jurisdiction. Paramount chiefs have expressed

their outrage over the 2011 Local Court Act, which they perceive as an attack on their authority to maintain law and order in the localities.[79] For them, the appointment of a chairman with a guaranteed tenure of office and over whom they have no control is equivalent to creating a parallel leadership structure in the chiefdom.[80] This tension explains why hardly any arrests have been made since the 1963 Act, even though chiefs' courts are a flagrant contravention of the 'no adjudication without authority' rule.[81] As a customary law officer disclosed, this complex reality also explains why an escape clause for chiefs was introduced in the 2011 Act.[82] Section 44 (2) states that 'a person shall not be regarded as having committed an offence where with the consent of the parties thereto he conducts an arbitration or like settlement in any matter in accordance with the relevant customary law'. Chiefs say they do arbitration not adjudication but most of that process is very similar to the proceedings of the local courts, and tensions emanating from role ambiguity between these parallel systems have prevailed.

Formalization and centralization of customary justice

Likewise, efforts to confer increasing legal authority on the 292 local courts in the provinces have also been counterproductive.[83] This exclusive focus on local courts does not only side-line a whole range of other local dispute settlement agencies, it is also a centralization of primary justice. Local courts are sparsely located in chiefdom headquarters and large towns, often geographically disconnected from the scene of local disputes, imposing travel burdens on disputants and witnesses. Crucially, concentrating authority to adjudicate customary law matters in a single body profoundly affects traditional social life. Harrell-Bond et al. have argued that 'a fundamental principle of traditional social organization is that any dispute which arises must be settled through the intervention of an intermediary such as the family head in minor quarrels or village elders in serious matters'.[84] The emphasis in such proceedings is less on assigning blame and inflicting punishment than on settling the dispute and reconciling the parties. Ideally, dispute proceedings are convened immediately after the incident so as to deny disputants time to harden their positions by thinking about their ancestors, pride, and social status. Although mediators are expected to be neutral, they are neither disinterested nor complete strangers to the disputants. Negotiations are often conducted in public forums where neighbours and kinsmen can offer opinions and condemn the behaviour of recalcitrant disputants.[85]

However, the fact that local courts jealously guard their prerogative to sit on all customary law disputes erodes this local-level dispute

resolution machinery with further implications. Disputes that are not settled promptly tend to escalate. Furthermore, since the customary practice is that all cases, no matter how trivial, require an intermediary to resolve them, the tendency is for people to proceed to the local courts even for minor infractions. 'Cases involving close relatives or intimate problems, which could be settled within the confines of the village without embarrassment, are causing shame and humiliation when heard in the local court away from home surroundings'.[86] Finally, the influence of formal procedures as local courts apply general law has increased the local court's propensity to finding guilt and handing down decisions accordingly. This approach often fails to achieve reconciliation between parties and leaves local communities wondering if justice has been done.

These examples of conflict resolution activities of chiefs in two local chiefdoms are illustrative of the dangers of concentrating the application of customary law in a state-constituted local court system. In June 2014, a young man in the southern Mano-Dasse chiefdom summoned a neighbour to the local court for spoiling his name with a false accusation that he had an affair with the neighbour's wife. The complainant wanted to avoid direct confrontation. But instead of investigating a complaint of character defamation, the court pressed charges for 'woman damage', which was difficult to substantiate. Realizing that the case was being delayed and wanting to clear his name, the complainant withdrew the matter from the court and moved it for review by the paramount chief (commonly known as madam) who immediately put together a panel of elders to investigate and amicably resolve the dispute.[87]

Disputes between members of the nomadic Fullah and majority Loko ethnic groups are common in the northern chiefdom of Gbedembu-Ngowahun. These disputes are usually about uncontrolled cattle grazing, especially in neighbouring farmlands not covered by original lodging agreements. On 10 April 2014, the local paramount chief received a report from one of his section chiefs that a cow has been injured with a knife following an attack on a Fullah resident who apparently owned the cow. The paramount chief wasted no time in inviting to his court all sub-chiefs of the area in question and the Fullah family whose cow had been attacked. When the parties assembled on the following day, the chief instructed the sub-chiefs to investigate all taxpayers (male adults) in their localities and to come up with names of culprits in a couple of days, warning that the alternative would be a traditional swearing process involving the blood-stained knife used in the attack.[88]

This would not have been possible in the local court, which operates on a formal procedural rule that gives defendants 14 days to respond to a

summons notice. Instead, after the timely intervention of the village chief to alert the section and paramount chief, a local investigation process was put in motion immediately, assuring the aggrieved party that something was being done and mitigating further revengeful actions. Also, the threat to use a dreaded traditional medicine to identify and punish the attackers was intended to instil fear so culprits would confess. In the end, members of the local community were willing to come forward with relevant information because traditional medicine is known to bring death or physical ailment to an entire family. These processes were inconsistent with rule-of-law principles but they sufficed to maintain peace and social harmony in a village remote from official state authority.

Conclusion

I have argued in this chapter that external influence over transitional justice in Sierra Leone has been driven by post-conflict rule-of-law consensus at the international level. Broadly speaking, this consensus centres on the idea that war-torn societies have failed because of a rule-of-law deficit and therefore they need a de novo (re)construction of functional legal systems. TJ mechanisms may be well-intentioned in subscribing to and helping to institutionalize this idea. But drawing from the Sierra Leonean experience, this chapter has cautioned that there are adverse consequences of applying international rule-of-law standards to customary justice systems. Such interventions not only undermine the efficacy of informal non-state conflict resolution mechanisms, they also undermine their social relevance, particularly the ability to respond spontaneously to changing norms of post-conflict societies.

As discussed above, formal regulation of customary justice systems has serious negative social and political ramifications, which may potentially hinder day-to-day conflict resolution processes germane to peace and stability in local chiefdoms. By incorporating local courts into the central judiciary while simultaneously eroding the judicial authority of chiefs, local communities are denied alternative forums to adjudicate their disputes. This in turn leads to the tendency for minor disputes, which should have been resolved in their immediate locality to fester, thereby incubating further resentment among community members. Formalizing the application of customary law may be consistent with rule-of-law principles, such as due process and certainty in decision-making. But at the same time, such standardized procedures erode informal features (such as reliance on social pressure, informal network ties, and community-oriented resolution processes), which are often the cornerstone of customary justice.

A number of lessons can be learned from Sierra Leone's experience of transitional justice and subsequent engagement of customary justice systems. Firstly, TJ practitioners should eschew top-down engagement with traditional justice norms to allow fuller incorporation of these practices into their operations. This recommendation is not about romanticizing customary law as flawless, harmonious, and restorative. In 2013, the 149 paramount chiefs in Sierra Leone signed a 'Code of Ethics and Service Standards', acknowledging that the institution of chieftaincy has been prone to political manipulation, is inherently patriarchal, and promotes certain unhealthy cultural practices. It is about a bottom-up approach that focuses on how to ensure customary justice practices remain meaningful and relevant to the justice needs and priorities of local communities, in the face of international pressures. Rather than a predefined rule-of-law agenda that takes as its starting point demonization of customary norms and practices, the approach should be an open-minded engagement to explore locally relevant ways of adapting and reforming those institutions.

Secondly, rule-of-law programmers must be aware that 'reforms are both legally and politically contentious, and cannot simply be engineered but require political will and consensus'.[89] Apart from reproducing patterns of privilege and power about which people may have long-standing grievances, rule-of-law interventions create new sites for political contestation. Ignoring the concerns of local stakeholders whose interests and power are being threatened by institutional restructuring is inexpedient because reform can only be sustained if those actors are invested in the process. Finally, rule-of-law practitioners should accept that they are not neutral and innocent interveners – interventions can be harmful. In addition to critical self-reflection of the assumptions that underlie so-called best practices, practitioners should be aware of the institutional constraints that inhibit constructive engagement with certain types of legal and political orders. When these recommendations are taken into consideration, TJ mechanisms can have meaningful and lasting impact in terms of sustainable post-conflict justice.

Notes

1 I would like to thank Kirsten Ainley, Rebekka Friedman, Chris Mahony, Rex Brynen, and Paula Brook for their valuable comments on this chapter and Vanier Canada for generous research funding.

2 This chapter uses the terms traditional and customary justice systems interchangeably as institutions, which, though not completely separate from the formal state system, lie largely outside of it in the informal realm. These institutions constitute an important component of Sierra Leone's primary

justice system, dispensing justice to 70 per cent of the country's population (Justice Sector Coordination Office (2007) 'Justice Sector Reform Strategy and Investment Plan (2008–2010)', Government of Sierra Leone).

3 Mostly operated by local chiefs, Kangaroo courts are conflict resolution mechanisms that adjudicate disputes without legal authority or state recognition.

4 O. Gbla (2006) 'Security Sector Reform under International Tutelage in Sierra Leone', *International Peacekeeping* 13(1), 78–93.

5 J. E. Mendez (1997) 'In Defence of Transitional Justice', in A. J. McAdams (ed.) *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press), p. 1.

6 Mendez, 'Defence', p. 1.

7 Mendez, 'Defence'.

8 UNSC (2004) 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', S/2004/616, p. 3.

9 United Nations High Commissioner for Human Rights (UNHCHR) (2008) 'Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts', *United Nations Publications* 08(XIV.2), 4.

10 W. O'Neill (2003) 'The Legacy of the Special Court for Sierra Leone', Project report for the United Nations Development Program & International Center for Transitional Justice, 1–29.

11 UNHCHR, 'Rule of Law Tools', p. 2.

12 UNHCHR, 'Rule of Law Tools'.

13 UNHCHR, 'Rule of Law Tools', p. 17.

14 R. Z. Sannerholm (2012) *Rule of Law after War and Crisis: Ideologies, Norms, and Methods* (Cambridge: Untersentia), p. 3.

15 T. Cruvellier (2009) 'From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test', *ICTJ Publications*, p. 40.

16 O'Neill, 'Legacy'.

17 A. Cassese (2006) 'Report on the Special Court for Sierra Leone', *Independent Expert Report*, para. 279.

18 Cruvellier, 'From the Taylor Trial'.

19 J. D. Kandeh (2012) 'Intervention and Peacebuilding in Sierra Leone', in T. Zack-Williams (ed.) *When the State Fails: Studies on Intervention in the Sierra Leone Civil War* (London: Pluto Press), p. 106.

20 C. Reiger (2009) 'Where to from Here for International Tribunals: Considering Legacy and Residual Issues', *ICTJ Briefing Papers* (New York: International Center for Transitional Justice).

21 Customary justice institutions are distinguished by the following features: 'reliance on social pressure to ensure attendance and participation, an informal process, flexible rules of evidence, basis in restorative justice, decisions based on compromise, and the central role of the disputants and community in the process.' They are non-state justice systems, which have existed, although not without change, since pre-colonial times and are generally found in rural areas. See Panel Reform International (2001) *Access to Justice in Sub-Saharan Africa: the Role of Traditional Informal Justice System* (London: Astron Printers).

22 D. H. Isser (2011) 'Introduction: Shifting Assumptions from Abstract Ideals to Messy Realities', in D. H. Isser (ed.) *Customary Justice and the Rule of Law in War-torn Societies* (Washington, DC: United States Institute for Peace), p. 2.

23 Sannerholm, *Rule of Law*.

24 D. Marshall (2014) 'Introduction', in D. Marshall (ed.) *The Interventional Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Cambridge: Harvard University Press), p. xv.
25 S. E. Merry (1997) 'Global Human Rights and Local Social Movements in a Legally Plural World', *Canadian Journal of Law and Society* 30(3), 247–271.
26 UNSC, 'The Rule of Law'.
27 UNSC, 'The Rule of Law', p. 13.
28 Isser, 'Shifting Assumptions', p. 4.
29 Isser, 'Shifting Assumptions', p. 4.
30 E. Harper (2011) *Customary Justice: From Program Design to Impact Evaluation* (Rome: International Development Law Organization).
31 C. L. Sriram et al. (2011) *Peacebuilding and the Rule of Law in Africa: Just Peace?* (Abingdon: Routledge).
32 Sriram et al., *Peacebuilding*.
33 R. Cox (1986) 'Social Forces, States and World Orders: Beyond International Relations Theory', in R. Keohane (ed.) *Neorealism and Its Critics* (New York: Columbia University Press), p. 128.
34 O. Alterman et al. (2002) 'The Law People See: The Status of Dispute Resolution in the Provinces of Sierra Leone in 2002', (Freetown: National Forum for Human Rights Publications).
35 R. L. Abel (1982) *The Politics of Informal Justice* (New York: Academic Press), p. 30.
36 J. A. D. Alie (2008) 'Reconciliation and Traditional Justice: Tradition-based Practices of the Kpaa Mende in Sierra Leone', in L. Huyse and M. Salter (eds) *Traditional Justice and Reconciliation after Violent Conflict: Lessons from African Experience* (Stockholm: International Institute for Democracy and Electoral Assistance), 123–146.
37 Interview with Justice A. S. Fofanah, former customary law officer and High Court Judge of Sierra Leone, conducted on 13 June 2014.
38 Interview with Monfred M. Sesay, principal customary law officer and state counsel, conducted on 14 June 2014.
39 Local Court Act (2011), section 1.
40 See Constitution of Sierra Leone (1991), section 170, sub-sections 1 and 2.
41 M. Weilenmann (2011) 'How to Restate Local Customary Laws in Sierra Leone? A Methodical Support for the Law Reform Commission of Sierra Leone', *GTZ-International Service*, Freetown.
42 L. Berg et al. (2014) 'Beyond Deficit and Dysfunction: Three Questions toward Just Development in Fragile and Conflict-Affected Settings', in D. Marshall (ed.) *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Cambridge: Harvard University Press), p. 280.
43 TRC Act (2000), part III, section 7(2).
44 R. Shaw and L. Waldorf (eds) (2010) *Localizing Transitional Justice: Interventions and Priorities after Mass Atrocities* (Stanford: Stanford University Press).
45 T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2), 385.
46 Alie, 'Reconciliation'.
47 See P. Richards (1996) *Fighting for the Rain Forest: War, Youth, and Resources in Sierra Leone* (Portsmouth, NH: Heinemann).
48 M. Mamdani (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press).

49 V. Maru (2006) 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', *The Yale Journal of International Law* 31(427), 435.
50 Maru, 'Between Law and Society', p. 435.
51 R. Fanthorpe and M. G. Sesay (2009) 'Reform Is Not against Tradition: Making Chieftaincy Relevant in 21st Century Sierra Leone', *Partners in Conflict Transformation (PICOT)*, Sierra Leone.
52 Sriram et al., *Peacebuilding*, p. 131.
53 According to the SCSL Legacy Report (2003), the Court should reinforce UK's extensive and ambitious project of judicial reform in Sierra Leone. But in addition to the UK, the United Nations Development Programme (UNDP), the World Bank, and the United Nations Mission in Sierra Leone (UNAMSIL) undertook various programmes to strengthen the rule of law.
54 See DFID (2001) The Sierra Leone Customary Law Reform Project, Terms of Reference.
55 TRC Report, Vol. 2, p. 136.
56 TRC Report, Vol. 2, p. 136.
57 A. S. Fofanah (2005) 'Customary Law Courts', *A Position Paper for the Law Reform Commission*, Sierra Leone.
58 Fofanah, 'Customary Law Courts', p. 9.
59 Fofanah, 'Customary Law Courts'.
60 Justice Sector Coordination Office (2007) 'The Justice Sector Reform Strategy and Investment Plan 2008–2010', Government of Sierra Leone.
61 Justice Sector Coordination Office, 'Justice Sector'.
62 Government of Sierra Leone (2005) Poverty Reduction Strategy Paper (PRSP).
63 Justice Sector Coordination Office, 'Justice Sector', p. 18.
64 M. M. Sesay (May 2003) 'Views and Suggestions for the Customary Law Reform Project', Office of the Chief Justice of Sierra Leone.
65 Fofanah interview (2014).
66 See A. S. J. Park (2008) 'Consolidating Peace: Rule of Law Institutions and Local Justice Practices in Sierra Leone', *South African Journal on Human Rights* 24(3), 536–564.
67 L. Denney (2013) 'Liberal Chiefs or Illiberal Development? The Challenge of Engaging Chiefs in DFID's Security Sector Reform Programme in Sierra Leone', *Development Policy Review* 31(1), 6.
68 Denney, 'Liberal Chiefs', p. 16.
69 Denney, 'Liberal Chiefs', p. 17.
70 Author's interview with Jamesina King, Chairperson of the Human Rights Commission of Sierra Leone (Freetown: 26 March 2014).
71 Author's interview with Yusuf S. Koroma, Customary Law Officer and State Counsel in the Northern Province (Makeni: 13 March 2014).
72 Weilenmann, 'How to Restate'.
73 The 2011 Chiefdom and Tribal Administration Policy limits the role of tribal heads to mediating traditional and customary matters in order to promote social harmony and resolve conflicts among their people.
74 Author's interview with M. G. Young, Mende Tribal head (Freetown: 28 March 2014); interview with Alhaji King Kandeh Kamara, Temne Tribal head (Freetown: 2 April 2014).

75 According to Braithwaite-Wallis, 'kassi' is levied as a penalty when a person is found guilty of any breach of local custom in court or elsewhere in Mendiland: C. Braithwaite-Wallis (1905) 'In the Court of the Native Chiefs in Mendiland', *Journal of the Royal African Society* 4(16), 397–409.
76 J. Magbity and P. Dias (2014) 'Traditional Justice Response to Children in Conflict with the Law in Sierra Leone', Report produced for the Ministry of Social Welfare, Gender, and Children's Affairs.
77 The government pays only paramount chiefs and speakers but the amount is meagre and very irregular.
78 The 1896 Colonial Ordinance established three types of courts in the protectorate: Court of the District Commissioner (a European), Court of the District Commissioner and native chiefs, and Court of native chiefs. In the court of native chiefs, paramount chiefs were authorized to hear civil and minor criminal cases exclusively between natives. Similarly, the 1924 Tribal Administration Ordinance in the colony conferred judicial authority on tribal heads.
79 According to the 2009 Chieftaincy Act, a paramount chief means a chief who is not subordinate in his ordinary jurisdiction to any other chief.
80 Author's interview with Alhaji Sahr CN Konno-Bundoh II, Paramount Chief of Gorama-Kono Chiefdom and Deputy Chairman, National Council of Paramount Chiefs (Kono: 29 May 2014).
81 The few exceptions include customary law officers in the provinces asking chiefs to refund monies when a dissatisfied party reports a chief or when a litigant in the western area hires a lawyer to challenge in court the decision of a chief.
82 Author's interview with M. M. Sesay, Principal Customary Law Office and State Council (Freetown: 14 June 2014).
83 M. M. Sesay (2012) 'A Baseline Survey of the Local Courts', Prepared for the Implementation Committee of the New Local Courts Act.
84 B. E. Harrell-Bond and U. Rijnsdorp (1974) *Family Law in Sierra Leone: A Research Report* (Leiden: Afrika-Studiecentrum), p. 84.
85 Abel, *Informal Justice*.
86 Abel, *Informal Justice*, p. 86.
87 Author's observation of dispute settlement process, Mano-Dasse (21–25 June 2015); interview with Haja Fatmata Koroma Neema-Kajue, Paramount Chief of Mano-Dasse (Moyamba: 21 June 2014).
88 Author's observation of dispute adjudication in the paramount chief's court, Gbendembu (Bombali: 10–15 April 2014).
89 Sriram et al., *Peacekeeping*, p. 140.

10

Whose Justice in Sierra Leone? Power, Security and Justice in Post-Conflict Reconstruction

Paul Jackson

Introduction

For most people in Sierra Leone, justice is not dispensed by formal systems but by a dense network of institutions at the local level, which may or may not be codified or even visible. These institutions constantly change and are subject to a variety of controlling bodies, which regulate the meaning and enforcement of common law. Indeed, even the formal institutions of local and Magistrate courts draw on common law rather than state law in many of their cases, and this is open to interpretation and influence according to changing local customs. Different social structures exercise influence over justice processes and outcomes. These biases exist despite the public, national agreements, for example, to enforce human rights legislation. Local power is at least partly exercised through the appointment to courts and through the role of elders within villages, many of which are relatively old and also male. As documented below, this leads to institutional bias within the customary system, particularly against women and those classified as youth.

The transitional justice (TJ) mechanisms put in place immediately after the war ignored this dense network. The Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission (TRC) essentially existed in Freetown, even though the TRC did venture out of the capital on occasion. Whilst the situation in Sierra Leone was difficult immediately after the war, with travel and infrastructure both problematic, one of the legacies of the approach taken was to leave the local justice mechanisms largely untouched by the TJ process; as a result, most of the population did not have access to mechanisms that could have dealt with war-related grievances. Instead, there was a re-establishment of Paramount chiefs in the countryside and a revival of

local justice systems dominated by the political will of the chief himself, social norms, including bias on the basis of gender and age, and an underlying aim of conserving existing social hierarchy through social regulation. The TJ mechanisms therefore missed an opportunity to work with existing formal systems, but also with those traditional systems that dominate local life in Sierra Leone, thus limiting the legacy of the SCSL and also the TRC.

External support to the justice sector

Initial interventions both before and immediately after the war within Sierra Leone were heavily dominated by re-establishing security.[1] An unintended consequence of early neglect of local courts, formal legal systems, prisons, and ministerial development was that even by 2008, the police themselves regularly commented that weaker capacity across justice institutions was undermining effectiveness through an inability to process cases.[2] Post-conflict support before 2005 was exclusively concentrated on the rehabilitation of the formal sector, particularly the infrastructure. With the advent of the Justice Sector Development programme (JSDP) in 2005, there was finally an attempt to construct a comprehensive approach, but in some ways this was limited. The legacy of a failing justice system is still felt in Sierra Leone with a backlog of cases, poor record keeping, and insufficient prison space.

With hindsight, it is easy to criticise the lack of progress in justice reform but it should be recognised that the justice sector had been subject to a very long period of decline. Reconstructing a legal system takes time and investment. By 2008 there were approximately 200 members of the Sierra Leone Bar Association, with virtually all residing in Freetown. This leaves access to justice extremely difficult for those who live in the countryside. Given the fact that the RUF may be seen as a rural-based organisation, the lack of justice in the countryside must be seen as extremely risky in a fragile country.[3] This is clearly where non-formal justice mechanisms need to play a role, where the traditional, or customary, system, operated by Paramount and Section Chiefs, offers access to many more people than the formal state system.[4] The surprising element of this is that the legitimacy of the chiefs has remained despite their role in the failing governance system that led to the war. The unsurprising element, perhaps, is that 'traditional' justice systems are not only present in the countryside, but they are also seen as cheaper than hiring formal lawyers and are understandable to most of the population. Despite this, there has only been limited use of traditional

systems to affect reconciliation and peacebuilding within local communities, although the extent of this remains under-researched.[5]

A detailed consultation at village level carried out by the Department for International Development (DFID) in 2003 concluded that there was 'a general desire among the populace for better governance rather than the abolition of the Chiefdom system'.[6] This effectively provided the direction of travel for all subsequent governance activities in local administration, including the re-establishment of local government in 2004.[7] However, the same section of the report outlines the key dilemma in relying on the chiefdom system to deliver justice to local people. It states that 'the fact that Chiefdom administration was in deep crisis is clear for all to see in the reports on the pilot consultations. Due process in Chiefdom administration had virtually disappeared due to the combined effects of war, resource starvation, and opportunism.' It further goes on to state that 'Chiefdom administration is not working'.[8]

Given these comments, it is perhaps unsurprising that the chiefdoms have been identified as a key element in driving elements of the population into conflict by enhancing their economic, social, and political alienation.[9] The rule of a rural, male gerontocracy, complete with degraded and corrupt links to elements of the state and particularly to the diamond trade in diamond-bearing areas, meant that the chiefdom system had been in decline for a long time before the war eventually destroyed large parts of it. It was not an accident that the first target sought out by RUF fighters during the war in almost every case was the chief, closely followed by the District Officer. An understanding of what the chiefdom system looks like is important in understanding the impact (or lack thereof) of the SCSL and the TRC.

The nature of local justice in Sierra Leone

It is important to recognise that the reality of local justice for most people in Sierra Leone is not a bifurcated system with two mutually exclusive and antagonistic systems (formal versus informal), but a hybrid consisting of a number of differing choices with a wide variety of differing possible outcomes. This is not only reinforced by the apparent contradiction of having a 'modern' government system coexisting with a 'traditional' one, but also by the willingness of local people both to exercise a preference for the lowest possible level of justice (i.e. the most local to them) and also to 'shop around' for the desired forum for any given situation.[10]

Although the spectrum 'formal–informal' might exist, it should be acknowledged that this consists in reality of variations of shades of grey with the District Magistrates' Court at the formal, state, end of a spectrum and the informal family elements at the other end. To a villager, going to a Paramount Chief is a formal act with a court and a set of procedures that are clearly understood, whereas in much donor literature, 'customary courts' are defined as informal, meaning outside the state sector, even though Paramount Chiefs are legally constituted with legally defined mandates.[11] Choices facing citizens come from a range of bodies with varying degrees of formal legal mandates, but also include secret societies, which have no public or legal mandate and yet are clearly recognised and have an accepted role within Sierra Leone.

The judiciary consists of a High Court and district-level Magistrates' courts. The High Court is based in Freetown but visits the three Provincial Capitals of Makeni, Kenema, and Bo. There is a 'Law Officers' Department' that serves as an office for public prosecutions and is responsible for all prosecutions within the formal system. However, there are just ten prosecutors in the whole country, with seven based in Freetown, and one each in Bo, Kenema, and Makeni, so in practice prosecutions within Magistrates' courts are handled by police prosecutors.[12] Typically located in district capitals, these courts are presided over by a mixture of Magistrates, court clerks, and Justices of the Peace, who usually receive training in common law. Magistrates' courts typically hear serious cases involving larceny, assault, sexual assault, fraud, and arson, and the Ministry of Justice estimates that around 70 per cent of cases relate to land disputes.[13]

There are significant problems with the Magistrate court system, not least the time it takes to complete cases and the huge number of adjournments. These are frequently caused by a failure of those involved to come to the court. This falls into two sets of causes: putting business above attendance at court; and witnesses not having the means to come to court, or to pay a fee for access.[14] There is also a chronic shortage of Magistrates within the system. There is only one Magistrate in each district to cover all cases and so their work for minor cases is supplemented by Justices of the Peace who sit on limited summary matters.

Magistrates are not only underpaid but are also frequently *un*paid as salaries are often delayed.[15] This presents a risk to the whole legal structure, since the judiciary may be open to external influence, particularly external financial influence, allowing those with money immunity from prosecution. Whilst the use of compensation in the informal system may also mean that the wealthy never end up in court, the lack of power

of the poor in the formal system means that they may be more likely to be prosecuted for more serious crimes, for example, murder, assault, and rape. There have, for instance, been several recorded instances where either chiefs or other big men like Chiefdom Treasury Clerks have exercised significant influence over sentences or even had cases thrown out of court.[16] In particular, since the reintroduction of local government in 2005, there have been numerous examples of conflicts of interest between the traditional authorities and the district council, or where local elites have intervened in cases.[17]

The financial imbalance in access to justice is exacerbated by a system that does not provide legal representation for plaintiffs. With no legal aid defendants have to defend themselves, usually through translation. There is only a public defender in capital cases that get to the High Court. If a case does get to the High Court, then, without a defence lawyer, any defendant is likely to spend considerable amounts of time in prison on remand.[18] The significant costs of going to court are also exacerbated by the plaintiff having to pay for travel to a district centre court, and for medical examinations and reports, including for rape.

These failings also reduce faith in the formal legal system as a whole. However, one response to this is to use the formal system as a means of leveraging settlement in the local court or with informal authorities. Known in Sierra Leone as 'subterranean movements', this seeking of alternative remedies to those imposed by a court is reported as being common.[19] The formal legal system is therefore subject to a situation whereby the frequency of adjournments is both an indicator of lack of respect for legal proceedings and also a cause of further degradation.

Customary courts are known as 'local courts' in Sierra Leone and are regulated by the Local Courts Act. These courts administer customary law, which is part of common law in Sierra Leone, and varies across chiefdoms, which have powers to establish customary bye-laws. Typical cases heard in the local courts would include local conflict resolution, family matters, money, loans or small frauds, local land issues, but not larger crimes or major theft.[20] Local courts are also investigative, that is, whereas a Magistrate's court hears pre-prepared cases presented by lawyers or police, a local court may hear 'truth-telling' by those involved, who are forced to swear on a variety of objects. Sentencing is open to negotiation and there is a process of bargaining over the severity of any fine. Sentencing is essentially a process of negotiation between the court, the accused, and the plaintiff, with the overall aim of ensuring that any fine is fair and can be paid.[21] However, this process is not always benign and, as well as establishing bye-laws that may contradict human rights

or constitutional law, these courts may also impose unusual punishments or excessive fines.[22] Those who are unable to pay are then forced to leave the chiefdom or go to prison, so the costs of failure in a court that may be rigged are very high.

In practice, chiefs wield a lot of power over local political and justice processes and it is virtually impossible to act within chiefdoms without the chief's approval.[23] They are the hub of local elites, control land through exercising trusteeship, and they dispense local justice, either directly or indirectly through their section or town chiefs and secret societies.[24] They also have access to resources through tax collection through the Chiefdom Treasury Clerks and through the granting of land rights, for example, for mining diamonds.[25] Plus they appoint the Court Chairmen and the four other court members, so the court itself is an instrument of the chief.[26] Chiefs exercise an indirect power over courts through influence over local elites: in other words, elite capture of the local legal system.[27] An important aspect of the local justice system with respect to reconciliation is that former combatants may be subject to the rule of a chief who may be related to a victim of those combatants and who also might use the court as a source of power rather than a source of justice. During consultations on the draft Local Courts Act in 2006, one Paramount Chief directly equated justice with power by stating that 'if you take the authority of the local courts away from the Paramount Chiefs, they won't have any power'.[28]

Therefore, while the customary system is said to have a number of advantages, including cost, accessibility, and relative speed in dispensing justice that is usually based on mediation, there are a number of issues that raise concerns.[29] Local courts, contrary to common perception, are both expensive and high risk, particularly for particular groups who are traditionally excluded, like women and children, and it is a challenge to prevent local abuses leading to the kinds of resentment amongst the young that led to many of them joining the RUF.[30]

TJ mechanisms in Sierra Leone

The SCSL was established through an agreement between the UN and the government of Sierra Leone with the aim of bringing to justice those who bore the most responsibility for the human rights abuses perpetrated during the war. The Court was explicitly established as a hybrid institution mixing domestic and international staff and approaches as part of the post-2000 expansion of international law into non-Western societies.[31] The SCSL was established to overcome a culture of impunity

amongst senior leadership of violent movements on all sides, particularly the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC), and, more controversially, brought cases against the Civil Defence Force (CDF).[32] In addition, the Court also tried Charles Taylor for crimes in Sierra Leone.

In targeting senior members of the armed groups, the SCSL aimed to show impartiality in terms of which side was tried, but also to show that senior leaders could not enjoy impunity when it came to international law. The Court, notably, did not have a mandate to tackle wider issues within Sierra Leone, and could not prosecute individual crimes carried out by rank-and-file members of the groups, as its jurisdiction was limited to 'those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law'.[33] Its mandate was very much to target those committing large-scale crimes in senior positions.

In the pursuit of this, the SCSL has been relatively successful. Despite Sam Bockarie, Hinga Norman, and Foday Sankoh all dying during the justice process, senior actors have actually been prosecuted, convicted, and sentenced, sending a powerful signal to other potential offenders. Undoubtedly, however, the failure to prosecute any but a very small number of leaders has created considerable disappointment within Sierra Leone.[34]

At the same time, whilst the SCSL has been described as a successful 'hybrid' model, there are questions about how far the Court makes real concessions to the local social environment within which it operated. This can be seen in particular in reactions to the CDF trial. The SCSL tried a group of *Kamajor* fighters who fought on the side of the democratically elected government and against the RUF. However, the *Kamajor* tradition is, by its nature, violent and there were reports of its members using similar terror techniques to the RUF as well as sorcery. The SCSL's actions in bringing CDF members to trial, quite regardless of their guilt according to international humanitarian law, damaged the legitimacy of the Court within Sierra Leone.

Against the socially embedded *Kamajor* tradition, the SCSL levelled a battery of international laws on child soldiers and wartime atrocities that represented a failure of understanding of the context in which CDF members were operating and a related failure to understand the nature of Sierra Leonean ideas of justice. Kelsall[35] points out that the SCSL also failed to recognise that the notion of superior responsibility was problematic in an organisation like the CDF, and the witness statements used to convict those leaders were flawed on the basis that the witnesses were

giving evidence on a different basis to the expectations of the Court, specifically that they did not recognise the hierarchy of decision-making (or command responsibility) assumed by the Court.

Whilst the SCSL was designed to enact retributive justice through trying 'those who bear the greatest responsibility', the Truth and Reconciliation Commission was designed to bring restorative justice to victims and to the country as a whole. The TRC itself described its work as carrying out a 'series of thematic, institutional and event-specific hearings in Freetown'.[36] This was supplemented by four days of public hearings and one day of closed hearings in each of the twelve district headquarter towns across the country. The hearings were designed both to 'cater for the needs of the victims' and to promote 'social harmony and reconciliation'.[37] The hearings consisted of witnesses, perpetrators, and victims all telling their stories to a panel of commissioners and a 'leader of evidence'. The TRC did not specifically aim to gather new information since there had been an earlier evidence-gathering phase, but to allow for catharsis through story-telling and recognition that – it was hoped – would facilitate wider societal healing. However, several scholars have pointed out that the TRC failed to provide what the local people wanted or needed.[38] Whilst truth-telling processes have logic, if based on reconciliation between clear protagonists, it is significantly reduced where the boundaries between the violent groups are less well defined.

The basic assumptions of the Sierra Leonean TRC were similar to other commissions: that the conflict happened between groups that dehumanised each other through hatred and an in-group/out-group dichotomy.[39] However, in Sierra Leone, there was very little clear sectarian demarcation and certainly no clear divisions along ethnic or religious lines. Instead of a clearly delineated, structured conflict between two or more clear protagonists, Sierra Leone was an evolving morass of different groups, with unclear command structures and institutional organisation, characterised by shifting alliances and changing loyalties.[40] The conflict, at various times and places, took the forms of a generational convulsion,[41] an agrarian slave revolt,[42] and a revolt against authority in the countryside.[43] The TRC itself alluded to the lack of distinct ideological or ethnic cleavages at the beginning of its report, recognising that successive ruling regimes became more like each other, stating that 'the Commission came to the conclusion that it was years of bad governance, endemic corruption and the denial of basic human rights that created the deplorable conditions that made the conflict inevitable.

Successive regimes became increasingly impervious to the wishes and needs of the majority'.[44]

In other words, this was not a conflict that allowed a TRC to persuade one side to reconcile with another. In fairness, the TRC did not aim to do that: its hearings were designed to create 'a climate which fosters constructive interchange between victims and perpetrators' and to 'promote healing and reconciliation and to prevent a repetition of the violence and abuses suffered'.[45] However, the situation in Sierra Leone, partly because of its fluidity and partly because of relatively widespread sympathy with some of the young men within the RUF, did not generate a public rejection of perpetrators. In fact, it is striking how many people regard perpetrators as 'our brothers' or 'our children'.[46] Since most hearings did not bring together victims and perpetrators, this represents something of a missed opportunity, since reconciliation requires some degree of acceptance of perpetrators by victims.

How far have the TRC and SCSL affected justice more broadly in Sierra Leone?

Both the SCSL and the TRC were partial successes, but both had limited impact on the overall reconciliation process. The SCSL failed to engage with a number of local political issues, as exemplified with the CDF trials, and completely failed to interact with local ideas of what constitutes justice. Its dismissal of locally important justice issues, particularly the complete lack of consideration of the role of magic or secret societies, for example, as well as the CDF trial itself, reduced local legitimacy and relevance amongst the local population, even if those issues were conceptually difficult to deal with in a court of law.

The Court seemed to privilege the international over the local, something clearly reflected in its costs. The SCSL has cost over USD 200 million to prosecute nine individuals.[47] In the year of its establishment in 2002, the total payroll of Sierra Leone's judiciary was approximately USD 215,000.[48] In 2007 the entire budget for the government of Sierra Leone was USD 414 million, of which less than 1 per cent – less than USD 4 million – went on the judiciary and this proportionate underspend remains, with a current spend of less than USD 10 million.[49] As Thompson suggested, 'to those working in Sierra Leone's own judiciary, this operation will likely seem like an extra-terrestrial visit, so disproportionate will be the conditions of work of its staff in comparison to its own'.[50]

The perception of the SCSL as an 'international court' was reinforced by the Court's approach to jurisprudence and its own personnel. Within the Court, defendants received an unusually high level of institutional support, to the extent that an International Centre for Transitional Justice (ICTJ) report identifies the level of support as being higher than their usual provisions in other comparable trials.[51] International justice requires a certain standard of justice to be performed, but the perception in Sierra Leone was that defendants were given special treatment in both their defence and their standards of accommodation whilst on trial, which was held to be better than for most Sierra Leoneans.[52]

There were almost no Sierra Leoneans in senior positions within the Court, partly a consequence of the government's appointment of internationals to posts that locals could have held. This reinforced the perception of a 'spaceship phenomenon', with the Court perceived as an interesting curiosity that had very little impact on local people's lives.[53] That the local legal profession rather kept its distance from the Court further reinforced this, and the top-down approach caused significant disenchantment. The privileging of the international was also blamed for the support intervening actors gave to the SCSL over and above the TRC (which was perceived as more local), resulting in a statement from a group of NGOs requesting parity between the two.[54]

The TRC and the exercise in 'truth-telling' that comprised the core of the process had a different sort of impact. Extensive local research on the TRC by Shaw[55] and Millar[56] shows that the institution was regarded as redundant by most Sierra Leoneans. The process was intended to be a cathartic experience both for individuals and society as a whole, but there was a deep misconception within Sierra Leone about what the process was supposed to achieve and also the nature of justice that was to be expected from such a process. Millar[57] points out that the impact and perception of the TRC depended very much on the initial expectations of the individual taking part and their understanding of 'justice'. Telling one's story is not necessarily restorative justice if the initial infringement has been social, economic, or cultural. In other words, the impact of the TRC was limited by its lack of engagement with local systems and perceptions of justice and redress.[58]

The TRC was empowered to 'seek assistance for traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations of abuses in support of healing and reconciliation'.[59] Despite this recognition of the issue, the actual use of traditional justice actors in the process remained very weak

throughout.[60] The TRC emphasised victims and restorative justice, particularly recognition of suffering through public hearings. This is a very Western cultural approach, and Kelsall,[61] amongst others, criticises it as being too alien and too formal for victims. Lack of funding also meant that in many cases the costs of attending the TRC fell on the participant, thus it actually cost people to give evidence.

The TRC had no power to compel evidence, and was relatively unsuccessful in its attempt to generate a virtuous circle of confession and forgiveness. The closest the TRC came to this was in recognition of what 'our side' did during the war rather than individual culpability. Coupled with the lack of governmental support to provide reparations for the testimony, the lack of trust in 'the truth' being told within an alien system, the lack of cross-referencing or cross-examination, the large numbers not taking part, and a perceived lack of emphasis on victims, despite public promises, it is hardly surprising that the TRC is regarded with some cynicism amongst victims.[62] Despite this, there remains an almost universal respect for the report itself, which stands as an impressive historical document in its own right and provides probably the most definitive account of the war.

Conclusions

This chapter contends that the nature of political power at the local level in the countryside frequently creates powerlessness in the face of justice, coupled by either no choice, or a choice between two flawed systems. In urban areas, there may be a formal justice option, usually a Magistrates' court, but in rural areas the population relies on local courts, presided over by a board appointed by the Paramount Chief. This leaves the chiefdom as the only real actor 'beyond the tarmac road'.[63] The local courts mainly investigate and make judgements based on customary law, and chiefs also have the power to set bye-laws in conjunction with predominantly male elders. This means that citizens do not necessarily know the bye-laws that apply to them or that they may contravene human rights.[64]

There appears to be little chance that a poor person could bring a successful case against a chief or a member of a chief's family. Kinship ties remain important and chiefs themselves are constrained by kin linkages as well as rural hierarchies.[65] Family history is frequently taken into account in selection for formal positions, so descendants of chiefs are more likely to gain positions of influence. Kinship also restricts power to particular ethnic groups – the *indigenes*. Because chiefdom and kinship

are intimately tied to the land, legitimacy is usually tied to the length of time that a particular family has occupied a piece of land.

This places certain groups of people in an increasingly powerless position. *Non-indigene* (stranger) women and youth are in particularly vulnerable positions with almost no representation and no power. Paramount Chiefs are frequently cited as hearing cases without a mandate, and individuals opposing the chief are likely to be ostracised from the community.[66] Young men are expected to obey their elders whilst (male) elders wield power in families, social groupings, and courts. 'Youth' in Sierra Leone, is a social category, relating to social status rather than age.[67]

Women have also been marginalised by the customary system of justice, which regulates domestic issues whilst constructing high barriers to entry for women seeking formal restitution.[68] Institutional bias against women frequently violates women's constitutional and human rights, despite the introduction of human rights legislation, including women having the status of 'minors' in many local courts.[69] In some chiefdoms in 2002, women expressed pleasure at being asked their opinion because they 'are not considered worthy of taking any challenging responsibility other than cooking and nursing children'.[70] The same report goes on to state that polygyny (one man with several conjugal relationships), leviratic marriage (inheriting a brother's wife), collecting 'marriage tax' whilst girls were still at school, hearing serious rape cases in local courts rather than district courts (therefore treating rape as a minor crime), and upholding patrilineal inheritance norms were all rigorously supported by local courts.[71]

The resilience of the local justice system has meant that the TRC and SCSL were able to achieve little penetration into the countryside. Insufficient funding for the TRC, for example, accompanied by poor sensitisation across the countryside and significant gaps in geographical coverage added to a shortfall in terms of the methods used by the TRC. In particular in a country where much of the population lacked subsistence means, and following a campaign of amputations that robbed families of breadwinners, justice, to many people, meant getting some form of compensation. Story-telling was seen as a poor second, particularly when it was not always clear who was to blame for their suffering.[72]

The SCSL, however, had an even narrower remit than the TRC and arguably has been more problematic in terms of its impact beyond Freetown. In keeping with the TRC, there has always been a strong demand for some form of reparation, even though it is acknowledged that this was not in the remit of the Court. This led many to question the value of the Court and the perceived distance between international

versions of justice and local ideas of what constituted justice. This was further exacerbated by the location of the Court in Freetown and its lack of effective outreach, including to local associations such as the Amputee Association, which actually threatened to boycott the Court over reparations. This has undoubtedly limited the impact of the SCSL.

One of the advantages of the SCSL being detached from local mechanisms and local attitudes is that this detachment has allowed the Court to make innovative decisions, particularly concerning women's rights, and gender crimes as a significant element of war.[73] This has led to a great deal of work internationally in terms of recognising sexual and gender-based violence, as well as humanitarian law and witness protection, but given the nature of the local justice system one has to ask why the Court and the institutions around it did not try to transfer some of those approaches to the Sierra Leonean justice mechanisms as part of its legacy.[74]

The emphasis on formal justice mechanisms at a central level was mirrored by international donor interventions in the justice sector more generally, which concentrated on formal training rather than working with customary mechanisms.[75] In fact, the question of how to work with these local mechanisms remains a critical issue in Sierra Leone.[76] At the same time, the creation of NGOs and civil society organisations has been a deliberate attempt to construct a series of oversight mechanisms within civil society, partly to compensate for the extremely weak justice oversight mechanisms at state level.[77] However, there are questions about the capability of civil society to deliver justice, and their access to, and their independence from, those local institutions that they are charged to investigate.[78] In addition, there are real questions about *who* actually constitutes civil society. There is a legitimate concern that many civil society groups are not representative, may be chasing donor funding rather than developing independent strategies, and may also be comprised of different versions of the same local elites who have had access to education.[79]

So where does that leave an analysis of the SCSL and the TRC? I have outlined some of the core issues with both and then put them into the broader context of justice in Sierra Leone. I argued in the chapter that the legacy of both the TRC and the SCSL remains extremely weak. The real question is why?

Firstly, there are a number of issues driving both institutions' lack of impact. There were undoubtedly issues about funding for both the SCSL and also the TRC, to the extent that many members of the Court, for example, were accused of spending more time trying to raise money

than conducting their work.[80] The TRC also suffered from financial shortfalls that clearly limited its ability to reach all parts of the country and spend enough time gathering testimony. Despite the excellence of the final report, it remains flawed due to the lack of coverage and the nature of the evidence.

Secondly, the nature of intervention is necessarily 'international' and the SCSL, in particular, exhibited some of the weaknesses of this approach, privileging international staff over local staff, applying international rules to local problems, and also appearing to be applying punitive justice to those who were regarded as local heroes. The lack of engagement with local justice systems effectively means that the customary systems play almost no part in reconciliation efforts and a complete failure to make any meaningful links with the local judiciary, let alone with any broader justice mechanisms in the country, has severely limited the legacy of the Court itself.

Even the TRC, which had a mandate to engage with these broader groups, in many ways failed because of the mechanisms used. However, there were also tensions between the two institutions, which, unusually, coexisted. Since both had funding problems and some degree of overlap, they competed for the same staff. At the same time, the TRC was hampered by the perception that giving testimony at the TRC could lead to being tried by the SCSL – a hurdle it never got over.[81]

Thirdly, the nature of justice in Sierra Leone is not the same as perceptions of justice internationally – at least in terms of how justice is performed. In particular, Kelsall[82] addresses these failings as representing a 'politics of culture', specifically around the nature of guilt as a property of individual perpetrators, whereas local traditions would not seek individual guilt, and around the role played by child soldiers where the age of participating in hunter groups, for example, remains very young. Additionally, there are significant questions over the nature of 'witnesses' in Sierra Leone. Expectations of payment for testifying at the TRC and the questionable validity of some witness statements at the SCSL raise issues concerning how far such mechanisms can reach 'the truth'.

All of these issues relate to both the TRC and SCSL. In an area where the TRC should have performed well, violence against women and children, there were issues with the sensitivity of the process and specifically the requirement of the victims to testify.[83] The experience of local methods of reconciliation did not require children to testify and offered a form of 'cleansing' and reacceptance into the community that the TRC did not.[84] Perhaps the most telling finding with regard to women was

that the SCSL has had a huge impact on the recognition of the crime of sexual violence within international law, whilst the actual justice available to many local women remains somewhat opaque.

Lastly, there needs to be some reflection on the meaning of hybridity with respect to the SCSL in particular. Specifically, hybridity has to mean more than employing a few local people. The failure of both the TRC and the SCSL to leave a lasting legacy on the domestic justice system, thus preventing meaningful reconciliation over time, was a wasted opportunity. A failure to actually develop a hybrid system whereby an international system could interact with the dense network of local institutions that provide justice in Sierra Leone has meant that the international intervention remains something of a 'spaceship' intervention.

A core goal of international justice must be to prosecute perpetrators, but also to use external support to empower people to access justice within the legal frameworks already in operation in their states. In other words, there has to be an acknowledgement that a formal legal framework is unlikely to be available to every community within Sierra Leone. At the same time, this does not mean that people within those communities should be just subject to the whims of local political elites or the biases of the chiefs. This implies a huge improvement in the capacity and reach of the formal, state legal system and in the ability of those involved to be able to access support, knowledge, and advice to enable them to use it. In short, the TRC and the SCSL effectively missed an opportunity to work with local justice systems – both formal and informal – and to make them work more effectively for local people.

This does not mean that external intervention should merely acknowledge that local situations are complex, but that there needs to be a shift in the way in which support for those excluded from the contemporary system is designed. Specifically, the lack of legal and political hegemony of the state in many post-conflict environments means that any formal system will not only be difficult to access, but is also likely to vary in quality across the country. In Sierra Leone this was exacerbated by the availability of staff and how embedded local staff are within local communities controlled by chiefs and will also vary geographically.

To have long-term success, international justice mechanisms like the SCSL and the TRC need to be properly resourced, flexible enough to deal with local mechanisms, properly explained to the local population, sensitive to needs and local customs (whilst not always upholding them), and also to involve local people meaningfully within them. The experience of TJ mechanisms in Sierra Leone was a mixture of poor financing and misunderstanding and a parachuted-in court of foreigners 'doing

justice' to a small group of Sierra Leoneans. In other words, any future set of mechanisms that addresses these issues must be sensitive to the local context, but also provide access to justice as opposed to political decision-making. This is a very difficult balancing act, respecting local institutions that may be misogynistic, politically biased, and designed to protect social hierarchies, and seeking to improve on them in terms of the justice offered, whilst also recognising that formal systems can be politically biased and are not available to all. This is one of the most important lessons of the TJ process in Sierra Leone.

Notes

1 P. Jackson and P. Albrecht (2010) *Security Sector Transformation in Sierra Leone 1997–2007* (London: Palgrave Macmillan); L. Denney (2014) *Justice and Security Reform: Development Agencies and Informal Institutions in Sierra Leone* (London: Routledge).
2 A. Howlett-Bolton (2008) *Aiming for Holistic Approaches to Justice Sector Development*, Working Paper Series, Security System Transformation in Sierra Leone, 1997–2007, No. 7, University of Birmingham.
3 P. Jackson (2007) 'Reshuffling the Deck? The Politics of Decentralisation in Sierra Leone', *African Affairs* 106(422), 106–111.
4 The commonly cited figure – but very difficult to verify – is that around 80 per cent of people access justice through traditional mechanisms.
5 B. Baker (2006) 'The African Post-Conflict Policing Agenda in Sierra Leone', *Conflict, Security & Development* 6(1), 25–50.
6 R. Fanthorpe, A. Lavali and M. G. Sesay (2011) *Decentralization in Sierra Leone: Impact, Constraints and Prospects*, (Department For International Development, United Kingdom).
7 The author had been part of DFID's Chiefdom Restoration Programme and was then involved with the decentralisation process.
8 R. Fanthorp, A. Jay and V. K. Kamara (2002) *A Review of the Chiefdom Governance Reform Programme, Incorporating an Analysis of Chiefdom Administration in Sierra Leone*, November. (Department for International Development, Freetown, Sierra Leone).
9 P. Richards (1996) *Fighting for the Rain Forest: War, Youth, & Resources in Sierra Leone* (Oxford: International African Institute); P. Jackson (2005) 'Chiefs, Money and Politicians: Rebuilding Local Government in Sierra Leone', *Public Administration and Development* 25(1), 49–58.
10 T. Kelsall (2006) *Law and Legal Institutions in an Upcountry Sierra Leonean Town*, Unpublished report prepared for Timap for Justice and the National Forum for Human Rights, Sierra Leone.
11 R. E. Manning (2009) 'The Landscape of Local Authority in Sierra Leone: How "Traditional" and "Modern" Justice Systems Interact', in Y. Zhou (ed.) *Decentralization, Democracy and Development: Recent Experience from Sierra Leone* (Washington: World Bank Country Study), 110–137.
12 C. Castillejo (2009) *Building Accountable Justice in Sierra Leone*, FRIDE Working Paper 76, Madrid.

13 Kelsall's *Law and Legal Institutions* showed that larceny consisted of 36 per cent, with assault and sexual assault comprising another 27 per cent. See also Castillejo, *Building*.
14 Kelsall, *Law and Legal Institutions*; Castillejo, *Building*.
15 Castillejo, *Building*.
16 Jackson, 'Reshuffling'; Castillejo, *Building*.
17 Jackson, 'Reshuffling'.
18 This has been identified by the current Justice Sector Development Programme within Sierra Leone, which is a DFID-funded justice support programme.
19 Jackson, 'Reshuffling'. See also R. Fanthorpe (2006) 'On the Limits of the Liberal Peace: Chiefs and Democratic Decentralization in Sierra Leone', *African Affairs* 105, 27–49.
20 Kelsall, *Law and Legal Institutions*.
21 Fanthorpe, 'On the Limits'; Kelsall, *Law and Legal Institutions*.
22 Castillejo, *Building*.
23 Fanthorpe, 'On the Limits'; See also P. Richards (2005) 'To Fight or To Farm? Agrarian Dimensions of the Mano River Conflicts in Liberia and Sierra Leone', *African Affairs* 104(417), 571–590.
24 A detailed discussion of secret societies such as *poro* is beyond the scope of this chapter, but these societies play an important role in regulating social events, respect, and control. Chiefs are part of these societies but not necessarily in control of them. However, it would be difficult for a chief to consistently act in opposition to a secret society.
25 Jackson, 'Chiefs, Money'.
26 Castillejo, *Building*.
27 Jackson, 'Chiefs, Money'; Kelsall, *Law and Legal Institutions*; Manning, 'Landscape'.
28 Manning, 'Landscape'.
29 Jackson, 'Reshuffling'.
30 P. Richards et al. (2003) *The Social Assessment Study: Community-driven Development and Social Capital in Post-War Sierra Leone*, Unpublished paper commissioned by the Community-Driven Development Group of the World Bank for the National Commission for Social Action of the Government of Sierra Leone.
31 'Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court For Sierra Leone', Article 1, available at: http://www.rscsl.org/Documents/scsl-agreement.pdf
32 SCSL Agreement, Article 1.
33 SCSL Mandate, Article 1, para. 1.
34 T. Kelsall (2009) *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press); A. Bates (2010) *Transitional Justice in Sierra Leone: Analytical Report*, ATLAS Project Report, British Institute of International and Comparative Law.
35 Kelsall, *Culture*.
36 Truth and Reconciliation Commission (2004) *Final Report of the Truth and Reconciliation Commission of Sierra Leone*, Freetown: 181.
37 TRC Report, p. 231.
38 Jackson, 'Chiefs, Money'; Kelsall, *Culture*.

39 G. Millar (2012) '"Our Brothers Who Went to the Bush": Post-Identity Conflict and the Experience of Reconciliation in Sierra Leone', *Journal of Peace Research* 49(5), 717–729.
40 Richards, *Fighting for the Rainforest*.
41 Jackson, 'Chiefs, Money'; 'Reshuffling'.
42 Richards, 'To Fight'.
43 Fanthorpe, 'On the Limits'; Richards, 'To Fight'; Jackson, 'Reshuffling'.
44 TRC Report, p. 1.
45 TRC Report, p. 24.
46 Jackson, 'Reshuffling'; Millar, 'Our Brothers'.
47 O. Bowcott and M. Mark (2012) 'Charles Taylor Found Guilty of Abetting Sierra Leone War Crimes', *The Guardian*, available at: http://www.guardian.co.uk/world/2007/may/26/charles-taylor-guitly-war-crimes
48 N. Thompson (2002) 'In Pursuit of Justice: A Report on the Judiciary in Sierra Leone', Commonwealth Human Rights Initiative, p. 39.
49 A. Varvaloucas, S. Koroma, M. Turay and B. Siddiqi (2012) 'Improving the Justice Sector: Law and Institution-Building in Sierra Leone', in O. E. G. Johnson (ed.) *Challenges and Policy Issues in Early 21st-Century Sierra Leone* (London: International Growth Centre and the Bank of Sierra Leone), 493–528.
50 Thompson, 'In Pursuit', p. 39.
51 T. Perriello and M. Wierda (2006) *The Special Court for Sierra Leone Under Scrutiny* (New York: International Center for Transitional Justice).
52 Perriello and Wierda, 'Scrutiny'.
53 Perriello and Wierda, 'Scrutiny'.
54 Perriello and Wierda, 'Scrutiny'.
55 R. Shaw (2005), 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone', United States Institute of Peace Special Report #130 (Washington, DC: USIP Press); (2007) 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *The International Journal of Transitional Justice* 1(2), 183–207.
56 G. Millar (2011) 'Local Evaluations of Justice Through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice', *Human Rights Review* 12(4), 515–535.
57 Millar, 'Local Evaluations'
58 Denney, *Justice and Security Reform*.
59 TRC Act, Part 3(2).
60 L. Huyse and M. Salter (2008) *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance).
61 Kelsall, *Culture*.
62 Shaw, 'Memory Frictions'; Bates, *Analytical Report*.
63 Baker, 'Policing Agenda'.
64 Castillejo, *Building*.
65 This is partly where the secret societies come in since they perform a regulatory function in society, including influencing the chief.
66 Fanthorpe, 'On the Limits'; Richards 'To Fight'; Castillejo, *Building*.
67 Richards et al., *Social Assessment Study*; Richards, 'To Fight'.
68 Castillejo, *Building*. Note that there are some differences between different regions in Sierra Leone.

69 Castillejo, *Building*.
70 Fanthorpe et al., *Chiefdom Governance*, p. 31.
71 Fanthorpe et al., *Chiefdom Governance*.
72 Kelsall, *Culture*.
73 A. Tejan-Cole (2009) 'Sierra Leone's "Not-So-Special" Court', in C. Sriram and S. Pillay (eds) *Peace versus Justice: The Dilemma of Transitional Justice in Africa* (Cape Town: James Currey), 223–247.
74 See Oosterveld chapter in this book for further discussion.
75 P. Jackson, P. Albrecht and O. Gbla (2013) *From Quick Wins to Long-Term Profits? Developing Better Approaches to Support Security and Justice Engagements in Fragile States: Sierra Leone Case Study*, OECD/INCAF: 1–59.
76 Albrecht and Jackson, *Quick Wins*.
77 Castillejo, *Building*.
78 Castillejo, *Building*.
79 Castillejo, *Building*.
80 Tejan-Cole, 'Not-So-Special'.
81 Kelsall, *Culture*.
82 Kelsall, *Culture*.
83 T. Ekiyor (2009) 'Reflecting on the Sierra Leone Truth and Reconciliation Commission: A Peacebuilding Perspective', in Sriram and Pillay (eds), *Peace versus Justice*.
84 Ekiyor, 'Reflecting'.

11

A Pragmatic Pact: Reconciliation and Reintegration in Sierra Leone

Kieran Mitton

A Sierra Leonean friend described returning to Sierra Leone in 2005 for the first time since peace was declared. Having fled during the war, he had followed violent events closely, fearing for friends and family left behind. He expected to find a society torn apart by grief and anger, with communities demanding retribution against perpetrators of atrocity. He was shocked – indeed almost frustrated – to find a very different situation. Victims of wartime violence talked of forgiving and forgetting, and of 'moving on'. Ex-combatants lived alongside non-combatants, with little sign of tension.[1] His amazement was one which has been frequently expressed by visitors to Sierra Leone since the war. How can it be that people are not angrier or crying out for justice?

The apparent capacity of Sierra Leoneans to 'forgive and forget' or, at the very least, to accept former combatants back into their communities without seeking redress is a notable feature of the post-war years. Writing in 2003, Jeremy Ginifer described 'a remarkable degree of forgiveness' in an amputee camp in Freetown, home to hundreds who had legs and arms hacked off during the war.[2] He quoted the head of an international NGO, who said of his visit to Sierra Leone in 2002: 'I found it amazing that they were looking forward so much, rather than wondering about the atrocities of the past.'[3] More than ten years later, former fighters of various factions live and work side by side, both with each other and with those who never took up arms. That it is difficult, if not impossible, to tell ex-combatants apart from other youths when travelling through Sierra Leone's towns and villages is frequently taken as a measure of just how successful reconciliation and reintegration have been.[4] Combined with the peace that has held since 2002, this has strengthened the view that Sierra Leone is a post-conflict 'success story'.

The precise reasons for this success are less often or easily articulated. Even the most positive view of the Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission (TRC) would struggle to attribute post-conflict reconciliation and reintegration in Sierra Leone to these institutions. Some have argued that the answer lies, in part, in Sierra Leone's own traditions and techniques of dealing with the past. Rosalind Shaw, for example, has drawn attention to the practice of 'directed forgetting', whereby Sierra Leoneans consciously forgo a potentially destabilising focus on past wrongs – and by extension, demands for vengeance or retributive justice – for the greater purpose of recovery.[5] Others have pointed to the specific character of Sierra Leone's civil war. Far from being a conflict centred on ethnic or religious divides, fighting forces shared similar social compositions and grievances. In this sense, as Gearoid Millar puts it, Sierra Leone's conflict was 'post-identity', and the post-war challenge of reconciliation has not been one of overcoming pronounced 'otherising' dynamics. Rather, Sierra Leoneans have been able to accept former fighters as 'brothers'.[6]

The interpretation that best accords with my own research among ex-combatants and communities, however, is that Sierra Leone has not, in fact, been an unqualified success for reconciliation, at least not in the terms by which it is often described. A number of researchers drawing on extended periods of fieldwork have highlighted the extent to which appearances may be seriously, even dangerously, misleading. Laura Stovel found that although Sierra Leoneans may have 'agreed to coexist and interact with ex-combatants, they had not reconciled in any deeply felt way'.[7] Similarly, Ginifer warned that a worrying factor for peace in the country was that 'reconciliation is not deep-rooted'.[8] Regarding reintegration, similar assessments note that surface-level appearances mask deeper, more ominous realities. That many former fighters have not returned to their home communities, remaining instead among fellow ex-combatants in larger urban areas, is one reason to question their 'reintegrated' status.[9] These observations raise the question of precisely how success in reintegration and reconciliation should be judged, and by whom. By extension, this calls for a critical examination of the very notions of reintegration and reconciliation, and the extent to which ideas about these related processes may vary considerably between individuals, communities and cultures.

This chapter examines the forms of reintegration and reconciliation that are said to have been reached in Sierra Leone, and assesses the terms by which Sierra Leoneans judge their success. It begins with a brief exploration of perceptions of the two formal transitional justice (TJ)

mechanisms – the SCSL and TRC – covering some of the most common criticisms made by Sierra Leoneans. This analysis draws out the degree to which the predominant criterion by which both institutions are commonly judged relates to their practical impact on assisting with everyday material challenges. What use is justice? Accordingly, the following section traces the development of discourses of reconciliation and reintegration. Drawing on extended field research, carried out by the author between 2008 and 2012,[10] the central argument of this chapter is that both processes have been driven by a popular pragmatic focus on immediate, practical welfare needs, which at times may appear to conflict with demands for justice, truth-telling and reflection on the past. Shaped by an emphasis on what is useful, reconciliation in Sierra Leone is best understood, I argue, as a tacitly agreed 'pact of accommodation' between former fighters and wider society. This pact incorporates a collective agreement to lay blame for the war beyond the agency of individual fighters, and a conscious re-branding of ex-combatants as 'youth' in society. It is agreed because it is useful for avoiding further conflict, and is viewed as the most realistic, perhaps only option, for improving the day-to-day situation of former fighters and non-combatants alike – both united by an ongoing struggle against poverty. The chapter thus raises the question of whether a pragmatic approach to dealing with the past (and the present) has led to a 'negative peace' – defined as the absence of organised, collective violence – in which many ex-combatants have avoided reintegration and reconciliation altogether.[11] I draw upon the experience of 'traditional' reconciliation efforts in south-eastern Sierra Leone to highlight the degree to which a 'deeper' form of reconciliation is needed in many rural settings, and to show why this deeper reconciliation is likely to facilitate greater reintegration for returning ex-combatants. However, the analysis also identifies a danger in returning to tradition, arguing that the terms by which ex-combatants are integrated include a subtle reification of political and generational structures that work counter to long-term peace and stability. Finally, the chapter concludes with consideration of the wider lessons that may be learned from Sierra Leone's experiences of transitional justice and its current form of peace.

What use is justice?

The SCSL and TRC have received sustained criticism since their inception. By trying only those considered to bear the greatest responsibility for war crimes, the SCSL stands accused of distorting the reality of

wartime abuses, allowing many of those who committed violence to escape justice. Among those who were indicted, the trial of former Civil Defence Forces (CDF) leaders, such as the popular Hinga Norman, also proved controversial, with the CDF regarded as heroic liberators in many parts of southern and eastern Sierra Leone. On a technical level, the Special Court and TRC have been criticised for inadequately communicating their purpose and processes.[12] Popular confusion over the role of both organisations, and apparent conflict between two supposedly complimentary institutions, has been well documented.[13] However, perhaps the most biting criticism is not so much that the SCSL or TRC failed to sufficiently communicate their objectives, but that their communication went in only one direction, from the top down. Sierra Leonean views on whether and which TJ mechanisms were appropriate were not adequately incorporated. The Special Court, in particular, has been condemned as an externally imposed exercise serving the aims of the international community, and paying insufficient regard to the needs or desires of ordinary Sierra Leoneans.[14] This perception has been reinforced by the conduct of trials within a heavily guarded compound in Freetown, as well as in The Hague, far from the reach of most citizens. By failing to gauge local needs, the argument goes, both institutions failed to meet local needs. Sierra Leonean ideas about justice were neglected, and according to a number of researchers, traditional practices of reconciliation were directly contradicted by the promotion of 'truth-telling'.[15]

There is, of course, no ideal or perfect form of justice available. And for all the criticisms, we cannot know how Sierra Leone may have fared without the SCSL or the TRC. Within Sierra Leone, opinions on the need for such institutions vary from individual to individual, and it is difficult to support any generalised views as wholly representative of a particular section of society, whether ex-combatants, amputees, youths, members of urban elites or rural villagers. This reality is partly reflected in academic assessments of reconciliation and reintegration in Sierra Leone which disagree over exactly what kind of justice, if any, people desire. Shaw and Kelsall, for example, found that many Sierra Leoneans did not wish to talk about the war or dwell on abuses. Kelsall understands truth-telling as ill-fitted to Sierra Leone's traditions of dealing with the past, suggesting that ritualised ceremonies may be more effective for reconciliation when truth is 'too close to home and too much to bear'.[16] Shaw likewise argues that dwelling on the past runs counter to a tradition of 'directed forgetting'.[17] In contrast, Boersch-Supan reports 'a demand for talking about the past',[18] and Stovel argues that 'while customs discourage open conversations about problematic events, it does not follow

that all or even most Sierra Leoneans prefer silence or avoidance', concluding that the TRC itself shows that 'many Sierra Leoneans wanted to talk and hear about the past'.[19]

During my own research with perpetrators and victims of atrocities, it was clear that both perspectives remain valid. Many were eager to talk about the war, but typically in a context that related to their present-day difficulties. This was the truth that was given focus, and the form of justice desired invariably related to reparations or practical assistance in dealing with these contemporary difficulties.[20] This focus shaped the criteria by which the suitability and success of the TRC and SCSL were judged, and was evident in many discussions with an amputee community in Grafton, on the outskirts of Freetown.[21] Asked whether they harboured anger or resentment towards those who had mutilated them, or how they viewed the SCSL and TRC, responses always returned to a question of practical needs. The chair of an amputee organisation stated: 'I think we have imperfect peace in Sierra Leone. I am always telling people that the peace is from us.'[22] She went on to explain that amputees were not at peace because of their dire economic situation.

> We are angry with the government. I am angry with the government because it is them that is able to make everything good for us. It's so hard for me to forgive. Because if you want to eat, want to do something, want to buy this, but you are not able – who can forgive? Everything is difficult. . . . My children are not angry with the rebels. They are angry with the government, because the government is responsible for helping.[23]

The same community nevertheless frequently repeated the phrase 'we forgive but we don't forget', a transformation of the early post-war mantra 'forgive and forget'. Forgiveness, my research suggests, was the agreement to peacefully coexist with ex-combatants and not 'dig up skeletons'. Not forgetting, however, reflected the reality that the violence inflicted upon the amputees left them struggling to secure basic welfare. Anger over this situation was not directed at ex-combatants, but at the government and the formal justice mechanisms, which had been expected to provide assistance. 'They don't understand anything. We the victims are suffering. They don't care about us', said one elderly amputee.[24] Shaw recorded similar frustrations during her earlier fieldwork:

> If you say peace should come, we the amputees should bring the peace. I cannot be struggling and say that I am living in peace. That is

> why our case should be pushed forward. If our problem is left behind, the war will not end. We the amputees, we all have children.[25]

Similarly, for those who testified at the TRC, disappointment over limited personal benefit was pronounced. Some even viewed the Commission as a 'provocation'.[26] For whilst the body which many believed would assist the victims of the war had not offered tangible assistance to individuals or communities, the Disarmament, Demobilisation and Reintegration (DDR) programme had provided skills training and cash payments to those who had fought. This frustration was compounded by the substantial resources expended on lengthy trials at the SCSL, which many felt should have been directed towards assisting victims. Noting that more than $300 million has been spent on the SCSL, Hoffman provided a damning verdict on the Court and the TRC: 'Despite millions of dollars spent on these proceedings, neither body has succeeded in fundamentally changing the daily lives of Sierra Leoneans who still grapple with the aftermath of war.'[27]

In the post-war years, countless testimonies from victims of the conflict have echoed Hoffman's assessment, drawing attention to the central question of the practical utility of justice. An amputee in Freetown told Rehrl: 'If the boy who cut off my arm goes to prison now, well, then maybe that's called justice. But even if that boy goes to jail, I will never get my arm back.'[28] In Magburaka, in the Northern Province, an individual told Boersch-Supan: 'For me specifically, I say let them leave this people freely. Even if they kill them or punish them, that will not give us back our lost people or property. It will not give us personal benefit.'[29] Another respondent put it bluntly: 'We are not interested in creating further problems, just give us assistance.'[30]

The above statements encapsulate the logic that has driven reconciliation and reintegration in Sierra Leone, regardless of the formal processes of transitional justice. A determination to focus on development, seen almost as a silver bullet for challenges of poverty and governmental failures, and the associated imperative of avoiding 'further problems', has led to a pact of accommodation. Before examining this pact more closely, it is first necessary to understand the manner in which the frustrations described above have grown from the discourse of reconciliation and reintegration promoted by TJ institutions. This discourse has consolidated two main features of Sierra Leone's post-war peace: a belief that accommodation is necessary to avoid conflict and 'move on', which also ties into traditional notions of reconciliation concerning forgetting;

and a belief that moving on is the surest way to address the difficult conditions of everyday poverty.

'Save Sierra Leone from another war': discourses of reconciliation and reintegration

In the aftermath of a brutally violent civil war, it may seem intuitive that victims of abuses would be most vocal in seeking justice or addressing their trauma through reconciliation processes. However, a legacy of the war's devastation in Sierra Leone was a shared determination by civilians and ex-combatants to avoid a return to conflict, and, in this respect, calls for public truth-telling or legal redress were often viewed as potentially divisive and dangerous. They might undermine the peace, seen as critical to development and the meeting of basic material needs, even risking returning the country to further violence. Shaw describes the tension that pervaded in 2002:

> Almost everyone seemed nervous about the upcoming TRC. That year marked the official end of the civil war, and a lot of people felt uneasy about a process that would activate memories of the violence that still seemed so close. The teenaged ex-combatants among whom I conducted fieldwork that year regarded this process with trepidation: some feared it would disrupt their integration into civilian society, and all dreaded the return of their own memories.[31]

According to Shaw, in local tradition 'healing and reconciliation depend on forgetting rather than truth-telling'.[32] Communities therefore 'sought to displace explicit verbal memories' through various social and ritual practices, including prayers, funerals, church services and sacrifices. The purpose of this forgetting was fundamentally practical – 'to create "cool hearts" that form the basis for life in a community'.[33] This did not amount to individuals erasing personal memories, but rather 'their containment in a form that would enable them to recover their lives'.[34]

The work of the SCSL and TRC seemed to conflict with local preferences. However, appeals for participation and support of these institutions, as well as the wider process of reintegrating ex-combatants, were couched in terms sensitive to the concern to 'move on'. Far from the Court or the TRC presenting a threat to peace, Sierra Leoneans were 'sensitised' that failure to address the past or forgive ex-combatants was

itself the surest way to return to conflict. This message was not only promulgated by external interveners. As a TRC official explained to Shaw, although many Sierra Leoneans 'just wanted peace', there existed a 'very strong vocal minority that thought that people needed to talk about what happened'.[35] The TRC itself was explicit in promoting truth-telling and reconciliation as the only way to achieve lasting peace and stability. TRC hearings and sensitisation drives carried such slogans as 'Truth Today, A Peaceful Sierra Leone Tomorrow', 'It's hard to speak the truth, but only this will bring peace', and more urgently, 'Save Sierra Leone from another War. Reconcile Now. TRC Can Help.'[36] The linking of the TRC to material assistance was less explicit than the link to peace, since in reality, the Commission had minimal powers beyond making recommendations for reparations. Nevertheless, it was often implied that participation would bring such benefits, whether individually or in the broader sense of restoring communities to an economically functioning whole.[37] It was in expectation of tangible welfare assistance that many non-combatant participants appeared to testify. Thus, as Kelsall notes, they viewed their engagement with the TRC 'principally in instrumental terms, a deal under which they would exchange their stories for a share of the government's economic resources'.[38]

The reintegration process was similarly linked to the national discourse of 'moving on' and an emphasis on securing practical material assistance.[39] It was likewise promoted by a carrot-and-stick approach, emphasising on the one hand its day-to-day usefulness in restoring communities to fully functioning order and providing them with newly skilled youths, whilst conversely warning of the dangers of rejecting ex-combatants. Sensitisation campaigns by UN agencies, NGOs and the National Commission on Disarmament, Demobilisation and Reintegration (NCDDR) were instrumental in popularising a discourse that held reconciliation and reintegration as essential for peace and development.[40] From the moment of demobilisation, the message that 'people had to move past the war for peace to prevail' was instilled in combatants and the communities that received them.[41] And, according to Catherine Bolten, who conducted research in the northern town of Makeni:

> Sensitization training usurped discussion, replacing it with a discourse conveying the official contours of peace and informing people that between the political necessity of amnesty and the social necessity of forgiveness, objections to reintegration were tantamount to 'disturbing the peace'.[42]

Presented with the stark choice between accepting ex-combatants back into the fold or threatening peace, there appeared to be no choice. Sierra Leoneans, as Boersch-Supan puts it, 'accepted a trade-off between coexistence with former perpetrators and peace'.[43] This trade-off also promised material benefits to communities receiving returning combatants. In addition to former fighters' value as labour due to the skills training they received upon disarming, NGOs and development agencies also provided development support.[44]

The goals of reconciliation and reintegration were further pursued through a conscious 'rebranding' of ex-combatants across Sierra Leone, strongly driven by formal DDR programmes and NGOs engaged in local reconciliation projects. Communities were encouraged to view combatants as victims themselves, a perspective which took into account that many had been forcibly recruited and brutalised by rebels. This was particularly true of returning child soldiers, with communities 'sensitised' by NGOs to embrace a discourse that 'children were not responsible for their crimes because of their age and that children had a *right* to be reunified with their family'.[45] Described by Susan Shepler as a discourse of 'abdicated responsibility', this encouraged returning combatants (and recipient communities) to lay blame for their past abuses elsewhere, be it on the leaders on trial at the Special Court or on the effects of drugs they had been forced to take. Former fighters were also returned to the wider community of 'youth' through a conscious reshaping of everyday language. A Sierra Leonean United Nations Development Programme (UNDP) official told me in 2008 that the term 'ex-combatant' was no longer used – the correct term was now 'youth'.[46] This followed a pattern that had been established by the reintegration programme, as recounted to Bolten: '[W]e were made to be aware that the process was about turning combatants into ex-combatants, and turning ex-combatants into civilians. So once a man agreed to be disarmed and go through the training, he was just a man again. Just an ordinary man.'[47]

The pact of accommodation – an 'imperfect peace'

These discourses of peace and reconciliation have shaped what I refer to as a pragmatic 'pact of accommodation'. Peaceful coexistence is driven by the collective desire to move on from conflict, to avoid a potentially divisive focus on past abuses and to embrace peace as a means to receive greater welfare security. Ex-combatants are recast as youths and as victims, as the promise of peace and development is bound to the notion that Sierra Leoneans will forgive, if not quite forget. Their reintegration,

as a Makeni bishop told Boersch-Supan, rests on an 'unspoken agreement. To not dig up old skeletons.'[48] Formed on the basis of avoiding conflict, to 'Save Sierra Leone from another War', this form of mutual toleration has been aided by formal discourses of reconciliation, and yet it does not support the view that retributive justice, or truth-telling and confrontation of the past, is critical to either peace or development. Rather, experiences of the TRC and SCSL have convinced many Sierra Leoneans that these forms of justice and reconciliation will not meet their needs of basic welfare or peace, whereas accommodation of ex-combatants will at least avert fresh conflict.

For a country emerging from protracted and violent conflict, the pragmatic form of reconciliation and reintegration achieved in Sierra Leone might be considered a success, at least in terms of being expedient in the short term. Certainly there has been no return to mass violence and former fighters coexist peacefully with those who once suffered at their hands. However, scratching below the surface of reintegration reveals a far less positive picture, and we must question whether 'reintegration' is an appropriate term at all. For although in Sierra Leone's towns and capital, former fighters may live and work side by side with civilians and those of former rival factions, this apparent harmony masks the reality that thousands are in urban areas because they have been unable or unwilling to return to their rural home communities. For many ex-combatants, *re*-integration provides a false notion of their prior incorporation into the social, economic and political life of the country. Physical 'relocation', even social dislocation, may be the more accurate term to describe their experiences. The tide of urbanisation in post-war Sierra Leone owes much to this form of 'reintegration', in which the anonymity afforded by settling in urban areas – and their distance from sites of wartime abuses – is preferred over a difficult return to rural villages and their inescapable intimacy.[49] This avoidance is a key element of the pact of accommodation. A chiefdom official in Magbruka described an 'implicit deal' to Boersch-Supan: '[C]ommunities integrate those who have not done bad in that particular place, while other communities integrate those who had to leave.'[50]

This form of reintegration raises questions over the depth of reconciliation that has taken place in Sierra Leone, and again terms such as 'mutual tolerance' or 'coexistence' may be more appropriate. In assessing reconciliation, Stovel differentiates between 'rational' and 'sentient' reconciliation. The former is a process of 'coming to agreement, coming together or coexisting peacefully'. The latter involves a 'deeper' form of reconciliation, and includes 'building trust, healing from a loss or

trauma or coming to terms with events'.[51] Unsurprisingly, she finds more evidence of rational rather than sentient reconciliation in Sierra Leone, concluding that 'while Sierra Leoneans generally agreed to coexist and interact with ex-combatants, they had not reconciled in any deeply felt way'.[52]

This lack of deep reconciliation is especially apparent in smaller towns and villages where civilians must coexist with known former aggressors. It is also apparent in those instances where ex-combatants seek forgiveness in their host communities, but are granted only accommodation, as Bolten's research in Makeni attests.[53] Here, through daily techniques of avoidance, civilians tolerated ex-combatants for the sake of preventing conflict, yet simultaneously kept them at arm's length. Former fighters lived in a 'parallel social world', and according to Bolten, struggled to secure the deeper acceptance that might allow their full incorporation into the community.[54] This was a source of frustration for ex-combatants. They had adhered to the message of forgiveness promoted by the TRC and reintegration programme, which led them to expect full acceptance by civilians should they ask for it, yet they had been denied. A former rebel told Boersch-Supan: 'There is no proper reintegration. Only lip service but they don't have it at mind or heart.'[55]

That some communities may have paid 'lip service' to reintegration and reconciliation partly reflects a belief that ex-combatants themselves have paid only lip service when offering statements of remorse or requesting forgiveness. If we can ask 'do civilians really want to forgive ex-combatants?' we should also ask 'do ex-combatants really want to be forgiven?' According to Bolten's findings in Makeni, many civilians viewed ex-combatant behaviour as remaining unchanged and lacking in humility. Their behaviour was seen as proof that their expressions of remorse were hollow. Whilst there may in fact be very good reasons for former fighters' reluctance to adopt the requisite humility – a critical issue that we shall return to shortly – this perspective is understandable. My research with those who had committed atrocities uncovered their complex relationship with a violent past, traversing a whole spectrum from shame to pride. Few of those I spent time with showed signs of remorse for their abuses, an attitude that accorded with the discourse of victimhood intended to ease their reintegration.[56] Boersch-Supan found likewise: 'None of the ex-combatants I interviewed showed remorse for the crimes they had committed. Most hid behind the argument of having been victims themselves, since they were forced to fight.'[57] Of ex-combatant appearances at the TRC, Kelsall observed: '[N]one of them admitted to individual responsibility for their actions, and none of them

appeared genuinely contrite. Because their statements had been empty, their apologies rang hollow.'[58]

The tensions that can arise between former combatants and those asked to provide forgiveness have not necessarily affected all communities. This is true where space affords more than arm's length distance between victims and former aggressors, as in Freetown. Yet where problems have arisen, particularly in rural villages – precisely the places where many ex-combatants have preferred not to return – there are signs to suggest some communities have found ways to resolve friction. In these communities, lack of deeper reconciliation is likely to be more visible and more detrimental to peace, stability and the economic functioning of the village. The pact of accommodation proves less useful for the purpose of moving on and avoiding conflict. It is perhaps for this reason that Sierra Leonean–driven reconciliation processes have tended to focus in the rural south and east, framed as a response to the failure – or indeed irrelevance – of the TRC and SCSL in addressing local needs.[59] One notable programme is 'Fambul Tok' (meaning 'family talk'), which has the express purpose of helping communities at the village level identify and pursue the forms of reconciliation they desire.[60] They have done so by combining the TRC's emphasis on truth-telling with traditional rituals, bonfire ceremonies and individuals confessing to abuses and requesting the forgiveness of their victims and communities.[61]

Judging the long-term impact of ritual ceremonies of reconciliation is a difficult task, and it would be unwise to view the immediate cathartic emotional release surrounding such events as necessarily amounting to a fundamental transformation of relations between ex-combatants and their communities.[62] Nevertheless, fieldwork in the eastern Kailahun region of Sierra Leone, during the time Fambul Tok had recently begun its work, suggested that the programme had been enthusiastically received by many villages. In Bomaru, where war first arrived and the first Fambul Tok ceremony took place, villagers described the subsurface tensions that had troubled the community prior to the ceremony.[63] Former combatants and those who harboured grievances against them employed techniques of everyday evasion, such as the avoidance of conversation, and even eye contact – what Mac Ginty has termed 'everyday diplomacy'.[64] However, unresolved tensions would occasionally surface during minor disputes, with arguments quickly escalating and switching focus to war-related grievances and 'rebel' identities. A similar dynamic is described by Boersch-Supan: 'In the context of tension or instability, allegations against ex-combatants arise quickly. This is true on the mundane level of everyday interactions as well as events of larger scale.'[65]

Following their engagement with Fambul Tok, residents of Bomaru explained, tensions had lifted and the community was described as being 'whole' again. The practical value of this change was emphasised by participants. For instance, it enabled ex-combatants to work together with others for the economic good of the community, a central aim of Fambul Tok: 'This healing is necessary in order for individuals to contribute to sustainable peace and development.'[66] One resident described another positive outcome: people no longer had to pay a local official to arbitrate in disputes. Now that the community had a designated 'peace tree' where disagreements could be calmly resolved, money was being saved.[67] It was unclear whether beyond this, residents expected or hoped that Fambul Tok would bring development or forms of material assistance, but the simple fact of receiving assistance at all was celebrated. There was little doubt, in the minds of those I spoke with, that this form of reconciliation had proved useful and relevant to their needs, in a way that the TRC and SCSL had not.

The experience of Fambul Tok suggests that there may indeed be a desire and need for deeper reconciliation in parts of Sierra Leone. It also highlights the importance of restoring ex-combatants to a 'useful' role within their communities, with 'usefulness' being what Bolten describes as a 'tenet of positive social personhood' in Sierra Leone.[68] It is precisely this question of usefulness, and the manner in which ex-combatants are willing (or able) to be 'usefully' incorporated into the social fabric of communities that may explain civilian reluctance to engage in deeper forgiveness in Makeni. It would seem that the appropriate ex-combatant behaviour for demonstrating genuine remorse – as viewed by civilians – should be a willingness to work hard and be of use to the community.[69]

Throughout TRC hearings and reintegration sensitisation, Sierra Leoneans were told that with reconciliation and the skills training former fighters received, they would become productive and valuable members of the community. The head of a child reintegration agency explained to Stovel that he told combatants that 'the chief will take you now as a valuable person'.[70] The reality, however, proved very different. In 2003, Ginifer warned: '[M]any ex-combatants will have little prospect of securing productive work when they return to their communities.'[71] This reflected not just unresolved tensions between ex-combatants and communities, or the sheer lack of opportunities in the post-war economy, but also the woeful inadequacy of the skills training many received. Again, expectations outstripped reality. Skills training was poorly and inconsistently implemented, whilst those who graduated their courses often found their skills were unsuited or insufficient to

make a living. Many chose to sell their tool-kits, compounding civilian perceptions that ex-combatants had squandered the assistance they had disproportionately received.[72] With certificates testifying to skills rendered of little value, and without the assistance of family or friends – social ties often severed during war that in part relied on reintegration for restoration – many former fighters were unable to find work and thus demonstrate their 'usefulness'. This gave traction to a widely held view that ex-combatants were 'idle', reluctant to contribute meaningfully to their communities or simply 'useless'.[73] As Bolten observed: 'As ex-combatants lost the ability to contribute, civilian willingness to integrate them – even for their own purposes – vanished.'[74]

The perceived failure of ex-combatants to contribute to their communities through earnest labour and hard work, preferring – supposedly – to maintain lives of idleness or even criminality, has often been taken as demonstrating their limited commitment to deep reconciliation.[75] Furthermore, it has been seen as a rejection of the fundamental social values upon which communities function. Echoing generational tensions that preceded, and even precipitated, the war, former fighters have been viewed as embodying a detrimental form of rebellion against traditional society. Yet in some respects, ex-combatant's inability to 'usefully' integrate may be a direct consequence of their being kept at arm's length – they are not accepted because they are 'idle', yet they are 'idle' because they are not accepted.[76] This is only part of the story, however. There is another reason for ex-combatants' failure, or reluctance, to integrate in terms that accord with traditional conceptions of usefulness and social value. It relates to civilian concerns of rebellion, and offers another answer to the question of why the pact of accommodation has prevailed in the place of deeper forms of reconciliation. It is to this aspect we now turn.

Restoring injustice?

The Sierra Leone civil war has been described as stemming from a 'crisis of youth'.[77] Much has been written on the extent to which the younger generations of pre-war society had become frustrated with the perceived self-serving patrimonial rule of traditional elites, at both national and village level. Frequent victims to abuses of political power and private jurisprudence, and exploited for their labour yet unable to improve their social and economic standing, these youths and their grievances provided fuel for the RUF and the war it brought in 1991. Although the majority of the RUF's recruits were forcibly conscripted, my interviews showed that many had already been labelled as 'rebels' due to

their rejection of the traditional social roles they were expected to take on in their home villages.[78] They recalled frustration with their powerless status and a yearning to move to a bigger town, escaping a life of subsistence farming and subservience to the gerontocracy. The RUF not only presented a challenge to traditional elites through its rhetoric and violence; it inducted recruits into a reversed, albeit brutal, form of social organisation, in which the powerless might gain power, and the young might take on the status of adulthood. The RUF quickly and violently diverged from its stated political goals, but the atrocities of its cadres often betrayed the anger felt towards established authorities.[79] As the TRC recorded, from the first days of conflict, '[c]hiefs, Speakers, elders and other social, cultural and religious figureheads were singled out for humiliation and brutal maltreatment by combatants'.[80]

With the end of war, the role of the youth crisis in fomenting conflict was given prime attention. The TRC recommended that 'the youth question be viewed as a national emergency that demands national mobilisation'.[81] Of paramount concern was that youths were incorporated into political life, given a 'stake' in society and no longer economically exploited or marginalised. Yet, despite the TRC's recommendations, the discourse of reconciliation, including that promoted by the TRC, has subtly implied that ex-combatant's reintegration is conditional on their return to a mode of 'youth' similar to, if not the same as, that which predominated before the war. Participation in TRC hearings, and the general process of seeking forgiveness and acceptance by society, has required ex-combatants to resubmit to the authority and traditions of recipient communities. Not unreasonably, as Bolten's research in Makeni highlights, those expected to reconcile with ex-combatants expect them to abide by the rules and social conventions of their communities. However, to ex-combatants, this may appear to constitute not so much reconciliation as conformity to the very strictures against which they had fought. The pivotal reconciliatory element of TRC hearings may not have been confessions of guilt or expressions of remorse, but rather the symbolic resubmission of ex-combatants to the traditional social hierarchy. Describing the TRC hearings, Kelsall noted:

> The perpetrators' very attendance at the hearings registered their partial subordination to the community, their compliance with its norms, and their willingness to submit to its judgement.[82]

Combined with the discourse of victimhood, aimed at easing acceptance of former combatants, this may also have constituted an undoing – at least in the minds of ex-fighters – of the forms of independence and

'adulthood' they had claimed through war. Again, Kelsall's interpretation of the TRC's mission is telling: 'While the perpetrators had been arrogant, swaggering, and terrifyingly capricious during the war, the Commission was now working to break their pride and reduce them to the status of obedient children.'[83]

The work of reducing ex-combatants to the status of children has also been undertaken by agencies returning former child soldiers to their communities.[84] Assisted in this endeavour by a discourse of victimhood, there has nevertheless been confusion – or perhaps disagreement – about how a child should behave. As Shepler points out, recipient communities expected returnees 'to become mute and return to their place at the bottom of the social hierarchy', yet the post-war humanitarian discourse in Sierra Leone has simultaneously encouraged youths to seek empowerment and make their voices heard.[85] For older ex-combatant youth, it is the discourse of rights and political empowerment that resonates, and to which 'deeper' reconciliation and reintegration may appear opposed.[86] Along these lines, Bolten finds that in refusing to fully incorporate ex-combatants, civilians in Makeni were 'challenging their youth to conform to a particular set of social behaviors that once again rendered their potential co-opted, banishing them to the margins of the social world if they resisted'.[87]

Traditional and ritualistic forms of reconciliation, often seen as preferable to internationally driven retributive and restorative justice, may likewise carry an implicit requirement to conform. With an emphasis on 'social conformity rather than equality and justice', Stovel warns, they 'may reinforce the pre-war status quo'.[88] Although programmes such as Fambul Tok appear sensitive to this concern, their underlying message is that they aim to help communities rebuild in their pre-war image. Describing Fambul Tok's success in relation to the transformation of individuals, Hoffman adds: 'These individual stories are linked to the reassertion of the traditional communal ties and values that were fractured by the war.'[89] The difficult reality facing many communities in Sierra Leone is that not all ex-combatants or youth wish to return to traditional values fractured by the war. For some, this reflects the legacy of socialisation into the violent world of the RUF, in which their identity and self-esteem in formative years were shaped by the power of the gun and the respect accrued through a capacity for violence. They struggle to accept the authority of others or to return an 'ordinary' social status. However, contrary to some civilian perceptions, in other instances ex-combatants' reluctance to submit to traditional authorities and values is a conscious socio-political 'rebellion', rather than behavioural

condition. For these individuals, life in rural villages is not seen as providing the social, political and economic opportunities they seek. Though conditions in urban centres such as Freetown are hardly ideal, they may offer modes of sociality that promise greater independence and opportunities for advancement. Thus many ex-combatants have preferred to remain in the city, regardless of the willingness of home communities to incorporate them.

The pact of accommodation enables many ex-combatants and their communities to peacefully coexist without having to compromise on questions of traditional political hierarchies and social values – a compromise that might be required to achieve deeper forms of reconciliation and reintegration. However, where former fighters seek to return home, or in locations where victims live in close proximity to former aggressors, lack of deeper reconciliation has fostered disruptive everyday frictions and prevented ex-combatants' social incorporation, a factor that impedes their economic integration as 'useful' members of their community. Whilst some forms of locally grounded reconciliation, drawing on ritual and tradition, have proved useful in addressing this problem, they have also underlined the generational tensions that partly sustain the pact of accommodation. Though mutual toleration has been pragmatically achieved for the sake of avoiding conflict and securing basic welfare needs, these tensions bring out the fundamental question of what *kind* of peace and development Sierra Leoneans seek. Addressing this question would require tackling one of the driving forces of the civil war – the disaffection of youth with traditional authority structures and lack of opportunities – but to do so would be an important step towards more comprehensive reconciliation and reintegration.

It is important to understand that the reality of post-conflict Sierra Leone is neither a mirror image of the pre-war socio-political landscape, nor an entirely radical departure. Society and culture should not be treated as static, and in many respects the pact of accommodation may be judged to be valuable in buying space and time for Sierra Leoneans to navigate socio-political transformations at their own pace, without risking conflict. Such navigation calls for greater attention to the changing role or status of youths, as well as to resistance to these changes. Post-conflict discourses of human rights and political entitlements have been adopted and shaped by ex-combatants and youths, challenging traditional hierarchies and gerontocratic structures in various ways. However, youth-led political and development organisations have also reproduced or been co-opted by established forms of patrimonialism, and as Boersch-Supan argues: 'This reinforcement of patrons' positions

blocks effective changes towards a more egalitarian distribution of power.'[90] The changes that must take place in Sierra Leone for deep reconciliation and reintegration to occur are thus likely to be negotiated over the long term rather than the short term. The pact of accommodation provides a degree of stability which allows Sierra Leoneans to focus on their critical, practical needs, whilst buying time for this negotiation in a context of peace.

Lessons of reconciliation in Sierra Leone

Sierra Leone's experience underlines the importance of appreciating the specific local contexts in which retributive and restorative justice are applied. In this regard, we should be wary of suggesting a one-size-fits-all approach when drawing wider lessons for transitional justice. Taking this into account, at least four broad lessons may be helpfully identified from Sierra Leone's engagement with processes of reconciliation and reintegration.

First, internationally sponsored exercises must take account of local demands and ideas about what forms of justice and reconciliation are desired. It cannot be assumed that all societies will seek to address a legacy of brutal conflict in the same way, and if formal truth-telling and legal trials may play a useful practical or symbolic role, they will nevertheless gain limited popular 'buy-in' if they are seen as insensitive or irrelevant to local needs. This may seem an obvious point, yet Fambul Tok found that the people they had worked with

> consistently described this as the first time that they were consulted on the kind of reconciliation *they* wanted and needed, and the first time they were actively encouraged to identify and draw upon their local traditions and resources to engage in this kind of process.[91]

Practices of reconciliation may be enhanced through an incorporation of existing traditions and techniques of dealing with the past, yet this too calls for careful scrutiny of local dynamics. Traditional mechanisms of justice should not be romanticised, and the case of Sierra Leone shows that they can risk reinforcing social divides as much as healing them where they are not tailored to the needs of all members of society. Ultimately, neither entirely local, traditional or international processes of reconciliation are likely to succeed alone in post-conflict settings – some combination will be needed. In Sierra Leone, discourses of reconciliation and reintegration were joined with and shaped by conventions

of 'forgetting' and a pragmatic popular focus on immediate welfare needs. It should be recognised that, in this respect, the discourse of peace cannot be 'controlled' through sensitisation programmes and the mere dissemination of information. By taking local views and needs of justice into account from the outset, TJ programmes may enjoy greater uptake and input from those intended to benefit. As Fletcher and colleagues argue, the central question for effective transitional justice is not whether an international or domestic trial is preferable, formal truth-telling or cultural tradition, but rather 'what is most beneficial to the people whose lives have been disrupted or even destroyed by the perpetrators of violence?'[92]

Second, a related lesson is that societies emerging from protracted violent conflict may place much greater value on the 'usefulness' of justice in terms of practical, often material, benefit, than conventional TJ mechanisms reflect. In Sierra Leone, the perception that the victims of war received little useful assistance from the SCSL and TRC in their daily lives, and the amount of resources expended on both institutions, has caused great frustration. The message of TJ mechanisms must be unambiguous, and if material rewards or other forms of assistance are not on offer, implicit suggestions to the contrary will foster disillusionment and anger. The importance of reintegration programmes to reconciliation efforts, and vice versa, must also be appreciated. In Sierra Leone, perceived favouring of ex-combatants with skills training and cash payments did little to assist reconciliation. Greater provision of reparations to victims of abuses may provide a solution, yet economic constraints and the possibility of fresh grievances caused by unequal or inconsistent implementation of any such programme makes this no easy undertaking. Interventions must carefully assess the relative advantages and disadvantages of offering material assistance, bearing in mind that in some contexts, practical utility may be the criteria by which justice is judged, and where none is forthcoming, many will be unable to forgive, forget or feel at peace.

Third, as a case often described as a 'success', Sierra Leone's post-war experience raises the critical question of precisely how to judge success in reconciliation. The absence of war and the day-to-day peaceful coexistence of non-combatants with ex-combatants may be one measure. However, looking below the surface in Sierra Leone betrays an absence of deeper forms of reconciliation. The form of reintegration that has been achieved, in which ex-combatants have been accommodated but not necessarily fully incorporated, cautions against conflating the absence of war with the presence of peace, at least in a form desired by

all sections of society. Surface-level reconciliation, described in Sierra Leone here as the pact of accommodation, may mask fundamental problems of division and dislocation.

Fourth, and finally, pragmatic forms of reconciliation and reintegration should not be seen as necessarily negative for peace. They may actually serve to buy the time needed to resolve underlying issues impeding deeper reconciliation, such as generational and socio-political tensions in Sierra Leone, for which there can be no immediate post-war fix. However, it would equally be a mistake to ignore those underlying tensions, or to allow an emphasis on peaceful coexistence to stall socio-political changes indefinitely. Stovel warns of the 'danger that policy-makers, planners and donors will see peaceful coexistence as the only "realistic" form of reconciliation, and will not commit themselves to the actions required to achieve deeper, sentient reconciliation'.[93] The same danger applies to ex-combatants and the communities with which they seek reconciliation and reintegration. Transitional justice must be understood as a long-term and ongoing process, and where a pragmatic pact of accommodation exists, it must be viewed as a stepping stone to addressing deeper issues of reconciliation, rather than an end point in itself.

Notes

1 Email correspondence with Sierra Leonean diaspora member, October 2013, London. His experience was also recounted in a BBC Radio 3 documentary, broadcast on 28 September 2005.
2 J. Ginifer (2003) 'Reintegration of Ex-combatants', in M. Malan, S. Meek, T. Thusi, J. Ginifer and P. Coker (eds) *Monograph 80: Sierra Leone, Building the Road to Recovery* (Pretoria, South Africa: Institute for Security Studies), p. 49.
3 Ginifer, 'Reintegration', p. 49.
4 Interview with UNDP Youth Officer, 10 September 2008. See also J. Boersch-Supan (2009) 'What the Communities Say – The Crossroads Between Integration and Reconciliation: What Can Be Learned from the Sierra Leonean Experience?', *CRISE Working Paper*, No. 63 (Oxford: CRISE), p. 19.
5 R. Shaw (2007) 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *The International Journal of Transitional Justice* 1(2), 183–207.
6 G. Millar (2012) '"Our Brothers Who Went to the Bush": Post-Identity Conflict and the Experience of Reconciliation in Sierra Leone', *Journal of Peace Research* 49(5), 717–729. Whilst Millar is right to point out that it is incorrect to describe the war as an ethnic or religious conflict, my own fieldwork during 2008–2012 suggests that otherising dynamics were in fact central to the dynamics of violence. See K. Mitton (2015) *Rebels in a Rotten State: Understanding Atrocity in the Sierra Leone Civil War* (London/New York: Hurst/

Oxford University Press). As such, the conflict is also misunderstood as 'post-identity'. That the divisions of war appeared to quickly fade with the arrival of peace may partly reflect the fact that polarisation was largely endogenous to conflict; wartime identities and divides held less power in peace. Another reason is identified in this chapter: the role that a 'pact' of accommodation played in fostering coexistence among former enemies, united by a common struggle against poverty.

7 L. Stovel (2008) '"There's No Bad Bush to Throw Away a Bad Child": "Tradition"-Inspired Reintegration in Post-War Sierra Leone', *Journal of Modern African Studies* 46(2), 315.

8 Ginifer, 'Reintegration', p. 51.

9 Boersch-Supan, 'Communities', p. 31.

10 Fieldwork was conducted for two main projects: one assessing reintegration, another exploring the dynamics of wartime atrocity (see Mitton, *Rebels*). Regular visits amounted to roughly 16 months in total, undertaken between September 2008 and April 2012. Informal and semi-structured interviews were carried out across Sierra Leone with a broad cross section of society, but the majority of informants were ex-combatants and victims of violence.

11 See J. Galtung (1967) *Theories of Peace: A Synthetic Approach to Peace Thinking* (Oslo: International Peace Research Institute), p. 12, who defines positive peace, by contrast, as including such societal features as equality, justice and freedom from fear and want.

12 See, for instance, R. Kerr and J. Lincoln (2008) *The Special Court* for *Sierra Leone*: *Outreach*, *Legacy* and *Impact – Final Report*, War Crimes Research Group, Department of War Studies (London: King's College London).

13 See Shaw, 'Memory Frictions'; T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2), 361–391.

14 See, for example, F. Mieth (2013) 'Bringing Justice and Enforcing Peace? An Ethnographic Perspective on the Impact of the Special Court for Sierra Leone', *International Journal of Conflict and Violence* 7(1), 10–22.

15 See, for example, Shaw, 'Memory Frictions' and Kelsall, 'Truth, Lies, Ritual'.

16 Kelsall, 'Truth, Lies, Ritual', p. 390. Kelsall does not reject TRC hearings altogether, but suggests they may be more effective by incorporating ritual elements.

17 Shaw, 'Memory Frictions'.

18 Boersch-Supan, 'Communities', p. 45.

19 Stovel, 'No Bad Bush', p. 320.

20 Boersch-Supan, 'Communities', p. 40, likewise found the main theme of her interviews to be a 'nexus between integration and economic development', and that 'food security, poverty reduction, and employment were the main concerns of the majority of my respondents'.

21 Members of this community have been regularly interviewed over the years, and their perspectives are to be found in many publications concerning reconciliation. I was able to regularly spend time with members between September 2008 and August 2009, in April 2010, and in April 2012.

22 Interview, Chair of local amputee organisation, Grafton, 14 May 2009.

23 Interview, Chair of local amputee organisation.

24 Interview, senior member of Grafton amputee community, 14 May 2009.

25 Shaw, 'Memory Frictions', p. 206.
26 G. Millar (2013) 'Expectations and Experiences of Peacebuilding in Sierra Leone: Parallel Peacebuilding Processes and Compound Friction', *International Peacekeeping* 20(2), 195–196. See also Shaw, 'Memory Frictions', p. 198.
27 E. Hoffman (2008) 'Reconciliation in Sierra Leone: Local Processes Yield Global Lessons', *The Fletcher Forum for World Affairs* 32(2), 131.
28 A. Rehrl (2004) 'Sierra Leone: We Want Reconciliation. We will Never Forget. But We Try to Forgive', *Refugees Magazine* 136, 17.
29 Boersch-Supan, 'Communities', p. 40.
30 Boersch-Supan, 'Communities', p. 40.
31 Shaw, 'Memory Frictions', p. 194.
32 Shaw, 'Memory Frictions', p. 194.
33 Shaw, 'Memory Frictions', p. 195.
34 Shaw, 'Memory Frictions', p. 195.
35 Shaw, 'Memory Frictions', p. 196. This minority was predominantly composed of human rights activists, an educated group typically conversant in 'development-speak' and generally more receptive to Western forms of justice. Interviews with this stratum of society alone could thus present a misleading impression of 'local' opinion (see Millar, 'Expectations and Experiences' for further discussion). As ever, it is important to appreciate 'local' identity as heterogeneous.
36 For these slogans see Truth and Reconciliation Commission (TRC) (2004) *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, Vol. 1, Ch. 4; Kelsall, 'Truth, Lies, Ritual', p. 365; and Shaw, 'Memory Frictions', p. 199.
37 See Shaw, 'Memory Frictions', p. 201.
38 Kelsall, 'Truth, Lies, Ritual', p. 371. See Shaw, 'Memory Frictions', p. 201 for similar observations.
39 In fact, Millar, 'Expectations and Experiences', p. 195, notes that many non-combatants expected the TRC to deliver material benefits similar to those awarded to ex-combatants by the DDR programme.
40 Ginifer, 'Reintegration', p. 45.
41 C. Bolten (2012) '"We Have Been Sensitized": Ex-Combatants, Marginalization, and Youth in Postwar Sierra Leone', *American Anthropologist* 114(3), 502.
42 Bolten, 'Sensitized', p. 497.
43 Boersch-Supan, 'Communities', p. 20.
44 Bolten, 'Sensitized', p. 504. With the return of children in particular, agencies such as UNICEF assisted with building schools and paying fees. S. Shepler (2005) 'The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone', *Journal of Human Rights* 4(2), 203, notes: '[T]he reintegration of children is explicitly linked to the nation, to national identity and to economic development.'
45 Shepler, 'Rites', pp. 200–201.
46 Interview, UNDP youth officer, Murray Town, Freetown, 10 September 2008. See also Boersch-Supan, 'Communities', p. 25.
47 Bolten, 'Sensitized', p. 501.
48 Boersch-Supan, 'Communities', p. 21.
49 Interview, UNDP youth officer, Murray Town, Freetown, 10 September 2008. This trend primarily applies to former rebel fighters. Former combatants of

local civil defence militia experience less stigma in their home communities and are even regarded as local heroes. See also L. Specker (2008) *The R-Phase of DDR Processes: An Overview of Key Lessons Learned and Practical Experiences* (The Hague: Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit), pp. 26–27. Concerns over reconciliation are not the only factors that may attract ex-combatants to urban life, as discussed in due course.

50 Boersch-Schupan, 'Communities', p. 31.
51 Stovel, 'No Bad Bush', p. 310.
52 Stovel, 'No Bad Bush', p. 315.
53 Bolten, 'Sensitized', p. 503.
54 Bolten, 'Sensitized', p. 502.
55 Boersch-Supan, 'Communities', p. 37.
56 Yet there were telling exceptions, and I do not wish to suggest that perpetrators did not feel remorse simply because it did not 'show'. Rather, the point here is that their perceived lack of remorse has impeded reconciliation in some communities. See Mitton's *Rebels* for further analysis of guilt and remorse.
57 Boersch-Supan, 'Communities', p. 33. See also Ginifer, 'Reintegration', p. 48.
58 Kelsall, 'Truth, Lies, Ritual', p. 372.
59 Interview, Freetown, 11 May 2009, John Caulker, executive director of NGO 'Forum of Conscience'.
60 See the chapter by Friedman in this book for further discussion of Fambul Tok.
61 Hoffman, 'Reconciliation', p. 135.
62 See Kelsall, 'Truth, Lies, Ritual', p. 388.
63 Interviews, youths and village elders, Bomaru, 10–11 April 2010.
64 R. Mac Ginty, 'Everyday Diplomacy, Agency and Conflict Resolution', University of Manchester. Remarks made at Banaras Hindu University, Varanasi, India, 18 March 2012, at a conference organised as part of the EUFP7 Project 'Cultures of governance and conflict resolution in India and the EU'. See also Bolten, 'Sensitized', p. 502.
65 Boersch-Supan, 'Communities', p. 29.
66 Hoffman, 'Reconciliation', p. 135.
67 Interview, Bomoru farmer, 10 April 2010.
68 Bolten, 'Sensitized', p. 498.
69 Bolten, 'Sensitized', p. 504.
70 Stovel, 'No Bad Bush', p. 313.
71 Ginifer, 'Reintegration', p. 48.
72 Individual and group interviews with multiple ex-RUF fighters in Kenema, 26–27 February 2009, 27–28 July 2009, 27–29 March 2010; Freetown, 27 March 2009, 13 May 2009; Makeni, 25 February 2009.
73 See Bolten, 'Sensitized'.
74 Bolten, 'Sensitized', p. 501.
75 Bolten, 'Sensitized', p. 501.
76 Bolten, 'Sensitized', p. 504.
77 See, for example, K. Peters (2011) *War and the Crisis of Youth in Sierra Leone* (Cambridge: Cambridge University Press).
78 Though rebels in this sense, few had wanted to join the RUF. Multiple interviews with ex-RUF combatants and members of villages attacked by the RUF,

Freetown, 8, 18, 25–28 March 2009, 13–14, 21 May 2009, 11–12 April 2012; Kenema, 26–27 February 2009, 28 July 2009, 27–29 March 2010. See also Mitton's *Rebels* and Peters's *War and the Crisis* concerning forced recruitment.

79 On derailment of the RUF political project, see Peters, *War and the Crisis*.
80 TRC Report, Vol. II, Ch. 2, p. 37.
81 TRC Report, Vol. 11, Ch. 3, p. 166.
82 Kelsall, 'Truth, Lies, Ritual', p. 386.
83 Kelsall, 'Truth, Lies, Ritual', p. 397.
84 See Shepler, 'Rites'.
85 Shepler, 'Rites', p. 206.
86 See P. Tom (2014) 'Youth-Traditional Authorities' Relations in Post-War Sierra Leone', *Children's Geographies* 12(3), 327–338 for discussion of youth's embrace of this discourse in resistance to traditional authorities.
87 Bolten, 'Sensitized', p. 506.
88 Stovel, 'No Bad Bush', p. 318.
89 Hoffman, 'Reconciliation', p. 133.
90 J. Boersch-Supan (2012) 'The Generational Contract in Flux: Intergenerational Tensions in Post-Conflict Sierra Leone', *Journal of Modern African Studies* 50(1), 45. On patrimonialism and youth movements, see also R. Fanthorpe and R. Maconachie (2010) 'Beyond the "Crisis of Youth"? Mining, Farming, and Civil Society in Post-War Sierra Leone', *African Affairs* 109(435), 362; and Tom, 'Youth-Traditional'.
91 Hoffman, 'Reconciliation', p. 137.
92 L. E. Fletcher, H. M. Weinstein and J. Rowen (2009) 'Context, Timing and the Dynamics of Transitional Justice', *Human Rights Quarterly* 31(1), 165.
93 Stovel, 'No Bad Bush', p. 311.

12

Evaluating the Success of Transitional Justice in Sierra Leone and Beyond

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There has been a great deal of academic work undertaken recently that attempts to appraise the success of transitional justice (TJ) in various post-conflict states. However, there is little agreement on what counts as success and how it should be measured or judged. The other chapters in this book consider the extent to which Sierra Leone's TJ processes should be considered a success. I take a step back to focus instead on what we mean by 'success' when assessing the impacts of TJ efforts and to examine the problems involved in evaluating transitional justice. My aim is not to provide a definition of success, as to do so would be impossible, for reasons set out below. Rather, I hope to provoke readers to consider afresh what should count as TJ success and how it should be evaluated.

The Sierra Leonean case is regarded by many practitioners and scholars as a success for transitional justice: 'Sierra Leone represents one of the world's most successful cases of post-conflict recovery, peacekeeping and peacebuilding.'[2] In 2012, the US described Sierra Leone as 'one of the most stable countries in a volatile region'.[3] The country recorded a high real GDP growth averaging 5.3 per cent between 2007 and 2011, and the growth rate of the Sierra Leonean economy in 2012 was, at 15.2 per cent, faster than the rate recorded in any other sub-Saharan African state that year.[4] As well as a strengthening economy, Sierra Leone also shows signs of having a strong polity. The 2007 presidential elections saw the first peaceful handover of power from the ruling party to the opposition in the country's history and took place without the presence of the UN peacekeepers (who had been present in the 2002 election which extended the Presidency of Ahmad Tejan Kabbah). In 2012, the third general election since the end of the civil war was held, returning

President Koroma and the All People's Congress to power. Again, it took place without significant civil unrest or violence. So Sierra Leone would seem to be, at least in terms of its topline democratic practices and its economic indicators, a successful case of post-conflict transition.

To what extent is this success due to the TJ mechanisms employed in Sierra Leone (the Special Court, the Truth and Reconciliation Commission [TRC], a reparations scheme, local justice initiatives and the Lomé amnesty)? Claims of TJ success should be relatively easy to analyse in this case. The mechanisms have now largely completed their work, a decade has passed since the end of the civil war and there is a great deal of published research on the efforts to bring justice to the country. Yet, as I will discuss below, there is surprisingly little agreement on what should count as success and whether those standards have been reached. This lack of agreement has significant consequences for what we should 'learn' from Sierra Leone and what we should seek to transpose to other post-conflict situations. There continues to be a substantial demand for policy-relevant research to use in future cases of countries emerging from conflict or authoritarianism. However, the current state of the literature even in a case that looks, at first sight, to be relatively clear-cut, should make TJ scholars modest in the advice they are willing to offer.

In the first half of the chapter, I identify the kinds of factors that are claimed (in literature on Sierra Leone and on transitional justice more widely) to demonstrate TJ success or failure. Outcomes are by far the most prevalent focus of research, but scholars also make claims about the mandates of institutions; processes of establishment and of functioning; involvement of, and reaction from, victims and affected populations; adherence to universal normative standards; and cost-effectiveness. I note conceptual and methodological challenges of each as I discuss them, then suggest (somewhat unhelpfully, having laid out an array of possible indicators of success) that the list of factors that could be analysed to judge TJ success should be expanded to include the political economy of transitional justice. Having outlined (and supplemented) the broad range of factors that might be thought to indicate success or failure, I examine, in the second half of the chapter, further key challenges in judging TJ success: the challenges of possibility; causality; temporality; aggregation; and generalisability. I conclude that four tools can assist in bringing about both the best forms of transitional justice in practice and the best evaluations of TJ programmes by scholars: deep engagement with contexts; mixed methods; reflexivity and political judgement.

Indicators of TJ success

An overview of the literature on the Sierra Leonean case shows a large number of factors claimed to indicate the success or otherwise of the TJ programme. The case is representative of the broader TJ literature: impact evaluation is a central concern in the most recent literature, but what determines impact or success is still controversial. I discuss below the various claims made in this literature, with illustrations from the Sierra Leonean case.

a. Outcomes

By far the most prevalent measure of TJ success is outcome (sometimes expressed in terms of impacts), with TJ mechanisms tending to be judged according to universal standards. However, there is deep disagreement over which outcomes should be measured, and contradictory results from recent studies on whether transitional justice does, in fact, lead to these outcomes.

Skaar identifies the most common areas on which TJ programmes are expected to impact as 'democratisation, rule of law, increased respect for human rights, human rights culture, violence reduction, peace, reconciliation'.[5] Thoms, Ron and Paris regard the impact of transitional justice on six areas as most important to assess: '(1) Respect for the core human rights to life and the inviolability of the human person, otherwise known as "personal integrity rights"; (2) Political violence; (3) Rule of law; (4) Democratization; (5) Popular perceptions of regime legitimacy; (6) A political culture of human rights and diversity.'[6] Clark defines transitional justice as a 'purposive concept, consisting of four essential goals: truth, accountability, reparation and reconciliation'.[7] Duggan notes that '[t]ypical change processes or implicit (and often untested) assumptions about the goals of transitional justice include social healing (through truth-telling initiatives), reducing recidivism (through criminal trials for human rights abusers) and facilitating the formation of new identities (through history education reform)'.[8] Kritz identifies four objectives that transitional justice aims to achieve, the first being: 'to determine the truth by establishing a record of human rights abuses. . . . The second objective is justice. The third is meaningful democratic reform, entrenchment of the rule of law within society, and building a society with institutions that ensure that the kinds of abuses being dealt with will not recur. The fourth objective is durable peace with assurance that a return to violence is fairly unlikely.'[9] De Greiff states that 'transitional justice measures can be seen as measures that promote recognition, civic

trust . . . and the democratic rule of law'.[10] Important to note are the assumptions of universality inherent in these lists: they are intended to be the standards against which all TJ programmes are measured.

Various outcomes are claimed for single TJ mechanisms or combinations of mechanisms in Sierra Leone. The UN Security Council has commended the Special Court for 'strengthening stability in Sierra Leone and the subregion and bringing an end to impunity'. It also commends its outreach activities for 'contributing to the restoration of the rule of law throughout [Sierra Leone and Liberia] and the region.[11] Others argue that the Court has deterred atrocity; for instance, the President of the International Centre for Transitional Justice, David Tolbert, said on the Taylor trial: 'The SCSL's judgment has . . . provided a strong signal to those who want to commit horrific crimes though surrogates and puppets: they may not easily hide behind complicated legal constructs and are more certain to face the bar of justice.'[12] Clark argues that the Court 'enhanced the degree of truth and accountability . . . detracted from the goal of reparations and added little to the goal of reconciliation'.[13] In this book, Friedman considers the effects of the TRC and local justice initiatives on reconciliation, Mitton looks at the effects of the TJ programme on peace and reconciliation and Oosterveld examines the rule-of-law contributions made by the TRC and the Court by examining their interactions with the domestic legal system. Hollis, in this book, argues that the Special Court for Sierra Leone (SCSL) contributed to rule-of-law outcomes in the domestic legal system through participation of Sierra Leonean staff in the work of the Court, capacity-building and training programmes, and the creation of the Sierra Leone Legal Information Institute. Note, however, that Sierra Leone has not held a single prosecution in its domestic system for war crimes or crimes against humanity committed during the conflict, and many Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC) prisoners taken by the Sierra Leonean government after the Lomé Accords broke down were held, sometimes without trial, for up to six years after the conflict concluded.[14] These circumstances suggest there is some way to go on entrenching the rule of law in Sierra Leone.

One of the main outcomes measured in TJ literature is the provision of 'truth'. TRCs and, increasingly, courts are assessed on whether they have provided a truthful and authoritative record of a conflict and the crimes that took place within it. This is something the Sierra Leonean TRC is particularly commended for – it published an extremely detailed report along with a shorter version for secondary schools and another directed at children. Mahony and Sooka, in this book, applaud the TRC for its

account of key incidents within Sierra Leone. However, they are critical of the extent to which it was able to illuminate the role of external actors and events, in large part because of the politics of its establishment. The role of the SCSL in providing an authoritative narrative is more debatable. The Court could only hear evidence related to its cases, and was presented information to justify holding individuals criminally responsible, not to paint an accurate picture of the conflict (Jordash and Crowe, in this book, suggest that the Court was actually incentivised to produce a false record, demonising the RUF and propping up Kabbah). However, it is common to see justifications of courts as providing a full and authoritative record – as writing history.[15] This elides the fact that conflicts have causes, characters and consequences that spread far beyond individual acts. Truth commissions are much better able to examine the structural and ideological features of conflict (in Sierra Leone, the role of the post-colonial state, corruption, nepotism and the ethnic divisions in the country, for instance), along with the contributions of collective actors such as political administrations and parties, professions (in particular the legal profession) and firms (particularly those involved in the extraction and sale of diamonds).[16] However, being well placed in theory to examine these features of conflicts does not mean that they will be so in practice. Mahony and Sooka, in this book, criticise the TRC for failing to consider the impact of structural adjustment on Sierra Leonean society, the increasing concentration of power in the executive or the exclusion of multiple social groups from spheres of influence within the system of patrimonial politics. Truth commissions are also well placed to identify and/or address the root causes of conflict, which is thought to be a route by which transitional justice can help to maintain peace. However, there are doubts about whether the identification of root causes alone has any effect in the absence of implementation of TRC recommendations.[17]

A final outcome that features in legal literature but rarely in TJ literature is the contribution that courts in particular can make to international jurisprudence. Hollis and Oosterveld, in this book, outline the successes of the SCSL in terms of generating jurisprudence that can be used by other international courts on forced marriage, sexual slavery, the use of child soldiers and attacks on peacekeepers. In contrast, Jordash and Crowe, in this book, call into question the quality of the justice served and express profound concerns over the use of SCSL decisions as precedents in future trials.

The confusion over whether outcomes can be observed is unsurprising when we review the results of the more general literature on TJ success. Even when the relevant outcomes are agreed upon, recent research

has produced contradictory results. Kim and Sikkink find that human rights prosecutions and TRCs lead to improvements in human rights protections, and that trials also deter future atrocity.[18] This is in contrast to Snyder and Vinjamuri, who find that war crimes trials do very little to deter future atrocity, and suggest that amnesties are better able to guarantee durable peace than trials.[19] In the most comprehensive large-n study of transitional justice to date, Olsen, Payne and Reiter find, in contrast to both of these studies, that single TJ mechanisms do not have significant positive effects on human rights or democracy (they do not look at peace).[20] Rather, they find that only combinations of mechanisms including amnesty – trials and amnesties or trials, amnesties and truth commissions – bring improvements in human rights and democracy. Contrary to Kim and Sikkink, they find that truth commissions used in isolation have negative effects. Dancy and Wiebelhaus-Brahm similarly find that TRCs are associated with an increased risk of the resumption of conflict.[21] Thoms, Ron and Paris find that the evidence for transitional justice producing either positive or negative outcomes is weak, noting that '[g]iven the intensity of the debate over TJ and its obvious policy significance, this conclusion may come as a surprise. It is in fact striking that so many commentators have expressed such strong positions on the basis of so little reliable evidence.'[22]

b. Achievement of mandate

One way that scholars narrow down the range of outcomes that might contribute to TJ success is to examine the objectives listed in the founding documents of institutions or their mandates. This relates most obviously to new institutions such as courts or commissions rather than initiatives taken within existing domestic structures, or amnesties. Looking at mandates makes sense as it is likely to be easier to judge whether a TJ institution has succeeded in achieving its mandate than it would be to prove, for instance, that it has achieved peace. In the case of Sierra Leone, there is significant debate on whether the SCSL tried the right people to achieve its mandate of prosecuting persons who bore the greatest responsibility for serious violations of international humanitarian and Sierra Leonean law committed in Sierra Leone since 30 November 1996. Should President Kabbah also have been tried (as Hinga Norman's senior in the chain of command)? President Compaoré of Burkina Faso, who funded and armed the RUF? Muammar Gaddafi, on whose territory the RUF was formed, and who continued to fund them through their rebellions in Liberia and Sierra Leone? ECOMOG forces, who participated in looting and the bombardment of civilian targets? Mercenaries such as Sandline and Executive Outcomes,

also rumoured to have taken part in atrocities? There is no objective standard of 'who bears the greatest responsibility', and in the end the Court prosecuted both those who were judged by the Office of the Prosecutor (OTP) to bear a high level of responsibility and also against whom sufficient evidence could be found.[23] Sceptics argue that lack of prosecution of Compaoré and Gaddafi, for example, was more to do with pressure from funding states exerted on the OTP to ensure that the US and the UK's relationships with Libya in particular did not become the business of the Court.[24]

In terms of the TRC, Friedman, in this book, takes this approach – she looks at the extent to which the Commission achieved its objectives and notes that most research on it tends to evaluate the Commission according to standards (for instance, the extent to which it brought about personal healing) that were outside its remit. She argues that it should be judged instead by its ability to generate political trust and solidarity. With regards to the TRC's objectives, Friedman notes that one of the main criticisms of the TRC is the failure until very recently of the reparations programme, leaving many of the participants at the TRC feeling let down by the process, on which more below.

However, to assess an institution according to its own mandate is to accept the way it, or the political actors that constituted the institution, defines its goals. Mandates are political documents as much as or more than they are ethical documents, subject to negotiation and wrangling, and as important for what they leave out as what they include. The mandate of the SCSL effectively limited the Court to consideration of acts by individuals rather than organisations (though the Joint Criminal Enterprise mode of liability was used to ascribe common acts to individual perpetrators) or states. The mandate of the Court, therefore, foreclosed consideration of anything except the actions of a small number of 'evil' individuals, excluding the responsibility of corporations mining diamonds or private military companies (in particular Executive Outcomes and Sandline), engaged on behalf of one or more parties to the conflict. Similarly, states and private actors supplying arms to combatants were left to be dealt with by a poorly resourced truth commission that had no retributive powers with which to confront these actors.[25]

c. Processes of establishment and of functioning

If the research findings on TJ outcomes are contradictory, but we want to look beyond institutional mandates, then TJ processes may be worth assessing. Scholars and practitioners have looked at the extent to which mechanisms were established legitimately, or at the will of particular political interests. The legitimacy of the Sierra Leonean TRC is rarely

questioned on this basis (though Mahony and Sooka, in this book, note the exclusion of key groups from its design and from the selection of its key personnel). However, there are many questions around the legitimacy of the SCSL.[26] Others judge the extent to which TJ processes were inclusive, fair, free from political interference,[27] reflective of the local political, legal and cultural contexts,[28] observant of the highest legal standards,[29] balanced (in terms of targeting all parties to a conflict) and so on.

Public engagement has also received increased attention recently. The UN Secretary General (UNSG) argues that 'the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out. Local consultation enables a better understanding of the dynamics of past conflict, patterns of discrimination and types of victims', citing Sierra Leone as an example of a more open and consultative trend.[30] He also argues that 'it is essential that [TJ] efforts be based upon meaningful public participation involving national legal professionals, Government, women, minorities, affected groups and civil society.'[31] In fact, local involvement is probably a normative standard (discussed below) rather than a causal factor in TJ success. There is no evidence offered by the UNSG, or any I am aware of more widely, that supports his claim that public participation is essential.

In the case of Sierra Leone, the ability of TJ mechanisms to coordinate their processes is also suggested as a determinant of success. Schabas argues that the SCSL and the TRC worked well together, and this case is often used as an example of how courts and TRCs can be used to provide a more holistic approach to justice than trials alone.[32] But what standards do we judge this collaboration by? TRC commissioners did not feel that the collaboration was successful – perpetrators were reluctant to speak at the TRC for fear of later prosecution by the Court, and the Court saw itself as having legal superiority over the TRC.[33] Does the mere production of a TRC report and completion of trials render the court–commission pairing a success? Or should we be concerned, for instance, about the ways that trials can limit the amount of truth telling at TRCs?[34]

Linked to issues of both process and outcome, the literature on Sierra Leone also features many authors listing 'firsts' as a mark of success – first hybrid court, first criminalisation of the use of child soldiers and forced marriage, first court to conclude a trial against a sitting Head of State and so on; for instance: '[T]he Special Court is the first modern international court located in the country where the prosecuted crimes were committed. It is also the first such tribunal that was created by a

bilateral treaty, co-existed with a truth and reconciliation commission, has a far-reaching outreach programme, and relies mostly on national staff.'[35] This is, however, an illegitimate way to judge success – there is no inherent reason to believe that an institution that does something first does it right. It is likely that these arguments are actually being used to advance a 'justice cascade'[36] or norm diffusion position, which may be a legitimate measure of success, but only if you are in favour of the norm supposedly being diffused.

However, these claims about 'firsts' are more frequent than other claims about process. It is not at all clear that anyone outside a narrow community of international lawyers cares much that the defence was not properly resourced for any of the SCSL trials, that Charles Taylor's conviction should probably be regarded as a failure for the OTP (as he was convicted only on relatively minor grounds of planning and aiding and abetting crimes in Sierra Leone) or that the jurisprudence on Joint Criminal Enterprise at the SCSL contradicts past precedents at the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). There is a little more attention on political interference in TJ mechanisms, but outcomes in general seem far more meaningful to commentators than issues of process.

d. Involvement of and reaction from victims and affected populations

The issue of public participation, discussed in the section above, is complemented in recent TJ literature by a broader consideration of public interest. Critics of Sierra Leonean transitional justice have shown through ethnographic research that the TJ programme did not speak to local understandings of justice and reconciliation.[37] Proponents of Sierra Leonean transitional justice use survey-based research to argue that it did speak to local needs, often citing the role of the outreach programme of the Court.[38] Hollis, in this book, uses survey data to demonstrate the SCSL's success in terms of its objectives, the generation of public trust and in bringing to trial those who bore the greatest responsibility for crimes.

The Centre for International Policy Studies (CIPS) survey on the effects of TJ mechanisms is equivocal on the role of public interests, seeing context as key to success here:

> [I]f there is reliable evidence that a population perceives TJ to be crucial – and that it views the absence of TJ as evidence of their own

> government's illegitimacy – this should be given considerable weight in evaluating TJ options for that country. Conversely, if there is little demand for TJ within a population, or if the people clearly indicate that they have other priorities, there needs to be a clear and compelling rationale for outsiders to treat TJ as a priority matter.[39]

e. Adherence to universal normative standards

On the other end of the spectrum from public interest and outcome-orientation is the conception of transitional justice as needing to adhere to particular (usually universal) normative standards in order to be judged as successful. Regardless of their impact or their public perception, TJ mechanisms might be judged according to, for instance, the goals they set for themselves and the actors they involve. The UNSG claims that:

> [t]he challenges of post-conflict environments necessitate an approach that balances a variety of goals, including the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy and the rule of law. A comprehensive strategy should also pay special attention to abuses committed against groups most affected by conflict, such as minorities, the elderly, children, women, prisoners, displaced persons and refugees, and establish particular measures for their protection and redress in judicial and reconciliation processes.[40]

Gender is a particularly important factor here. Calls for women's participation in transitional justice are rarely made on the basis of evidence that such participation leads to one or more desirable outcomes. Instead, they are made on the basis of the normative value placed by those making the calls on gender equality or inclusivity. Similarly, future TJ mechanisms are likely to be assessed more frequently on the basis of the contributions they make to 'revealing gendered patterns of abuse, enhancing access to justice, and building momentum for reform'.[41] This is not because such contributions would necessarily bring positive outcomes in terms of human rights observance, peace, reconciliation and so on (and in fact the inclusion of women as equal parties with equal voice in TJ could exacerbate rather than quell social tensions) but because it is 'right' to do so.[42]

f. Cost-effectiveness

A final factor used in making judgements of TJ success is cost-effectiveness. Donors in particular tend to be concerned about this, and, again, it is an area about which contradictory claims are made about the

SCSL in particular (the other TJ mechanisms in Sierra Leone being far cheaper). Some argue that the Special Court as a hybrid model should, in principle, be more cost-effective than the prior international criminal tribunals.[43] Others note that the Court has, in practice, been tremendously expensive.[44] At a total cost of close to $250 million for the trials of 13 indictees, it certainly does not compare favourably to the cost of domestic criminal trials.[45] And the funding model of the Court, which was based on voluntary contributions, also led to inefficiencies. The UN had to step in twice to bail out the Court when contributions from states were not forthcoming, and Court officials spent a great deal of time soliciting funds.

g. The political economy of TJ

An aspect of transitional justice that has not received enough attention is the big-picture political economy of TJ projects, particularly in poor countries. Some work has been done on the cost of international justice;[46] the problems of the voluntary contributions funding model of the SCSL discussed above; the subjecting of accountability mechanisms to market-based rationality;[47] and the consequences of witness payments at the Court.[48] However, the economics of transitional justice are important in three further respects, all of which are worthy of further investigation. First, the success or otherwise of reparations schemes receives far too little critical attention, certainly in the case of Sierra Leone, along with its relation to other TJ mechanisms. Second, the financial spoils available to post-conflict states that implement the TJ mechanisms currently popular in the international community can be measured as indicators of a particular kind of success (though the spoils available to individual participants may corrupt the TJ process). Third, and probably the most serious, the implications of choosing particular forms of transitional justice (i.e., mechanisms that largely exclude considerations of socio-economic issues) should be examined, including what these choices mean for the likely success of transitional justice in stabilising peace or deterring future conflict.

Despite being mandated in the TRC report as a key measure to bring rehabilitation and healing, a reparations scheme was not set up in Sierra Leone in a timely or efficient way, and reasonable reparations have not been paid to those most severely affected by the war. Reparations were probably the aspect of the TJ programme that was most important to most Sierra Leoneans – 53 per cent of whom still live below the national poverty line.[49] Yet it took until 2008 for the government of Sierra Leone, with support from the UN Peace-building Fund and the UN Development Fund for Women (UNIFEM), to found the Sierra Leone

Reparations Programme (SLRP). This was much to the disappointment of the people who had testified at the TRC or the SCSL because they expected it to materially improve their lives in some way (often because they had been led to expect this by community leaders, NGOs or the government).[50] In fact, ex-combatants were aided before victims, which victims viewed as unfair, particularly where financial aid or training enabled ex-combatants to create monopolies in certain businesses.[51] Once the SLRP was established, victims were given a flat sum of $100 each, and by 2013, the most severely affected amputees and war-wounded people were given payments of $1400 and asked to sign documents giving assurances that they would not request any more.[52]

In terms of interaction between TJ mechanisms, Clark notes that the SCSL had a negative impact on the reparations process in a number of ways. Most importantly, 'it is not unreasonable to assume that the cost of the court depleted the international resources available for reparations thus directly detracting from the reparations provided to the Sierra Leonean victims'.[53] The SCSL cost a total of around $250 million and was funded through voluntary contributions (and via the UN as emergency measures when those voluntary contributions fell short). The reparations programme was also funded with voluntary contributions, but managed only $4.4 million to try to help more than 32,000 registered war victims. Clark also quite rightly notes that the Court failed to exercise its Article 19(3) powers to order the forfeit of unlawfully acquired property, proceeds or assets and restore them to their rightful owner or the state (from where they could have been used to supplement the reparations coffers), or to prosecute any members of the arms or diamond industries that benefitted from (and likely enabled) crimes during the conflict.[54] So an opportunity cost of the SCSL would seem to be an under-resourced reparations programme.

At a further level of remove, however, the economic story looks to be a positive one – significant spoils in terms of overseas development aid (ODA) are correlated to the establishment and operation of the TJ programme (in particular the SCSL) in Sierra Leone. The government of Sierra Leone worked with powerful sponsors of their TJ process, and has reaped the rewards: net ODA per capita per annum has increased by an average of 63 per cent since the war and $1.7 billion of debt was cancelled through the Heavily Indebted Poor Countries Initiative.[55] Of course, counterfactual analysis cannot prove that Sierra Leone would not have received this money anyway, but there is a striking correlation at first sight between the largest donors to the SCSL and the largest contributors of ODA to Sierra Leone (the US and the UK).[56]

The Special Court also featured a number of times in the EU document setting out the aid programme to Sierra Leone for 2008–2013, which pledged a total of €242 million over the period plus contributed an extra €24 million in 2012.[57] Work to determine whether states that implement a particular TJ mechanism or combination of mechanisms get significant financial inducement to do so, or reward for having done so, is outside the scope of this chapter, but sorely needed. In parallel, research would also be useful on the financial inducements available to individuals to encourage participation in TJ processes. In very poor states, it is hardly surprising to find people willing to testify at a court or to tell stories to a TRC in return for material assistance.[58] While this may be entirely understandable in situations of serious poverty, the normative processes and goals of transitional justice rely on participants telling the truth rather than telling the stories that will make them the most money.

Third, there is a much more radical aspect to taking economics seriously in evaluating TJ programmes – the current liberal practices of transitional justice focus on individual actors and bringing about changes to political institutions. In doing so, 'TJ renders the continuity of socioeconomic dimensions of conflict irrelevant for the democratic legitimation of the new regime'.[59] Van der Merwe reaches a similar conclusion: 'This focus [on providing justice only for acts deemed to be politically motivated] effectively sidelines the more common economic or social abuses that generally occur in oppressive regimes – abuses that may well be the underlying reason for conflict over political power in the first place.'[60] Horovitz takes a more liberal line, but still argues that '[t]he international community cannot overlook the fact that for TJ mechanisms to have a sustainable effect, attention must be given to fighting poverty and encouraging development. . . . Alleviating poverty will enable the population to engage in social and political reform; it will also mitigate public bitterness which may easily serve to promote the political agendas of opportunistic and corrupt elements within the society.'[61] Hoffman, writing specifically about the Sierra Leonean case, notes how little transitional justice has done for Sierra Leoneans: '[D]espite millions of dollars spent on these proceedings, neither body has succeeded in fundamentally changing the daily lives of Sierra Leoneans.'[62] While it might be argued that TJ mechanisms are not well placed to confront the socio-economic conditions that may have been root causes of the conflict, the normative imperative of confronting them somehow – because justice requires it, not just because doing so is likely to stabilise the peace – should not be forgotten.[63]

Further challenges in evaluating transitional justice

Even if agreement could be reached about which factors are relevant in judging the success of transitional justice, there are five further challenges to be confronted in evaluation: the challenges of possibility, causality, temporality, aggregation and generalisability.

First, some decision needs to be made as to what was possible in any given situation before the success of transitional justice can be deduced. There is little point in judging TJ mechanisms according to standards they could never have attained. These mechanisms are usually established in post-conflict contexts in which it is surprising they achieve any traction at all given the lack of domestic resources that are available. Yet they are often invested with unrealistic expectations. As Duggan notes, transitional justice is 'almost always the result of political compromise and seldom reflects the ideal state of justice. Yet, in transitional justice research and practice, mechanisms are almost always measured against someone's ideal concept of justice.'[64] The TRC in Sierra Leone, for instance, could never have guaranteed reconciliation on an interpersonal level – it could only act at the level of the collective. The Court could not have tried all those responsible for atrocities in the war. And the reparations scheme could not have restored to people what they lost in material terms during the conflict.

Second, if markers of success are noted in a given case, work needs to be done to establish whether it was in fact TJ mechanisms that brought them about or if we are observing a correlative rather than causal relationship. For instance, transitional justice in Sierra Leone preceded improvements in human rights observance and democracy according to a major study.[65] But did the TJ programme *cause* these improvements? If so how? Or could the end of the civil war as a military defeat rather than a negotiated bargain, along with continued UK intervention and support, have caused both? Brahm, in a study of truth commissions, notes that '[a] commission's creation is a reflection of the preliminary moves to establish a more democratic system that respects human rights'.[66] This suggests that if democracy and human rights improvements are observed after the creation of the commission, this may be a reflection of a prior commitment to such improvements rather than the improvements being caused by the commission. In fact, the commission in this case would likely also have been caused by prior commitment to such improvements.

In addition to the problem of endogeniety there is a problem of intervening variables. There are usually so many other factors that could

have influenced outcomes (in Sierra Leone, for instance, the UN Peacebuilding Fund, the massive international aid programmes, the British military presence and investment in reforming the armed forces and police, the formation of the Anti-Corruption Commission, etc.) that it seems impossible to separate out which causes led to which outcomes. Horovitz recognises the limits of the SCSL in achieving peace and justice without such intervening variables: '[W]ithout additional measures employed by the government and the international community to promote sustainable transformation and to put an end to endemic corruption and mismanagement, as effective as the Court may be in conducting trials, it will be unsuccessful in promoting sustainable peace and reliable justice.'[67]

One way to confront the challenge of causality is to theorise (rather than just describe or evaluate) transitional justice – to develop theories of how TJ mechanisms might bring about change (and what other factors might also lead to changes in the variables we are interested in). For some scholars these are 'pathways to impact' between, for instance, transitional justice and democracy, such as the delegitimation of past abusers and potential spoilers, the promotion of reforms and the empowerment of previously marginalised actors.[68] For others they are 'social mechanisms' such as norm affirmation and the articulation and disarticulation of networks.[69] The establishment of coherent theories of change assists TJ evaluation as the researcher can investigate evidence of the pathways in order to draw causal inferences about the effects of transitional justice versus other factors. One problem this does not solve, however, is whether the effects of individual TJ mechanisms can be isolated. In the Sierra Leonean case a major recent study has been undertaken on the legacy of the SCSL.[70] Yet a number of the chapters in this book suggest that success can only be appreciated if the interactions between TJ mechanisms (including those in the domestic system) are assessed.[71] Duggan doubts whether it will ever be possible to establish causal relationships in transitional justice: '[T]he change being sought through a transitional justice mechanism will be nonlinear, the result of multiple interactions by numerous actors. . . . As social interventions, one of the most critical features of transitional justice processes is that they are nested in social systems. It is through the workings of entire systems of social relationships that any changes in behaviour or social conditions will be effected.'[72]

The third challenge is one of temporality. Sierra Leone should be a good case in which to measure success as a decade has now passed since the end of the war, so there has been plenty of time for measureable

effects to have emerged from the TJ programme. Yet it may be that too much time has passed. To avoid mistakenly including the effects of intervening variables as TJ success, it may be necessary to carry out research very quickly. But to ensure that success observed is not transient, it will be useful to try to trace out the pathways to TJ success after a much longer period – perhaps even a generation. Van der Merwe suggests that only the most immediate outcomes (for instance, the experience of individuals after testifying to a truth commission) can be reliably credited to TJ mechanisms, though he argues that measuring specific immediate effects could give indications of the broad structural changes these might feasibly lead to.[73]

Fourth, there is the challenge of aggregation. Is it possible to add together all of the various micro claims about success and failure of specific TJ mechanisms or combinations of mechanisms to make a single macro judgement about whether transitional justice in a particular state has been a success? Should the possible outcomes of transitional justice be ranked – either generally or in specific situations? For instance, was it more important for the TJ programme in Sierra Leone to support peace and political stability than to provide reparations or a high quality of legal procedures? Clark's detailed analysis of the SCSL clearly demonstrates the problem here. She outlines the various contributions the SCSL made or failed to make to the four goals she sees as essential to TJ, but gives no indication of how she moves from this fine-grained analysis through a weighing of the positive and negative contributions she finds for each goal to her broad conclusions that the Court was overall a success.[74]

The final challenge is one of generalisability. If conclusions can be reached about the Sierra Leonean case, under what circumstances might they provide lessons learned for other post-conflict (or other transitional) situations? How can contextual reasons for success be separated from structural reasons in order to ascertain whether the same combination of TJ mechanisms would work well elsewhere? Could the contradictory results in the large-n studies discussed above be caused by a lack of attention to context? In judging the success of transitional justice in Sierra Leone, Rodman argues that the rejection of the Lomé amnesty was only possible because of the British military intervention in 2000 that returned Kabbah strongly to power. If Kabbah had had to power-share, then the amnesty would have had to stand and the prospects for transitional justice in Sierra Leone would have been rather different.[75] Similarly, Harris argues that the fact that two of the three principal warring factions (the AFRC and the RUF) had either disintegrated or were

unable to build a political support base at the time the SCSL started its work was a critical factor in the Court being able to prosecute war crimes without endangering peace.[76] When the different sides of a conflict retain support, it is likely to be much more difficult either to achieve a negotiated end to the conflict that includes criminal justice provisions or to run prosecutions without risking the provocation of new discontent. Schabas has a more negative view of the Sierra Leonean context: 'A useful comparison can be made with South Africa, where the TJ institutions were part of a much broader social transformation, driven by an extremely dynamic civil society. Sierra Leone lags far behind South Africa in this respect. And this sad conclusion inevitably limits the potential of the Sierra Leonean TRC to influence the future of this troubled country.'[77] As will be clear, applying lessons learned from specific contexts is not straightforward: it will not always be either possible or ethical to enforce a decisive military (rather than negotiated) end to a conflict; the political power of parties to conflict varies across contexts; and a dynamic civil society cannot simply be created for the purposes of transitional justice.

Conclusion

I have started to parse out the various claims that are made in the course of TJ evaluations, yet parsing out claims is just the beginning. Scholars must continue to strive to find ways to judge the past and to use those judgements to assist in deciding what to do in the future. There is a great deal of resource being invested in transitional justice globally, and academics are frequently asked to work with policy makers to decide how TJ mechanisms should be designed for particular contexts. There is a body of contradictory large-n and small-n research on transitional justice that does not mark a clear path forward, yet forward we will inevitably go. Four tools will aid the journey: deep engagement with contexts, mixed methods, reflexivity and political judgement.

Deep engagement with contexts has both retrospective and prospective elements. Transitional justice has been evaluated, for the most part, by social scientists, but we cannot evaluate TJ success without rich histories. Many of the chapters in this book engage with the history of Sierra Leone to understand the effects of its TJ programme, and strong historical knowledge can be as persuasive as or even more persuasive than robust social scientific analysis. As the CIPS report argues, '[c]ross-national findings are important, but nothing can replace the "art" of considered, country-specific debate and judgment'.[78]

Engagement with contexts should take place using a range of methods. Researchers will be drawn to focus on different areas, and the breadth of the knowledge generated will help to build up a patchwork picture of the impacts of transitional justice. Varied methodologies and varied research questions should get around the problem of having to decide precisely what success is – successes and failures, from various points of view, will be revealed in the detail of the studies – and readers will have to decide what they particularly value about transitional justice when trying to draw conclusions from the body of research. The chapters in this book are a good demonstration of this – each author has their own area of particular concern and therefore their own views on the relative success of transitional justice in Sierra Leone. Large-n and medium-n studies are also valuable, as scholars can tack backwards and forwards between information on global trends and specific cases. This will not lead to agreement, but to more nuanced and granular, and therefore productive, disagreement.

Even if agreement cannot be reached on whether or not transitional justice in Sierra Leone or elsewhere was a success, it would help to progress the debate if scholars were aware of, and reflected upon, the standards by which they evaluate transitional justice. Reflexivity involves being cognisant of your own priorities and biases, willing to challenge your own assumptions and willing to accept that a range of incommensurable views may all have validity. We may never be able to find a definitive answer, for instance, for how to rank the wishes of victims against the importance of peace, or against the ending of impunity, in any one context, let alone across all of them. An awareness of one's position in the debate and the bases on which that position is taken would be useful.

Reflexivity, mixed methods and deep engagement with contexts will give rich but contested narratives that can inform decisions in future situations. But to inform them well, another ingredient is needed: political judgement. Working respectfully through a range of positions is very hard and it is even harder to make judgements. Yet if we want to influence transitional justice in practice, judgement is necessary. Various actors within the international community will continue to push for TJ programmes to take place after conflict, and victims and the public may support this, particularly if there is a sense that it will be financially beneficial, either to individuals or to the state as a whole. We need to judge when transitional justice might be successful in a particular context because the money and effort that goes into a TJ programme is not going elsewhere – a decision needs to be made, for instance, that funding some particular kinds of TJ projects will bring more benefits than

working on security sector reform or poverty reduction. These judgements will be imperfect and fallible, but unavoidable: 'Indexed as we are to time and place, limited in knowledge and constrained by the need to act, our practical judgments are shot through with fallibility. But trying to be infallible is no more rational than trying to grow wings.'[79] They will also be political – they will involve working through a set of contested claims including about whose needs to prioritise, which actors to prosecute and which to empower. Working through what TJ success might mean in and across contexts, and what the challenges are in evaluating it, may be a small but necessary step along the path to improved (though inevitably imperfect) TJ policy in the future.

Notes

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2 K. Ban (2014) 'Remarks at Press Conference to Mark the Completion of the UN Integrated Peacebuilding Office's Work in Sierra Leone', 5 March 2014, available at: http://www.un.org/sg/offthecuff/index.asp?nid=3337

3 US Department of State (2012) 'Fact Sheet on US Relations with Sierra Leone', available at http://www.state.gov/r/pa/ei/bgn/5475.htm

4 Christian Aid (2014) 'Losing Out: Sierra Leone's Massive Revenue Losses from Tax Incentives', p. 9, available at: http://www.christianaid.org.uk/images/Sierra-Leone-Report-tax-incentives-080414.pdf

5 E. Skaar, C. Gianella Malca and T. Eide (2015) *After Violence: Transitional Justice, Peace, and Democracy* (London: Routledge), Chapter 1, p. 20.

6 O. N. T. Thoms, J. Ron and R. Paris (2008) 'The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners' (Ottawa: Centre for International Policy Studies, University of Ottawa), p. 26.

7 T. M. Clark (2014) 'Assessing the Special Court's Contribution to Achieving Transitional Justice', in C. C. Jalloh (ed.) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (Cambridge: Cambridge University Press), p. 749.

8 C. Duggan (2010) 'Editorial Note to Special Issue on Transitional Justice on Trial', *The International Journal of Transitional Justice* 4, 320.

9 N. Kritz (2009) 'Policy Implications of Empirical Research on Transitional Justice', in H. van der Merwe, V. Baxter and A. Chapman (eds) *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC: United States Institute of Peace Press), p. 13.

10 P. de Greiff (2011) 'World Development Report: Background Paper: Transitional Justice, Security, and Development', p. 9, available at: http://web.worldbank.org/archive/website01306/web/pdf/wdr%20background%20paper_de%20greiff_0.pdf

11 UNSC (2012) 'Security Council, in Statement, Strongly Commends Special Court for Sierra Leone, Urges Robust Financial Support as Historic Body Moves into Final Stages of Work', available at: http://www.un.org/press/en/2012/sc10787.doc.htm
12 D. Tolbert (2013) 'The Impact of Charles Taylor's Verdict', *Al Jazeera*, available at: http://www.aljazeera.com/indepth/opinion/2013/10/impact-charles-taylor-verdict-201310112386948327.html
13 Clark, 'Assessing', p. 768.
14 Human Rights Watch (2007) 'World Report Sierra Leone', available at: http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/sierra14713.htm
15 Clark, 'Assessing', for instance, sees the Court as having contributed to the establishment of two forms of truth: forensic and social or dialogue truth, but doing little to establish narrative or personal truth.
16 See K. Ainley (2011) 'Excesses of Responsibility: The Limits of Law and the Possibilities of Politics', *Ethics & International Affairs* 25(4), 407–431.
17 G. Dancy and E. Wiebelhaus-Brahm (2011) 'Justice and the Peace: A Time-Sensitive Empirical Evaluation', *Annual Meeting of the International Studies Association*, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1936946
18 H. J. Kim and K. Sikkink (2010) 'Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries', *International Studies Quarterly* 54(4), 939–963.
19 J. Snyder and L. Vinjamuri (2003/2004) 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security* 28(3), 5–44.
20 T. D. Olsen, L. A. Payne and A. G. Reiter (2010) *Transitional Justice in Balance. Comparing Processes, Weighing Efficacy* (Washington, DC: Unites States Institute of Peace Press).
21 Dancy and Wiebelhaus-Brahm, 'Justice and the Peace'.
22 Thoms et al., 'The Effects', p. 4. Appendix 1 of this piece and Skaar et al., *After Violence*, Chapter 1, p. 11 provide useful tables summarising research on TJ outcomes.
23 See Hollis in this book.
24 See Mahony in this book.
25 K. Ainley (2008) 'Individual Agency and Responsibility for Atrocity', in R. Jeffery (ed.) *Confronting Evil in International Relations: Ethical Responses to Problems of Moral Agency* (London: Palgrave Macmillan), pp. 37–60 discusses the problems of viewing atrocity in terms of individual perpetrators. K. Ainley (2014) 'Transitional Justice in Cambodia: The Coincidence of Power and Principle', in R. Jeffery (ed.) *Transitional Justice in the Asia-Pacific* (Cambridge: Cambridge University Press) further outlines the shortcomings of assessing TJ mechanisms only on their mandates. For an examination of the TRC's failure to investigate external actors see Mahony and Sooka in this book.
26 Harris and Lappin, and Mahony in this book.
27 Mahony, and Mahony and Sooka in this book.
28 Friedman, Jackson, Mitton and Sesay in this book.
29 Hollis, and Jordash and Crowe in this book.
30 UN Secretary General (UNSG) (2004) 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', Report of the Secretary-General to the UNSC, p. 7, available at: http://www.unrol.org/files/2004%20report.pdf

31 UNSG, 'The Rule of Law', p. 7.
32 W. Schabas (2006) 'The Sierra Leone Truth and Reconciliation Commission', in N. Roht-Arriaza and J. Mariezcurrena (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press), pp. 21–42.
33 Sierra Leonean TRC Report (2004), available at: http://www.sierra-leone.org/TRCDocuments.html; Sierra Leone Working Group on Truth and Reconciliation (2006) 'Searching for Truth and Justice in Sierra Leone: An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission', available at: http://www.fambultok.org/TRCStudy-Final Version.pdf
34 A. Jillions and R. Friedman (forthcoming, 2015) 'The Pitfalls and Politics of Holistic Justice', *Global Policy*.
35 S. Horovitz (2006) 'Transitional Criminal Justice in Sierra Leone: Beyond Truth versus Justice', in Roht-Arriaza and Mariezcurrena (eds) *Transitional Justice*, p. 43.
36 K. Sikkink (2011) *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton).
37 Probably the most influential of these works are T. Kelsall (2009) *Culture under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press) and R. Shaw and L. Waldorf (eds) (2010) *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford, CA: Stanford University Press).
38 S. Ford (2014) 'How Special is the Special Court's Outreach Section', in Jalloh (ed.) *The Sierra Leone Special Court*, pp. 505–526 is a nuanced analysis of these claims.
39 Thoms et al., 'The Effects', p. 53.
40 UNSG, 'Rule of Law', p. 9. See also Schabas, 'The Sierra Leone TRC'.
41 International Centre for Transitional Justice website 'Gender Justice' page, available at: https://ictj.org/our-work/transitional-justice-issues/gender-justice
42 Friedman in this book notes the controversial actions taken by Fambul Tok to include women in reconciliation ceremonies in Sierra Leone and encourage them to testify against authority figures.
43 R. Kerr and J. Lincoln (2008) 'The Special Court for Sierra Leone: Outreach, Legacy and Impact' (Kings College London War Crimes Research Group), available at: http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/wc/slfinalreport.pdf
44 Antonio Cassese (2006) 'Report on the Special Court for Sierra Leone', available at: http://www.rscsl.org/Documents/Cassese%20Report.pdf; Clark, 'Assessing'.
45 Figures calculated using estimate of $222.9 million from C. Jalloh (2010) 'Special Court for Sierra Leone: Achieving Justice?', *Michigan Journal of International Law* 32(3), 395–460, footnote 253 and adding in any 2011–2013 expenditure not predicted when Jalloh made his calculation. The additional figures were sourced from the post-2010 annual Reports of the President of the SCSL. The budget of the Sierra Leonean domestic justice system is around $13 million per annum: http://www.cgdev.org/blog/was-charles-taylor-trial-worth-price-tag
46 S. Ford (2011) 'How Leadership in International Criminal Law Is Shifting from the U.S. to Europe and Asia', *St Louis University Law Journal* 55, 953–1000.

47 S. Kendall (2014) 'Marketing Accountability at the Special Court for Sierra Leone', in Jalloh (ed.) *The Sierra Leone Special Court*, pp. 387–405.
48 Jordash and Crowe in this book; J. Easterday (2014) 'The Consequences of Witness Payments at the Special Court for Sierra Leone', in Jalloh (ed.) *The Sierra Leone Special Court*, pp. 447–468; C. Mahony (2010) *The Justice Sector Afterthought: Witness Protection in Africa* (Pretoria: Institute for Security Studies), pp. 84–86, 93–94.
49 E. Conteh and M. Berghs (2014) '"Mi at Don Poil": A Report on Reparations for Amputee and War-Wounded People in Sierra Leone' (Freetown: Amputee and War-Wounded Association), available at: http://disability-studies.leeds.ac.uk/files/library/AWWA%20Report%20on%20Reparations.pdf; poverty statistic taken from Christian Aid 'Losing Out'.
50 T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27, 361–391; R. Shaw (2007) 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *The International Journal of Transitional Justice* 1(2), 183–207.
51 M. Berghs (2012) *War and Embodied Memory: Becoming Disabled in Sierra Leone* (Aldershot: Ashgate).
52 Conteh and Berghs, 'Mi at Don Poil'.
53 Clark, 'Assessing', p. 765.
54 For instance, Mahony, in this book, notes the failure of the SCSL to prosecute arms dealer Ibrahim Bah.
55 Source of figures: World Bank.
56 Human Rights Watch (2011) 'World Report Sierra Leone', available at: http://www.hrw.org/world-report-2011/sierra-leone; Ford, 'How Leadership'.
57 'EU-Sierra Leone relations webpage', available at: http://eeas.europa.eu/sierra_leone/index_en.htm
58 Kelsall, 'Truth, Lies, Ritual', p. 371; J. Easterday (2013) 'The Consequences of Witness Payments at the Special Court for Sierra Leone', in Jalloh (ed.) *The Sierra Leone Special Court*, 447–468.
59 H. Franzki and M. C. Olarte (2014) 'Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective', in S. Buckley-Zistel et al. (eds) *Transitional Justice Theories* (London: Routledge), p. 203.
60 H. van der Merwe (2009) 'Delivering Justice during Transition', in van der Merwe et al. (eds) *Assessing the Impact*, p. 117.
61 Horovitz, 'Transitional Criminal Justice', p. 61.
62 E. Hoffman (2008) 'Reconciliation in Sierra Leone: Local Processes Yield Global Lessons', *The Fletcher Forum for World Affairs* 32(2), p.131.
63 R. Mani (2008) 'Dilemmas of Expanding Transitional Justice', *International Journal for Transitional Justice* 2(3), 253–265 discusses the importance of reparatory rather than rectificatory justice in developing countries.
64 Duggan, 'Editorial Note', p. 321. See also van der Merwe, 'Delivering Justice'.
65 Sikkink, 'Justice Cascade'.
66 E. Brahm (2007) 'Uncovering the Truth: Examining Truth Commission Success and Impact', *International Studies Perspectives* 8(1), p.28.
67 Horovitz, 'Transitional Criminal Justice', p. 61.
68 V. Arnould and C. Sriram (2014) 'Pathways of Impact: How Transitional Justice Affects Democratic Institution-Building', *TJDI Policy Paper 1*, p. 1,

available at: http://www.tjdi.org/wp-content/uploads/2014/10/TJDI-Policy-Paper-Pathways-of-Impact-1.pdf; See also Skaar et al., *After Violence*.

69 P. de Greiff (2012) 'Theorising Transitional Justice', in M. S. Williams, R. Nagy and J. Elster (eds) *Transitional Justice* (New York: New York University Press), pp. 31–77.

70 Jalloh (ed.), *The Sierra Leone Special Court*.

71 See chapters authored by Oosterveld, Friedman, Jackson and Sesay.

72 Duggan, 'Editorial Note', p. 320.

73 Van der Merwe, 'Delivering Justice', p. 59.

74 Clark, 'Assessing', p. 768.

75 K. A. Rodman (2013) 'Justice is Interventionist: The Political Sources of the Judicial Reach of the Special Court for Sierra Leone', *International Criminal Law Review* 13, 63–91.

76 D. Harris (2013) *Sierra Leone: A Political History* (London: Hurst), p. 171.

77 Schabas, 'The Sierra Leone TRC', p. 40.

78 Thoms et al., 'The Effects', p. 30. Skaar et al., *After Violence* demonstrates why a serious engagement with context is likely to lead to more robust conclusions about TJ impact.

79 G. S. Davis (1992) *Warcraft and the Fragility of Virtue: An Essay in Aristotelian Ethics* (Moscow: University of Idaho Press), p. 23.

13

The Potential and Politics of Transitional Justice: Interactions between the Global and the Local in Evaluations of Success

Kirsten Ainley, Rebekka Friedman and *Chris Mahony*

Sierra Leone has become something of a touchstone in broader debates surrounding transitional justice (TJ) since its civil war ended in 2002: a site of competing imperatives and conflicting ideologies and agendas. The country has been the focus of a sustained international effort to implement an ideological-normative TJ agenda and a setting in which TJ practitioners tried to correct perceived past shortcomings. Yet this was not purely a project of ethics or law: international and domestic politics, as this book makes clear, have also played important roles in dictating the opportunities and constraints for transitional justice in Sierra Leone.

The chapters in *Evaluating Transitional Justice: Accountability and Peacebuilding in Post-Conflict Sierra Leone* critically engage with, and contribute to, the study and evaluation of TJ success in Sierra Leone and beyond. In this final chapter we use insights from the book's contributions to reflect on the two questions that the book is framed around. In the first part of the chapter, we consider the extent to which Sierra Leone's TJ processes should be considered successful, in a discussion broadly organized around questions about standards of evaluation, institutional pluralism, outcome and the role of transitional justice in achieving process goals. The final part of the chapter examines the lessons of the Sierra Leonean TJ experience for other conflict and post-conflict contexts. We engage with the broader holistic emphasis in recent TJ theory and practice and highlight, in particular, the importance of long-term planning and commitment, local partnership and the recognition and management of the politics and trade-offs of transitional justice.

Sierra Leone: a post-conflict success?

'Success' is currently a key concern in TJ theory and practice. Despite a remarkable lack of agreement surrounding the objectives and criteria for assessment, empirical impact evaluation is flourishing, reflected in a burgeoning comparative literature and micro-level ethnographic studies. As transitional justice has professionalized and grown as a field,[1] a large body of scholarship has sought to distance itself from the normative foundations of TJ practice and to produce empirically grounded knowledge. In many ways, however, impact studies speak past each other. As the diverse contributions of this book make clear, many competing underlying understandings and background assumptions enter into the assessment of success. Should TJ mechanisms be judged according to external or internal ends? Whose priorities do evaluations of transitional justice reflect? Should we assess TJ mechanisms according to their legal mandates, their immediate effects or their longer-term cumulative impacts over time? While Kirsten Ainley covers the prima facie issues and debates in-depth in the preceding chapter, this final chapter considers the book's two central questions at different levels of analysis. As transitional justice has become increasingly globalized, on what level do we assess impact – on the domestic level, the international or global level, or perhaps even the personal level – and what happens when interests and agendas at the different levels collide?

This latter question has become particularly pressing in analyses of the Special Court for Sierra Leone (SCSL) and international criminal law. Legally oriented scholar-practitioners have generally produced the most favourable evaluations of transitional justice in Sierra Leone, although, as this book makes clear, there is substantial disagreement within this group.[2] The latest work in this area has focused on 'legacy' issues, with legacy on a global scale understood as a 'narrow and specific reference to the body of legal rules, innovative practices, and norms that the tribunal is expected to hand down to current and future generations of international, internationalized and national courts charged with responsibility to prosecute the same or similar international crimes'.[3] From an international-legal perspective, international criminal law – and its institutionalization into international tribunals – is a progressive global venture, which builds upon the successes, and learns from the failures, of previous experiences. Progress is incremental but cumulative over time.[4]

Analyses of the legal legacy of the SCSL tend to commend its innovation, in particular the ways in which the Court sought to improve upon the limitations of the International Criminal Tribunal for Rwanda (ICTR)

and International Criminal Tribunal for the former Yugoslavia (ICTY). As one of the first hybrid tribunals, the SCSL was bound by a finite temporal and jurisdictional mandate; established in the country in which the atrocities took place; and sought to engage local stakeholders through a more extensive outreach programme than its predecessors. Those who argue that the SCSL was a success often highlight the precedents it set and the role it had in breaking down previous barriers to prosecution, particularly in the areas of sexual slavery and the recruitment of child soldiers.[5] Oosterveld's chapter in this book, while circumspect in its judgments of success, sets out the generally progressive nature of SCSL jurisprudence on sexual and gender-based violence.

Proponents of the SCSL also emphasize its commitment to upholding international legal standards, for instance, principles of impartiality, judicial independence and fairness. However, there is significant disagreement between the chapters in this book on this point. Whereas Brenda Hollis sets out reasons to commend the SCSL's proceedings for upholding international standards, critics argue that aspects of the Court's operation were so flawed as to make the institution fundamentally opposed to accepted legal principles. For instance, Chris Mahony argues that the selection process was biased from the start, with the interests of states such as the UK and the US taking precedence over the interests of justice. Wayne Jordash and Matthew Crowe argue that procedural safeguards and judicial approaches to the law at the SCSL did not meet standards of fairness and due process, particularly in comparison to the ICTY and the ICTR. They attribute failure to uphold international standards to Sierra Leone's inflammatory post-conflict environment, judicial inexperience, the Court's location, resource scarcity, the Court's hybrid structure and a culture of judicial deference to the prosecution. Outside this book, critics such as Tim Kelsall add that the Court was flawed due to its lack of connection to, or respect for, Sierra Leonean culture.[6]

Staying within the legal frame, but moving to the national level of analysis, the domestic impact of criminal tribunals on the rule of law and capacity building can be assessed. Scholars within this book are divided here too as to the impact of the SCSL. For Hollis, citing the recent SCSL legacy evaluation impact survey, the SCSL has had a positive impact on capacity building, strengthening the rule of law in Sierra Leone and promoting a culture of accountability. Other contributors have taken a more cautious stance. David Harris and Richard Lappin, as well as Mohamed Sesay, note what they see as perverse effects of international criminal law on domestic capacity building and Valerie Oosterveld traces only indirect effects of the SCSL on the 'gender laws'

in Sierra Leone, and little (possibly zero) effects on the high level of gender inequality and sexual and gender-based violence in the country. Legacy at the national level has been defined on the basis of the extent to which international law has become embedded within local practice and systems.[7] Sesay, in this book, documents the problems faced when international pressure to domesticate rule-of-law norms and (re)create legal systems meets domestic justice practices and traditions.

Evaluations from legal practitioners supportive of the SCSL are also concerned with procedure – how the law is exercised and by whom. Hollis in this book, building on the SCSL Legacy Report, praises the Court's emphasis on outreach and popular engagement. Rachel Kerr and Jessica Lincoln, on the other hand, find that, particularly outside Freetown, while general knowledge of the Court was high, the depth of understanding of its work was low.[8] Concern with procedures such as outreach is often teleological – they are simultaneously presented by proponents as appropriate measures of past success and as ways to enhance the future legitimacy of international law.

Other scholars question the commitment to international criminal law and its goals, institutions and values seen in many positive evaluations of the SCSL. More anthropologically oriented analyses have increasingly sought to confront the universalizing inclination of transitional justice – the search for, and promotion of, a template for successful TJ programmes that includes criminal justice measures to enforce international criminal law.[9] Despite the historical resonance of retributive and restorative traditions in many cultures in the world,[10] international criminal law – particularly in its current manifestation – comes from a distinct normative and historical context and standpoint and can therefore be at odds with local expectations.[11] Kelsall provides the most thorough consideration of what he sees as the sidelining of Sierra Leonean culture and world views at the SCSL and the clash of cultural systems that ensued.[12] Others have drawn similar conclusions in reference to restorative justice.[13] Cultural resonance has also been an important theme in this book: Sesay, in particular, questions the technocratic approach to the global promotion of international law. He critiques the hierarchy built into global transitional justice and the discursive maligning of customary law. Harris and Lappin suggest that, unlike democracy (which has been more easily integrated and adapted to African contexts), the rule of law and its individualistic ontology might fit less comfortably within African societies and politics. Paul Jackson and Kieran Mitton, however, warn against a romantic vision of customary justice practices. Yasmin Sooka and Chris Mahony locate the source of customary justice

in colonialism, noting that it reinforces the patrimonial power relations that are often cited as a root cause of the conflict.

Restorative justice and institutional pluralism

Similar issues have shaped evaluations of Sierra Leone's restorative justice processes, particularly the Truth and Reconciliation Commission (TRC). In contrast to research on the Court, international legacy features less prominently in discussions of the Commission, with the focus tending to be at the domestic and sometimes even individual or personal level. Echoing the criticisms of the Court outlined above, a growing ethnographic literature has argued that the formalistic proceedings at the TRC and its use of personal testimony do not resonate with local norms and values.[14] Rebekka Friedman, in this book, takes issue with the literature that criticizes the TRC's lack of impact on healing and interpersonal reconciliation, arguing that the TRC's focus was primarily on civic nation-building and democratization, rather than on micro-level goals. She argues that the way in which TJ institutions define their goals and how the agents promoting them justify these goals to participants matter for domestic experiences and perceptions of justice.

In terms of the delivery of its mandate, one of the largest war-related grievances today, particularly among victims, concerns the lack of progress in implementing the TRC's recommendations, especially reparations.[15] This is, for the most part, not the fault of the TRC, though the lack of implementation of the TRC's recommendations complicates any suggestion that the Commission was a success. Elsewhere in the book, Mahony and Sooka highlight the lack of support for the reparations programme from many of the international actors that have otherwise been heavily involved with shaping transitional justice in Sierra Leone (in particular the UK) and Ainley examines the reparations programme in the broader context of the political economy of TJ efforts.

Like the SCSL, scholars have also debated the TRC's broader effects on capacity building and its normative and discursive impact. Although the TRC provided a forum for civil society to mobilize, as reflected in the rationale driving Fambul Tok, for many internal and external commentators, the TRC was modelled too much on other, foreign, commissions and did too little to work through, and support, domestic civil society. Unlike the South African TRC, which benefited from significant backing among South African civil society organizations, Jackson argues that the Sierra Leonean TRC's relatively meagre engagement with

local organizations was a missed opportunity to build legitimacy for the Commission and to strengthen civil society.

Despite the emphasis placed upon culture in many ethnographic evaluations, tradition-based practices tend to feature less in other TJ literature.[16] Tradition and culture, it should be borne in mind, are distinct from authenticity and need to be treated with caution. As Sierra Leonean historian, Joe A. D. Alie, argues, 'African institutions, whether political, economic or social, have never been inert. They respond to changes resulting from several factors and forces.'[17] Yet the importance of culture as a common reference point through which identifications are forged and belief systems are defined and redefined deserves careful attention and respect. Informal conflict resolution and customary law tend to be strongest precisely in contexts with long histories of subordination and violence, where communities lack recourse to formal justice and are marginalized by the state.[18] Friedman, in this book, highlights the importance of Fambul Tok in elevating culture on the TJ agenda, by using – and teaching – cultural traditions and beliefs to communities as a way to solidify bonds and generate reconciliation. Her analysis reinforces the importance of legitimacy and ownership for reconciliation. The tying of reconciliation to communal work and community traditions, in this context, restores socially valuable bonds of reciprocity, making reconciliation self-generating and meaningful over time. Mitton, however, warns that cultural practices and hierarchies can prevent deep reconciliation, as many of the youth who fought in the war were attempting to escape from the traditional gerontocracy and have no desire to return to it now.

Other chapters in the book have also addressed informal conflict resolution and settlement processes. The majority of Sierra Leoneans find it much easier to access local courts practising customary law than the formal legal system. Sesay and Jackson both emphasize the indirect effects of formal rule-of-law building efforts. Countering 'trickle-down' arguments – the assumptions that TJ institutions lead to capacity building, institutional change and the dissemination of international legal norms and standards over time – they pinpoint a surge in the importance of customary law as the majority of Sierra Leoneans continue to lack access to the formal justice system. Despite its role in the marginalization of youth and in building resentment in the lead up to the war, the chieftaincy system has by and large stayed intact in the post-conflict period. Where chiefs are central to the functioning and regulation of customary law, customary courts have provided the main remaining source of power for chiefs. The importance of being sensitive to culture must,

however, be weighed against the potential for local practices to empower undemocratic elites, reify social hierarchies and perpetuate forms of discrimination.[19] Mahony and Sooka argue that the TRC missed an opportunity to challenge discriminatory local authority structures, also citing the role of chieftaincy in enabling an ethno-regionally aligned politics that leaves Sierra Leone vulnerable to predatory external actors.

The contemporary context and the role of transitional justice

Another way to evaluate success is to examine the nature of the Sierra Leonean peace and the progress made in the country since the end of the war. What level of transformation would have had to occur for Sierra Leone to be considered a success? What can we realistically expect TJ mechanisms to have achieved?

Sierra Leone has come a long way since the end of the war. It has now had three democratic elections without serious violence, GNP has risen and international investment has increased.[20] Yet there are also worrying trends. Most of the root causes of the war remain. Unemployment remains high, which is a matter of particular concern in a country with a very young population, many of whom are ex-combatants.[21] Sierra Leone also now faces a desperate challenge to recover from an Ebola epidemic that devastated its already weak public healthcare services and left almost 180,000 heads of household unemployed since the outbreak began.[22] The epidemic also revealed problems in the ways that international and national actors have dealt with legacies of the war, notably their prioritization of restructuring the country's security apparatus over investment in development and infrastructure. The region's struggles to manage the Ebola crisis are testing the current peace, bringing more critical attention to leadership whose legitimacy and ability to maintain tough post-war measures hinge rather delicately on their record of bringing progress and development. Political turmoil in Liberia and calls for the resignation of Liberian President and Nobel Prize winner, Ellen Johnson-Sirleaf, are particularly pointed examples.[23] The Ebola crisis has also drawn attention to leadership problems in Sierra Leone. Government responses to Ebola have reinforced ethnic politics in the country and worsened the public health management of the crisis.[24]

Less tangible, but of vital importance for the assessment of peacebuilding and reconciliation, are current social relations. Commentators have often noted the relatively tolerant views shown towards ex-combatants and the forgiving disposition of many Sierra Leoneans.[25]

Yet some warn that this outward impression is misleading. Sierra Leone has been described as having a cold or negative peace, what Mitton refers to in his chapter as a 'pact of accommodation': an uneasy coexistence of ex-combatants and victims, with tensions simmering beneath the surface. He argues that there has been collective societal agreement to lay blame for the war beyond the agency of individual fighters, and a conscious rebranding of ex-combatants as 'youth', leading to a pragmatic but fragile reconciliation. The lack of deep or genuine reconciliation leaves Sierra Leone vulnerable to a resurgence of tensions with the right trigger.

Nevertheless, given the extreme brutality of the war and the relatively short time that has passed since it ended, a tense but peaceful coexistence may well be a laudable achievement. In opposition to more ambitious transformative understandings of reconciliation, which entail the active repair of broken relationships and usually have a subjective and emotional focus, Louis Kriesberg argues that coexistence better fits the goals of compromise and accommodation that bolster democratic politics.[26] It is somewhat paradoxical that advocates of global transitional justice seem to expect higher standards to be achieved within fragile 'transitioning' societies than have been achieved in established multicultural democracies, where conflict, although generally non-violent, is still built into and expressed through the political system. Ultimately, there are many degrees of reconciliation and stages of transformation. Drawing on a wider reconciliation literature, some have distinguished forgiveness, which is backward-looking, from reconciliation as forward-looking. Unlike forgiveness and contrition, which require a level of internal psychological transformation and are oriented towards the past, reconciliation is future-oriented and pragmatic, and can occur with or without forgiveness.[27] Reconciliation is both the more appropriate TJ goal to aim for and the one more likely to be achieved.

A rigorous discussion of success must also address underlying methodological questions concerning impact and causality. As Ainley discusses in her chapter, questions remain as to the extent to which the TJ mechanisms employed in Sierra Leone can be credited for any success observed. Here, as well, a meaningful discussion of success needs to have a temporal dimension. Transitional justice should not be expected to have transformed the society within only a decade, or to be the panacea to all of Sierra Leone's problems, as Hollis points out in her chapter. Yet, in discussing whether the Sierra Leonean case is a success, the broader set of problems still facing the country should be acknowledged.

Although Sierra Leone still features prominently within the TJ literature, the relevance of transitional justice to the majority of the country's

population is up for question. The war ended over ten years ago and post-war institutions, such as the SCSL and TRC, are part of Sierra Leone's past. In his 23 November 2012 swearing-in speech, President Koroma listed his priorities as job creation; training young people to seize opportunities in the mining, construction and agricultural sectors; continuing with infrastructural development programmes, particularly in building roads, electricity and healthcare; attracting investment; fighting corruption and protecting rights.[28] While he made reference to the country's post-conflict environment when he committed to maintaining the country's 'peace, democracy and development', justice did not feature once in his speech. Similar themes have permeated popular discourses within the country, which put emphasis on focusing on the future and leaving the past behind.

On this note, it is worth bearing in mind that Sierra Leone has been quite saturated with transitional justice, particularly through outreach programmes. The lack of interest in continuing TJ projects may be a product of 'intervention fatigue', feelings of disappointment or betrayal at the lack of meaningful reparations, and the uneasy relationship of the Sierra Leonean government and people to the international community and its continuing projects. A more optimistic interpretation, in contrast, would take the lack of interest in transitional justice as an indicator of success. From this angle, TJ institutions have accomplished their mandates so effectively that TJ issues no longer feature on the domestic political agenda. Whether or not TJ issues are still relevant has significant implications not only for those researching and working in transitional justice, but also for the country's prospects for peace. Returning to Mitton's observation of a pragmatic reconciliation, it may be that war weariness, the devastation caused by the conflict and the horrific nature of some of the violence in the war, rather than transitional justice, has prevented another outbreak of violence in Sierra Leone. If this is so, it gives significant cause for concern, as the guarantors of peace will fade with time, particularly as the next generation, for whom the conflict is not in living memory, take over political power. Much more needs to be done to engage youth and to address social marginalization – issues highlighted in this book's discussions of reintegration and reconciliation.

What lessons should be drawn from transitional justice in Sierra Leone?

Given the complex and multifaceted analyses of TJ success in Sierra Leone that precede this chapter, what lessons, if any, should be drawn

for other cases? The first implication of this book is the importance of long-term planning and commitment.[29] The lack of funding – and the issue of voluntary funding for the SCSL – delayed and obstructed the TJ mechanisms and politicized their work.[30] Mahony and Sooka note the lack of long-term support from both domestic and international agents as a significant barrier to the TRC's work and impact. In their view, the Commission was a half-hearted effort with insufficient institutional capacity and training for those tasked with running the process.

A second lesson concerns the importance of international–domestic partnership and a multifaceted approach to transitional justice. These goals are already part of global TJ discourse and policy, but are not often followed through. The UN and the International Center for Transitional Justice have recently advocated a holistic approach to TJ design. Holistic justice builds upon the strengths of different mechanisms to maximize results and integrates local ownership and practices with global expertise.[31] It brings in local practices and traditions, and tasks practitioners to reconcile local mechanisms with established global mechanisms.[32] However, there are many challenges to implementing a holistic TJ agenda. Despite a surge in critical studies of transitional justice, these accounts often do little in terms of offering alternative ways forward and there is a shortage of guidance available on how TJ practitioners should implement holistic transitional justice in practice. Kelsall calls for a more pluralistic and 'dialogical' approach – a process that pursues justice and reconciliation at multiple levels with government support for reparations.[33] Jackson, in this book, argues that hybridity must entail more than just placing local staff on the payroll. Global and local representation and engagement must be well thought-out with careful consideration given to politics and interests. This is not to suggest that there will ever be easy answers, and certainly no template that can be transferred from transitional state to transitional state. Rather, the Sierra Leonean experience suggests that transitional justice works best, in principle and in practice, when local, hybrid and international efforts are coordinated, or work in tandem.

Linked to this is the lesson that TJ mechanisms can compete with, rather than complement, each other – the holistic approach is not as easy to implement as it might sound. While William Schabas argues that Sierra Leone is a successful case of the 'two-track' approach, the chapters in this book reveal tensions between the Court and the Commission, and between internationalized transitional justice and local justice initiatives.[34] Friedman, for instance, illustrates how the TRC and Fambul Tok defined themselves in opposition to the SCSL and international TJ

practices (in the case of Fambul Tok in particular). She notes the negative impact of the SCSL on truth-telling at the TRC and the Commission's realignment of its own position and goals in relation to the Court. While prominent global policy actors have argued that no TJ measure is likely to be effective in isolation,[35] more empirical scrutiny is needed of tensions between various approaches and the potential adverse effects that TJ mechanisms can have on each other.[36] More strategic coordination is needed from the start as to the approaches and goals to prioritize, how different TJ processes should ideally interact and the relative jurisdictions of each. As Mahony argues, TJ mechanisms are often products of power configurations; for instance, a military rather than negotiated end to conflict can make the operation of parallel TJ processes challenging. If a TJ process is already established under negotiation, but the negotiated solution fails and the war is ended militarily, as in Sierra Leone, support for the original mechanism is likely to be much diminished.

TJ research and practice must also take further account of global contexts. A number of officials associated with the Sierra Leonean TRC have argued that establishing a criminal court alongside a TRC and overriding the amnesty promised at Lomé harmed reconciliation.[37] However, these criticisms may be on the decline. Since the establishment of the International Criminal Court (ICC), the provision of a general amnesty as part of a peace process, particularly for the highest-level perpetrators, has become increasingly difficult. To a degree, tensions experienced between TJ institutions in Sierra Leone are likely to affect any TJ process. For Harris and Lappin, similar dilemmas of how to balance criminal trials with truth-seeking proceedings are played out between the Kenyan TRC and the ICC, with criminal proceedings tending to overshadow all other TJ efforts.[38]

Finally, this book highlights the links between TJ programmes and economics – both the economics of justice and the links between transitional justice and development. As Ainley argues, a meaningful approach to transitional justice must take seriously and, where possible, address economic priorities and structural injustices. While some argue that the widespread view in Sierra Leone that the money spent on the SCSL should have gone into development is based on a misunderstanding of the Court's funding stream,[39] grievances concerning the lack of reparatory justice continue to be deeply felt. In conflicts with a class element, the marginalization of economic needs and structural violence perpetuates suffering and victimization, and reifies the fault lines that led to conflict. Whether or not reparation should be an end in itself, as a requirement of justice, comparative studies have shown that insufficient

emphasis on victims' needs and economic development can hamper broader positive effects of transitional justice.[40] Longitudinal studies frequently indicate that economic suffering has increased conflict-related grievances over time and dampened processes of reconciliation.[41]

Conclusions

The goal of this book was not to look for or build consensus. As stated in the Introduction, we sought to gather and debate a range of views and, in doing so, to make explicit our own assumptions – something Ainley refers to in her chapter as reflexivity. The contributors to the book all provide persuasive, but often contradictory, arguments. Some criticize the normative rationale behind the global practice of transitional justice and its technocratic, individualistic and liberal statebuilding- and human rights–based approach. However, others accept the normative primacy of international criminal law and the search for truth. In gathering together these opposing arguments, we have provided a space in which to reflect on and assess the political and normative underpinnings of evaluations of success. We think that making explicit these starting orientations allows for more fruitful debate. It also helps to connect normative claims about the priority, objectives and processes of transitional justice with more sophisticated and rigorous empirical engagement. Through this reflective interrogation, the book has exposed sets of assumptions about what is valuable in post-conflict societies, and about the potential of different TJ processes to achieve it. While we have in no way eliminated the complexities of evaluating TJ efforts, we hope that by bringing the complexities to light and thinking through how TJ policy should deliver global and local goals, the contributions in this book might be useful in informing the design and evaluation of TJ programmes in the future.

Notes

1 R. G. Teitel (2003) 'Transitional Justice Genealogy', *Harvard Human Rights Journal* 16, 69–94.
2 See, for instance, Hollis, and Jordash and Crowe in this book.
3 C. C. Jalloh (ed.) (2014) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (New York: Cambridge University Press), p. 2.
4 Vivian Grosswald Curran argues that the idea behind the SCSL was born from a revolution in modern international law often traced to the International Military Tribunal in Nuremberg. 'From Nuremberg to Freetown', in Jalloh (ed.), *The Sierra Leone Special Court*.

5 See Ainley in this book for a critique of evaluations that use innovation as a mark of success.
6 T. Kelsall (2009) *Culture Under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press).
7 The Office of the High Commissioner for Human Rights (2008) Rule of Law Tools for Post-conflict States. Maximizing the legacy of hybrid courts defines legacy in relation to hybrid courts as their 'lasting impact on bolstering the rule of law in a particular society', pp. 4–5.
8 R. Kerr and J. Lincoln (2008) 'The Special Court for Sierra Leone: Outreach, Legacy and Impact', Final Report, War Crimes Research Group Paper (King's College London), p. 14, available at: http://www.kcl.ac.uk/schools/sspp/ws/groupresearch/int/wcrg/scsl.html
9 Kelsall, *Culture*; R. Shaw and L. Waldorf (eds) (2010) *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford, CA: Stanford University Press). On templatization, see O. N. T. Thoms, J. Ron and R. Paris (2008) 'The Effects of Transitional Justice Mechanisms' (Centre for International Policy Studies), pp. 16–17.
10 J. Braithwaite (1999) 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', *Crime and Justice* 25, p. 3.
11 Shaw and Waldorf, *Localizing Transitional Justice*.
12 Kelsall, *Culture*.
13 R. Shaw (2005) 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone', Special Report (Washington, DC: United States Institute of Peace); G. Millar (2012) '"Ah Lef Ma Case Fo God": Faith and Agency in Sierra Leone's Postwar Reconciliation', *Peace and Conflict: Journal of Peace Psychology* 18(2), 131–143.
14 G. Millar (2011) 'Local Evaluations of Justice through Truthtelling in Sierra Leone: Postwar Needs and Transitional Justice', *Human Rights Review* 12(4), 515–535; C. Coulter (2009) *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone* (Ithaca: Cornell University Press); Shaw, 'Rethinking'; T. Kelsall (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2), 361–391.
15 Ainley in this book discusses reparations.
16 Exceptions include Shaw, 'Rethinking' and J. A. D. Alie (2008) 'Reconciliation and Traditional Justice: Tradition-based Practices of the Kpaa Mende in Sierra Leone', *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance).
17 Alie, 'Reconciliation', p. 133.
18 Shaw and Waldorf, *Localizing Transitional Justice*, p. 11.
19 See also Oosterveld in this book.
20 Ainley in this book supplies relevant statistics.
21 'World Bank Sierra Leone Overview', available at: http://www.worldbank.org/en/country/sierraleone/overview
22 World Bank (2015) 'The Socio-Economics Impacts of Ebola in Sierra Leone', available at: http://www.worldbank.org/content/dam/Worldbank/document/Poverty%20documents/Socio-Economic%20Impacts%20of%20Ebola%20in%20Sierra%20Leone,%20Jan%2012%20(final).pdf

23 A. Leaf (2014) 'Ebola Spotlights Liberians' Distrust of Their Political Leaders', *Al Jazeera*, 14 October, available at: http://america.aljazeera.com/opinions/2014/10/liberia-ebola-ellenjohnsonsirleafunconstitutionalpowergrab.html; J. Butty (2014) 'Amid Ebola Crisis, Some Liberians Call for President's Resignation', *Voice of America News*, 2 September, available at: http://www.voanews.com/content/diaspora-liberians-discuss-presidents-resignation-and-interim-goverment/2435563.html

24 M. Mark (2014) 'Sierra Leone: Journalist Arrested after Questioning Official Ebola Response', *The Guardian*, 5 November, available at: http://www.theguardian.com/world/2014/nov/05/ebola-journalist-arrested-over-criticism-sierra-leone-government-response

25 J. Ginifer (2003) 'Reintegration of Ex-combatants', in M. S. Malan et al. (eds) *Monograph 80: Sierra Leone, Building the Road to Recovery* (Pretoria: Institute for Security Studies), 39–52.

26 L. Kriesberg (2001) 'Changing Forms of Coexistence', in M. Abu-Nimer (ed.) *Reconciliation, Justice and Coexistence: Theory and Practice* (Lanham, MD: Lexington Books), pp. 47–64. Taken from D. Bloomfield (2006) 'On Good Terms', Berghof Report 14 (Berghof Research Center for Constructive Conflict Management), p. 14.

27 C. Villa-Vicencio (2004) 'Reconciliation', in C. Villa-Vicencio and E. Doxtader (eds) *Pieces of the Puzzle: Keywords on Reconciliation and Transitional Justice* (Capetown, South Africa: Institute for Justice and Reconciliation), p. 8. J. Quinn (2009) 'What Is Reconciliation?', in J. Quinn (ed.) *Reconciliation(s): Transitional Justice in Postconflict Societies* (Montreal and Kingston: McGill-Queen's University Press), pp. 182–183.

28 K. Ainley, S. Datzberger, R. Friedman and C. Mahony (eds) (2013) 'Ten Years On: Transitional Justice in Post Conflict Sierra Leone: Report and Analysis', p. 9, available at: http://tinyurl.com/sierraleoneconf2012report

29 A. Jillions and R. Friedman (forthcoming, 2015) 'The Pitfalls and Politics of Holistic Justice', *Global Policy*.

30 On funding and the SCSL, see C. C. Jalloh (2011) 'Special Court for Sierra Leone: Achieving Justice?', *The Michigan Journal of International Law* 32(3), 395–460. See also Ainley in this book.

31 International Center for Transitional Justice (ICTJ) (2008) 'What Is Transitional Justice?'.

32 The United Nations (20 February 2008) 'What Is Transitional Justice? A Backgrounder', available at: http://www.un.org/en/peacebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf

33 Kelsall, *Culture*, pp. 266–277.

34 W. Schabas (2003) 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25(4), 1035–1066. See Harris and Lappin, Jackson, Mitton and Sesay in this book.

35 ICTJ, 'What Is Transitional Justice?'.

36 See also B. Leebaw (2008) 'The Irreconcilable Goals of Transitional Justice', *Human Rights Quarterly* 30(1), 95–118.

37 The Sierra Leone Working Group on Truth and Reconciliation (February 2006) 'Searching for Truth and Justice in Sierra Leone: An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission', available at: www.fambultok.org/TRCStudy-FinalVersion.pdf

38 On the ICC and Uganda, see also M. Ssenyonjo (2007) 'The International Criminal Court and the Lord's Resistance Army Leaders: Prosecution or Amnesty', *Netherlands International Law Review* 54(1), 51–80.
39 Jalloh argues that the SCSL raised all the money it had to spend on its own: *The Sierra Leone Special Court*, p. 450.
40 R. Mani (2008) 'Dilemmas of Expanding Transitional Justice', *International Journal for Transitional Justice* 2(3), 253–265.
41 For instance, The Institute for Justice and Reconciliation (2010) 'The South African Reconciliation Barometer Dialogue Report', available at: http://www.ijr.org.za/publications/recbar2011.php

Select Bibliography on Sierra Leone

The individual chapters in this book contain full details of all works cited therein. The bibliography below lists major works on the Sierra Leonean civil war and its aftermath, and is provided as a resource for scholars interested in the country.

Abdullah, I. (ed.) (2004) *Between Democracy and Terror: The Sierra Leone Civil War* (Dakar: CODESRIA).

Ainley, K., S. Datzberger, R. Friedman and C. Mahony (eds) (2013) 'Ten Years On: Transitional Justice in Post Conflict Sierra Leone: Report and Analysis', available at: http://tinyurl.com/sierraleoneconf2012report

Albrecht, P. and P. Jackson (2009) *Security System Transformation in Sierra Leone, 1997–2007* (Birmingham: Global Facilitation Network for Security Sector Reform, Birmingham University).

Alie, J. A. D. (2008) 'Reconciliation and Traditional Justice: Tradition based Practices of the Kpaa Mende in Sierra Leone', *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance).

Amnesty International (1998) 'Sierra Leone: 1998 – A Year of Atrocities Against Civilians', available at: http://www.amnesty.org/en/library/asset/AFR51/022/1998/en/e39f65cf-d99d-11dd-af2b-b1f6023af0c5/afr510221998en.html

Amnesty International (2000) *Sierra Leone: Rape and Other Forms of Violence Against Girls and Women* (London: Amnesty International Index).

Baker, B. (2006) 'The African Post-conflict Policing Agenda in Sierra Leone', *Conflict, Security & Development* 6(1), 25–49.

Barnes, K., P. Albrecht and M. Olson (2007) *Addressing Gender-Based Violence in Sierra Leone: Mapping Challenges, Responses and Future Entry Points* (London: Irish Aid and International Alert).

Bates, A. (2010) 'Transitional Justice in Sierra Leone: Analytical Report' (ATLAS Project Report, British Institute of International and Comparative Law).

Belair, K. (2006) 'Unearthing the Customary Law Foundations of "Forced Marriages" during Sierra Leone's Civil War: The Possible Impact of International Criminal Law on Customary Marriage and Women's Rights in Post-Conflict Sierra Leone', *Columbia Journal of Gender & the Law* 15, 551–557.

Berghs, M. (2012) *War and Embodied Memory: Becoming Disabled in Sierra Leone* (Aldershot: Ashgate).

Boersch-Supan, J. (2012) 'The Generational Contract in Flux: Intergenerational Tensions in Post-conflict Sierra Leone', *Journal of Modern African Studies* 50(1), 25–51.

Bolten, C. (2012) '"We Have Been Sensitized": Ex-Combatants, Marginalization, and Youth in Postwar Sierra Leone', *American Anthropologist* 114(3), 496–508.

Braithwaite-Wallis, C. (1905) 'In the Court of the Native Chiefs in Mendiland', *Journal of the Royal African Society* 4(16), 397–409.

Cassese, A. (2006) 'Report on the Special Court for Sierra Leone', Independent Expert Report.

Chikoore, C. (2011) 'Evaluation Report: Supporting Gender and Capacity, Women's Rights Protection and Child Protection in Recovery and Peacebuilding in Sierra Leone', available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fgate.unwomen.org%2Funifem%2Fevaluationadmin%2Fdownloaddocument.html%3Fdocid%3D3472&ei=hPFWVIbxA8ityAT_6oHwDg&usg=AFQjCNE9SLsfcfGnD4tjow8T-thn40ttNQ

Conteh, E. and M. Berghs (2014) '"Mi At Don Poil": A Report on Reparations for Amputee and War-Wounded People in Sierra Leone' (Freetown: Amputee and War-Wounded Association), available at: http://disability-studies.leeds.ac.uk/files/library/AWWA%20Report%20on%20Reparations.pdf

Conteh, F. M. and D. Harris (2014) 'Swings and Roundabouts: The Vagaries of Democratic Consolidation and "Electoral Rituals" in Sierra Leone', *Critical African Studies* 6(1), 57–70.

Coulter, C. (2009) *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone* (Ithaca: Cornell University Press).

Cruvellier, T. (2009) 'From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test' (International Center for Transitional Justice, Sierra Leone Monitoring Programme), available at: http://ictj.org/sites/default/files/ICTJ-SierraLeone-Taylor-Trial-2009-English.pdf

da Silva, C. (2011) 'The Hybrid Experience of the Special Court for Sierra Leone', in B. S. Brown and E. Elgar (eds) *Research Handbook on International Criminal Law* (Cheltenham and Northampton, Massachusetts: Edward Elgar Publishing Inc.).

Denney, L. (2013) 'Liberal Chiefs or Illiberal Development? The Challenge of Engaging Chiefs in DFID's Security Sector Reform Programme in Sierra Leone', *Development Policy Review* 31(1), 5–25.

Denney, L. (2014) *Justice and Security Reform: Development Agencies and Informal Institutions in Sierra Leone* (London: Routledge).

Denney, L. and A. F. Ibrahim (2012) *Violence Against Women in Sierra Leone: How Women Seek Redress* (London: Overseas Development Institute).

Dougherty, B. K. (2004) 'Searching for Answers: Sierra Leone's Truth and Reconciliation Commission', *African Studies Quarterly* 8(1), 39–56.

Dougherty, B. K. (2004) 'Right-sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra Leone', *International Affairs* 80(2), 311–328.

Ekiyor, T. (2009) 'Reflecting on the Sierra Leone Truth and Reconciliation Commission: A Peacebuilding Perspective', in C. Sriram and S. Pillay (eds) *Peace versus Justice: The Dilemma of Transitional Justice in Africa* (Cape Town: James Currey).

Evenson, E. (2004) 'Truth and Justice in Sierra Leone: Coordination between Commission and Court', *Columbia Law Review* 104(3), 730–767.

Fanthorpe, R. (2006) 'On the Limits of the Liberal Peace: Chiefs and Democratic Decentralization in Sierra Leone', *African Affairs* 105(418), 27–49.

Fanthorpe, R. and M. G. Sesay (2009) 'Reform is not against Tradition: Making Chieftaincy Relevant in 21st Century Sierra Leone' (Partners in Conflict Transformation, Sierra Leone).

Fanthorpe, R. and R. Maconachie (2010) 'Beyond the "Crisis of Youth"? Mining, Farming, and Civil Society in Post-War Sierra Leone', *African Affairs* 109(435), 251–272.

Fanthorpe, R., A. Jay and V. K. Kamara (2002) 'A Review of the Chiefdom Governance Reform Programme, Incorporating an Analysis of Chiefdom Administration in Sierra Leone' (Department For International Development, Freetown, Sierra Leone).

Fanthorpe, R., A. Lavali and M. G. Sesay (2011) 'Decentralization in Sierra Leone: Impact, Constraints and Prospects' (Department For International Development, United Kingdom).

Ferme, M. C. (2001) *The Underneath of Things* (Oakland: University of California Press).

Francis, D. (1999) 'Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?', *Third World Quarterly* 20(2), 319–338.

Gberie, L. (2003) 'Briefing: The Special Court of Sierra Leone', *African Affairs* 102(409), 637–648.

Gberie, L. (2005) *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (London: Hurst).

Gbla, O. (2006) 'Security Sector Reform under International Tutelage in Sierra Leone', *International Peacekeeping* 13(1), 78–93.

Ginifer, J. (2003) 'Reintegration of Ex-combatants', in M. S. Malan et al. (eds) *Monograph 80: Sierra Leone, Building the Road to Recovery* (Pretoria: Institute for Security Studies).

Harris, D. (2011) *Civil War and Democracy in West Africa: Conflict Resolution, Elections and Justice in Sierra Leone and Liberia* (London: IB Tauris).

Harris, D. (2013) *Sierra Leone: A Political History* (London: Hurst).

Hirsch, J.L (2001) *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder, CO: Lynne Rienner for International Peace Academy Occasional Paper Series).

Hoffman, D. (2011) *The War Machines: Young Men and Violence in Sierra Leone and Liberia* (Durham, NC: Duke University Press).

Hoffman, E. (2008) 'Reconciliation in Sierra Leone: Local Processes Yield Global Lessons', *The Fletcher Forum for World Affairs* 32(2), 129–141.

Horovitz, S. (2006) 'Transitional Criminal Justice in Sierra Leone: Beyond Truth versus Justice', in N. Roht-Arriaza and J. Mariezcurrena (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press).

Human Rights Watch (1999) 'Sierra Leone: Getting Away with Murder, Mutilation, Rape', available at: http://www.hrw.org/reports/1999/sierra/SIERLE99.htm

Human Rights Watch (2003) *'We'll Kill You if You Cry': Sexual Violence in the Sierra Leone Conflict* (New York: Human Rights Watch).

Human Rights Watch (2005) *Justice in Motion: The Trial Phase of the Special Court for Sierra Leone* (New York: Human Rights Watch).

Jackson, M. D. (2004) *In Sierra Leone* (Durham: Duke University Press).

Jackson, P. (2005) 'Chiefs, Money and Politicians: Rebuilding Local Government in Sierra Leone', *Public Administration and Development* 25(1), 49–58.

Jackson, P. (2007) 'Reshuffling the Deck? The Politics of Decentralisation in Sierra Leone', *African Affairs* 106(422), 95–111.

Jalloh, C. C. (2011) 'Special Court for Sierra Leone: Achieving Justice?' *The Michigan Journal of International Law* 32(3), 395–460.

Jalloh, C. C. (ed.) (2014) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (New York: Cambridge University Press).
Jillions, A. and R. Friedman (forthcoming 2015) 'The Pitfalls and Politics of Holistic Justice', *Global Policy,* http://dx.doi.org/10.1111/1758-5899.12193
Johnson, O. E. G. (ed.) *Challenges and Policy Issues in Early 21st Century Sierra Leone* (London: International Growth Centre and the Bank of Sierra Leone).
Jordash, W. and S. Martin (2010) 'Due Process and Fair Trial Rights at the Special Court: How the Desire for Accountability Outweighed the Demands of Justice at the Special Court for Sierra Leone', *Leiden Journal of International Law* 23(3), 585–608.
Kaldor, M. with J. Vincent (2006) *Case-Study; Sierra Leone. Evaluation of UNDP Assistance to Conflict-Affected Countries* (New York: United Nations Development Programme).
Kandeh, J. (1998) 'Transition without Rupture: Sierra Leone's Transfer Election of 1996', *African Studies Review* 41(2), 91–111.
Kandeh, J. (2004) *Coups from Below, Armed Subalterns and State Power in West Africa* (New York: Palgrave).
Kandeh, J. (2008) 'Rogue Incumbents, Donor Assistance and Sierra Leone's Second Post-Conflict Election of 2007', *Journal of Modern African Studies* 46(4), 603–635.
Keen, D. (2005) *Conflict and Collusion in Sierra Leone* (Oxford: James Curry).
Kelsall, T. (2005) 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly* 27(2), 361–391.
Kelsall, T. (2009) *Culture Under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press).
Kerr, R. and J. Lincoln (2008) 'The Special Court for Sierra Leone: Outreach, Legacy and Impact' (Final Report, War Crimes Research Group, King's College London), available at: http://www.kcl.ac.uk/schools/sspp/ws/groupresearch/int/wcrg/scsl.html
Lord, D. (ed.) (2000) *Paying the Price: The Sierra Leone Peace Process* (Accord 9, e-book, Conciliation Resources).
MacKenzie, M. (2009) 'Securitization and De-securitization: Female Soldiers and the Reconstruction of the Family in Post-Conflict Sierra Leone', *Security Studies* 18(2), 241–261.
MacKenzie, M. (2012) *Female Soldiers in Sierra Leone: Sex, Security and Post-Conflict Development* (New York: New York University Press).
MacKenzie, M. and M. Sesay (2012) 'No Amnesty from/for the International: The Production and Promotion of TRCs as an International Norm in Sierra Leone', *International Studies Perspectives* 13(2), 146–163.
Mahony, C. (2010) 'The Special Court for Sierra Leone: A New Model for African Witness Protection?', in C. Mahony (ed.) *The Justice Sector Afterthought: Witness Protection in Africa* (Pretoria: Institute for Security Studies).
Mahony, C. (2012) 'Prioritising International Sex Crimes before the Special Court for Sierra Leone: One more Instrument of Political Manipulation?', in M. Bergsmo (ed.) *Thematic Prosecution of International Sex Crimes* (Beijing: Torkel Opsahl Academic E-Publisher).
Manning, R. E. (2009) 'The Landscape of Local Authority in Sierra Leone: How "Traditional" and "Modern" Justice Systems Interact', in Y. Zhou (ed.)

Decentralization, Democracy and Development: Recent Experience from Sierra Leone (Washington, DC: World Bank).
Marks, Z. (2013) 'Sexual Violence Inside Rebellion: Policies and Perspectives of the Revolutionary United Front of Sierra Leone', *Civil Wars* 15(3), 359–379.
Marks, Z. (2014) 'Sexual Violence in Sierra Leone's Civil War: "Virgination", Rape, and Marriage', *African Affairs* 113(450), 67–87.
Maru, V. (2006) 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', *Yale Journal of International Law* 31, 427–476.
Mieth, F. (2013) 'Bringing Justice and Enforcing Peace? An Ethnographic Perspective on the Impact of the Special Court for Sierra Leone', *International Journal of Conflict and Violence* 7(1), 10–22.
Millar, G. (2010) 'Assessing Local Experiences of Truth-telling in Sierra Leone: Getting to "Why" Through a Qualitative Case Study Analysis', *International Journal of Transitional Justice* 4(3), 477–496.
Millar, G. (2011) 'Local Evaluations of Justice through Truthtelling in Sierra Leone: Postwar Needs and Transitional Justice', *Human Rights Review* 12(4), 515–535.
Millar, G. (2012) '"Ah Lef Ma Case Fo God": Faith and Agency in Sierra Leone's Postwar Reconciliation', *Peace and Conflict: Journal of Peace Psychology* 18(2), 131–143.
Millar, G. (2012) '"Our Brothers Who Went To The Bush": Post-Identity Conflict and the Experience of Reconciliation in Sierra Leone', *Journal of Peace Research* 49(5), 717–729.
Millar, G. (2013) 'Expectations and Experiences of Peacebuilding in Sierra Leone: Parallel Peacebuilding Processes and Compound Friction', *International Peacekeeping* 20(2), 189–203.
Mitton, K. (2015) *Rebels in a Rotten State: Understanding Atrocity in the Sierra Leone Civil War* (London: Hurst).
No Peace Without Justice (2003) 'Final Narrative Status Report (July 2002–October 2003)'.
No Peace Without Justice (2012) 'Making Justice Count: Assessing the Impact and Legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia' (survey commissioned by the Special Court for Sierra Leone).
O'Neill, W. (2003) 'The Legacy of the Special Court for Sierra Leone' (United Nations Development Program/International Center for Transitional Justice).
Oosterveld, V. (2009) 'Lessons from the Special Court for Sierra Leone on the Prosecution of Gender-Based Crimes', *American University Journal of Gender, Social Policy & the Law* 17(2), 407–430.
Oosterveld, V. (2009) 'The Special Court for Sierra Leone's Consideration of Gender-based Violence: Contributing to Transitional Justice?', *Human Rights Review* 10(1), 73–98.
Oosterveld, V. (2011) 'Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties', *Journal of International Humanitarian Legal Studies* 2(2), 127–158.
Oosterveld, V. (2011) 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments', *Cornell International Law Journal* 44(1), 49–74.
Oosterveld, V. (2012) 'Gender and the Charles Taylor Case at the Special Court for Sierra Leone', *William & Mary Journal of Women and the Law* 19(1), 7–34.

Oosterveld, V. (2015) 'The Representation of Rape by the Special Court for Sierra Leone', in D. Buss, J. Lebert, B. Rutherford and D. Sharkey (eds) *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts* (London: Routledge).

Park, A. S. J. (2008) 'Consolidating Peace: Rule of Law Institutions and Local Justice Practices in Sierra Leone', *South African Journal on Human Rights* 24(1), 536–564.

Perriello, T. and M. Wierda (2004) *The Special Court for Sierra Leone: The First 18 Months* (New York: International Centre for Transitional Justice).

Perriello, T. and M. Wierda (2006) *The Special Court for Sierra Leone Under Scrutiny* (New York: International Center for Transitional Justice).

Peters, K. (2011) *War and the Crisis of Youth in Sierra Leone* (Cambridge: Cambridge University Press).

Physicians for Human Rights (2002) *War-Related Sexual Violence in Sierra Leone: A Population-Based Assessment* (Boston: Physicians for Human Rights).

Poole, J. (2002) 'Post-Conflict Justice in Sierra Leone', in M. C. Bassiouni (ed.) *Post-Conflict Justice* (Ardsley, NY: Transnational Publishers).

Post-conflict Reintegration Initiative for Development and Empowerment (PRIDE) (2002) 'Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone' (International Center for Transitional Justice).

Reno, W. (1995) *Corruption and State Politics in Sierra Leone* (Cambridge: Cambridge University Press).

Richards, P. (1996) *Fighting for the Rainforest: War, Youth and Resources in Sierra Leone* (Oxford: International African Institute).

Richards, P. (2005) 'To Fight or To Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone)', *African Affairs* 104(417), 571–590.

Rodman, K. A. (2013) 'Justice is Interventionist: The Political Sources of the Judicial Reach of the Special Court for Sierra Leone', *International Criminal Law Review* 13(1), 63–91.

Schabas, W. (2003) 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25(4), 1035–1066.

Schabas, W. (2004) 'Conjoined Twins of Transitional Justice: The Sierra Leone Truth and Reconciliation Commission and the Special Court', *Journal of International Criminal Justice* 2(4), 1082–1099.

Schabas, W. (2006) 'The Sierra Leone Truth and Reconciliation Commission', in N. Roht-Arriaza and J. Mariezcurrena (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press).

Schabas, W. (2012) 'Partners in the Search for Truth: The Truth Commission and the Special Court', *Studies in Transnational Legal Policy* 45, 155–170.

Schocken, C. (2002) 'The Special Court for Sierra Leone: Overview and Recommendations', *Berkeley Journal of International Law* 20(2), 436–461.

Shaw, R. (2002) *Memories of the Slave Trade: Ritual and the Historical Imagination in Sierra Leone* (Chicago: University of Chicago Press).

Shaw, R. (2005) 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone', Special Report (Washington, DC: United States Institute of Peace).

Shaw, R. (2007) 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *The International Journal of Transitional Justice* 1(2), 183–207.

Shaw, R. (2010) 'Linking Justice with Reintegration? Excombatants and the Sierra Leone Experiment', in R. Shaw and L. Waldorf (eds) *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford, CA: Stanford University Press).

Shepler, S. (2005) 'The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone', *Journal of Human Rights* 4(2), 197–211.

Sierra Leone Truth and Reconciliation Commission (2004) *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Accra, Sierra Leone: GPL Press).

Sierra Leone Working Group on Truth and Reconciliation (2006) 'Searching for Truth and Justice in Sierra Leone: An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission', available at: www.fambultok.org/TRCStudy-FinalVersion.pdf

Smilie, I., L. Gberie and R. Hazleton (2000) *The Heart of the Matter: Sierra Leone, Diamonds and Human Security* (Ottawa: Partnership Africa Canada).

Sooka, Y. (2006) 'Dealing with the Past and Transitional Justice: Building Peace through Accountability', *International Review of the Red Cross* 88, 311–325.

Stovel, L. (2008) 'There's No Bad Bush To Throw Away A Bad Child': "Tradition"-Inspired Reintegration in Post-War Sierra Leone', *Journal of Modern African Studies* 46(2), 305–324.

Suma, M. and C. Correa (2009) 'Report and Proposal for the Implementation of Amnesties in Sierra Leone' (ICTJ), available at: https://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Reparations-Report-2009-English.pdf

Teale, L. (2009) 'Addressing Gender-Based Violence in the Sierra Leone Conflict: Notes from the Field', *African Journal on Conflict Resolution* 9(2), 69–90.

Tejan-Cole, A. (2009) 'Sierra Leone's "Not-so-special" Court', in C. Sriram and S. Pillay (eds) *Peace versus Justice: The Dilemma of Transitional Justice in Africa* (Cape Town: James Currey).

ten Bensel, T. (2014) 'Framing in the Making: The Evolution of Sex Offender Motivation in Sierra Leone', *International Criminal Justice Review* 24(1), 211–226.

Thompson, N. (2002) 'In Pursuit of Justice: A Report on the Judiciary in Sierra Leone' (Commonwealth Human Rights Initiative).

Tom, P. (2014) 'Youth-Traditional Authorities' Relations in Post-War Sierra Leone', *Children's Geographies* 12(3), 327–338.

Udombana, N. (2003) 'Globalization of Justice and the Special Court for Sierra Leone's War Crimes', *Emory International Law Review* 17(1), 55–132.

United Nations Security Council, Report of the United Nations Secretary-General (2000) 'Establishment of a Special Court for Sierra Leone', S/2000/915.

Weeks, J. (1992) *Development Strategy and the Economy of Sierra Leone* (New York: St. Martin's Press).

Williams, S. (2005) 'Amnesties and International Law: The Experience of the Special Court for Sierra Leone', *Human Rights Law Review* 5(2), 271–309.

Wlodarczyk, N. (2009) *Magic and Warfare: Appearance and Reality in Contemporary African Conflict and Beyond* (Basingstoke: Palgrave Macmillan).

Zack-Williams, T. (ed.) (2011) *When the State Fails: Studies on Intervention in the Sierra Leone Civil War* (London: Pluto Press).

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