



**THE “LEGACY” OF
THE SPECIAL COURT
FOR SIERRA LEONE**

Draft for Discussion

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Executive Summary

This project, a partnership between the United Nations Development Programme's Bureau for Conflict Prevention and Recovery (UNDP-BCPR), the International Center for Transitional Justice (ICTJ), and senior consultant William O'Neill, a rule of law specialist, seeks to explore the potential of the Special Court for Sierra Leone to have a positive impact on Sierra Leone's domestic legal system. The Special Court is a hybrid tribunal, incorporating both Sierra Leonean and international judges, and mandated to try both international and a limited number of domestic crimes. One of the fundamental justifications often given for such a tribunal is that it will "leave something behind" for the people it is meant to serve. However, aside from the obvious material benefits of a new courtroom and prison facility, it is important for those who want this aspect of the Court to succeed to be strategic, and not to expect benefits to accrue without planning or proactive policy.

In this respect, UNDP-BCPR (Andrea Goodman), the ICTJ (Marieke Wierda), and William O'Neill conducted a mission to Sierra Leone to interview a wide variety of stakeholders about the potential legacy of the Court. Our goal was to identify a cluster of small, but achievable, projects that could form part of a strategic approach to this legacy. In our initial conversations with the Court about its own ideas, we found its staff members to be very supportive and enthusiastic of the concept of legacy. They had developed a number of very good individual ideas, but there was no overall, comprehensive approach.

Outside the Court, we found a wide range of expectations toward the Special Court and its potential for impact. The Special Court may have the potential to demonstrate qualities of effectiveness and efficiency from which lessons may be drawn for the domestic legal system. Sierra Leone's legal system, which is common law in its heritage, suffers from many systemic problems, including allegations of corruption among the judiciary, poor conditions of service and remuneration for judges, lack of access to justice fora and lack of representation, failure to report case law, old and outdated statutes, and a complex relationship between the formal legal system and the customary law, which citizens in the provinces rely on widely to solve disputes.

Naturally, the presence of the Court is not, by itself, going to alleviate these profound difficulties. However, its presence can and should inspire reform-oriented Sierra Leoneans to seize the opportunity to take initiatives. With this in mind, we have identified the following three priority activities that we hope will happen as a result of the Court's presence:

- *Substantive law reform.* A number of the criminal law and procedure statutes currently applicable in Sierra Leone derive from outdated English laws and do not necessarily comply with international standards. A small group of legal practitioners could convene on a regular basis to review these laws and draft new

legislation to put to Parliament. The legislation will also seek to bring Sierra Leonean law into compliance with its international legal obligations on human rights, such as those assumed under the Rome Statute for the International Criminal Court, under which it is obligated to prosecute genocide, crimes against humanity, and war crimes. Sierra Leone's bankruptcy and company laws were recently reviewed using a similar method, and the exercise was successful. Special Court staff could act as advisors to the process and bring in international examples.

- *Professional development.* The Special Court is bringing a lot of international legal expertise into Freetown and it is important that cross-fertilization occurs between these individuals and local legal professionals. We recommended the implementation of a strategic professional development program, to be organized outside the Court but which draws upon the human resources of the Court to ensure that domestic counterparts benefit, and to likewise ensure that the international experts learn about local laws and realities from their Sierra Leonean counterparts.
- *Raising awareness of the Court as exemplary of an independent and well-functioning criminal court.* Sierra Leoneans outside Freetown have a minimal familiarity with formal criminal law systems. It is therefore important to introduce the concept and create awareness of legal processes to audience outside of Freetown. We suggest that short video segments of the trials and interviews of participants (judges, prosecutor and defense, and registrar) could be compiled and shown in the provinces to raise awareness and conduct dialogue. In this way, the Special Court for Sierra Leone can demonstrate the importance of building and sustaining an effective criminal justice system.

These three projects complement one another and form a coherent whole. Moreover, the burden to carry these forward extends not just to the Court, but also to interested and reform-minded Sierra Leonean legal professionals.

The expected results of this project will include: updated and improved laws; availability of skills training and development opportunities for judges, lawyers, investigators, court administrators, and prison guards; and, finally, an increased public awareness and dialogue about criminal processes and the role they fulfill in post-conflict societies. It is anticipated that UNDP and the ICTJ will remain involved with the implementation of these projects and will continue to develop and support the legacy of the Special Court. This project has brought us into close and positive contact both with officials at the Court and individuals who are interested in bringing lasting change and improvement to the justice system in Sierra Leone.

THE “LEGACY” OF THE SPECIAL COURT FOR SIERRA LEONE

I. BACKGROUND TO THE PROJECT

In February of this year, Andrea Goodman and Marieke Wierda, representatives from the United Nations Development Programme Bureau for Crisis Prevention and Recovery (BCPR) and the International Center for Transitional Justice (ICTJ), respectively, conducted a joint mission to Freetown. They were joined by rule of law specialist William O’Neill. The purpose of the mission was to explore the potential of the Special Court for Sierra Leone (SC-SL) itself, or its presence, to impact upon Sierra Leone’s domestic legal system through a number of small but clearly defined projects, to be funded by UNDP.

The purpose of this paper is to report on the findings of that mission, including which projects have been identified as priorities.¹ We are of the view that sharing some of our mission observations will be useful (1) for observers of the Court, in order to give insight into how this matter has been conceived of by the Court; (2) for the Court itself, to give insight into some of the expectations surrounding its legacy; (3) to form the basis for further legacy-oriented work; and finally (4) for a broader audience, which will in years to come evaluate the particular model of tribunal which the Special Court represents, and its potential to have impact on a domestic legal system. In regard to the last of these, we do note that many of the observations and conclusions in this report are essentially of a practical nature. The report contains the following sections:

- The Special Court for Sierra Leone
- The Special Court’s own perception of its legacy and relevance to its work
- Pervasiveness of the concept of legacy outside the Special Court
- Potential threats to legacy
- Conclusions from the mission
- Next steps

From the outset, these were some of our presuppositions, which bore out in the mission: (1) both the Registry and the Office of the Prosecutor of the SC-SL have recognized legacy as a priority; (2) the legacy of the SC-SL is a joint responsibility between all actors, and especially Sierra Leoneans, who want this aspect of the SC-SL to succeed; and (3) the SC-SL should be expected to contribute to, but not to drive its legacy; in general projects should be housed in other institutions that bear some relation to the Court.

Comment [BO1]: especially Sierra Leoneans,

¹ During the mission we met with a wide range of almost 40 individuals (see Annex 4). This report is written primarily to inform these individuals of the outcome of the mission.



II. THE SPECIAL COURT FOR SIERRA LEONE

In order to comprehend the importance of establishing a legacy for the Court, it is useful to note its mandate within Sierra Leone. The SC-SL is a tribunal established to try those bearing “the greatest responsibility” for violations of international humanitarian law and some provisions of Sierra Leone’s domestic law during Sierra Leone’s civil war since November 30, 1996. The Court was established by Agreement between the United Nations and the government of Sierra Leone. Its jurisdiction and procedures are governed by the Statute which was appended to the Agreement and its Rules of Procedure and Evidence, which have been drafted and amended by the judges.² It is often referred to as a “hybrid tribunal”, due to its mixed jurisdiction and composition, although structurally it is independent and completely distinct from Sierra Leone’s legal system and enjoys primacy vis-à-vis domestic courts. Although there have been other hybrid tribunals, the Court is the first example of this particular model, and is therefore potentially precedent-setting in the field of international justice.

Comment [B02]: (SC-SL)

The SC-SL has a mixture of domestic and international judges, with a predominance of international judges and an Australian, Geoffrey Robertson, as President. The Office of the Prosecutor is headed by an American, David Crane.³ The Registry provides support to the Chambers, the Office of the Prosecutor, and the Defence Counsel Unit and is headed by Robin Vincent from the UK.⁴ The Court is funded by voluntary contributions of interested States. A management committee comprising “interested states” oversees all non-judicial activities.⁵ Matters of cooperation with the Government of Sierra Leone are regulated by the Special Court Ratification Act 2002.

The SC-SL became operational in late 2002 and issued its first indictments in March 2003. Since then, it has suffered some setbacks: two prominent accused have died (Sam Bockarie, Foday Sankoh), one is missing (Johnny Paul Koroma) and Charles Taylor, former President of Liberia, was offered asylum in Nigeria. However, another ten accused are in the detention of the Court and there may be more indictments. The SC-SL will have a short life span, perhaps as little as three years.

² The Rules of Procedure and Evidence are loosely based on those of another ad hoc tribunal, the International Criminal Tribunal for Rwanda. They were amended on 1 August 2003.

³ The Office of the Prosecutor has about 40 staff, including investigators and trial and appeals counsel. The Deputy Prosecutor is Desmond da Silva from the UK.

⁴ The Registry carries out the following functions: management of detention; witness protection; court management; legal support to the Judges Chambers; filing of court records and exhibits; public information and outreach; security; etc.

⁵ The management committee comprises representatives from Canada (chair), the United States, the United Kingdom, the Netherlands, Lesotho, Nigeria, the United Nations Office of Legal Affairs, and the Government of Sierra Leone.

III. THE SPECIAL COURT'S OWN PERCEPTION OF ITS LEGACY AND RELEVANCE TO ITS WORK

In our conversations with staff of the Special Court, we found that the concept of legacy is pervasive and widely supported among its staff. At the same time, it must compete in priority with many other urgent and pressing concerns.

A. Registry

From our meetings with the Registry,⁶ it is apparent that the SC-SL considers legacy at the heart of most of its daily activities, both in terms of (1) the material aspects of the Court's legacy, including the court building and the detention facility;⁷ (2) the perception of the SC-SL in terms of outreach and the way its work is transmitted to the public. In this regard, staff raised some interesting suggestions regarding the public accessibility and relevance of indictments, court decisions, and judgments; e.g., by producing summaries including customary "proverbs" to make them more comprehensible.

1. Registry's Plans for Outreach

Regarding outreach, the Registry envisions that the SC-SL would play a role in creating rights-awareness, where public expectations of a fairer criminal justice system would be raised by seeing justice dispensed to some of the most serious criminals in the country. The position of Outreach Coordinator had recently moved from the Office of the Prosecutor to the Registry during the time of our visit. It was envisioned that there would be up to 12 full-time positions in the outreach unit, to service regional resource centers under what is known as the "District Grassroots Network," a program estimated to run at \$125,000 in its first year and \$50,000 in subsequent years.⁸ The SC-SL will also be establishing a "Court Users Committee" to give feedback to the Court. This group will comprise various local civil society organizations, such as the Amputee Association, National Forum for Human Rights, PRIDE, and others, and the Registrar will serve as chair. It also has connections with the Special Court Working Group (SCWG), although there were some initial complications in the relationship because the Registrar suggested a name change in order to avoid misconceptions that the SCWG represents the Special Court.

⁶ At the Registry, we had several meetings with Robin Vincent, Registrar; his assistant, Wendy Hart; Mariana Goetz, legal officer; and Georgia Totor, liaison with government.

⁷ This may include for instance training of prison wardens, etc. Even these physical aspects of the Court's legacy may suffer from sustainability problems.

⁸ See "District Grassroots Network Funding Proposal" of the SC-SL. This document states that "[a] variety of good governance or legal reform efforts could use our networks to distribute information and receive feedback from the people."

2. Professional Development

In his meeting with us, the Registrar mentioned that he is indirectly training a number of Sierra Leoneans in his staff, such as the Deputy Registrar of the High Court. In addition, we were told that the Prosecutor has plans to teach law at the university and there will be Court-based trainings in advocacy, trainings of media, prison guards, and judges. Finally, he stressed that although a number of “legacy” related projects were currently on a list to be outsourced through “ring-fence contributions,”⁹ the Court does not consider these a luxury, but rather as central to its mandate. The Registrar did observe that because of the many urgent and pressing other matters it had been difficult to be strategic about legacy, even though it infused much of the Court’s work.

Comment [B03]: are also anticipated.

B. Office of the Prosecutor

The Office of the Prosecutor¹⁰ also places a high premium on matters of legacy and it features prominently in a public presentation shown to us by Bruce McKay, Chief of Operations. Among the Court’s “guiding principles” are the following:

1. The people of Sierra Leone are the SC-SL’s clients and its most important audience;
2. Interactions with the people of Sierra Leone must consist of two-way communication; and
3. The Court’s work should support local reform efforts.



The first two of these therefore place emphasis on the importance of outreach, a matter on which the Prosecutor had been very active prior to the removal of this function to Registry.¹¹

In terms of local law reform efforts, staff of the office of the Prosecutor envisaged a role for the Court in support of a local initiative that would seek to bring domestic law reform, known as the Legal Reform Initiative (LRI). This initiative was conceived against a

⁹ These are projects for which the Court is seeking specific, limited amounts of funding from donors.

¹⁰ At the Office of the Prosecutor we met with Tom Perriello, Abdul Tejan-Cole, and Bruce MacKay.

¹¹ In terms of outreach, the work plan of the OTP was divided into the following steps (which were not consecutive but overlapped).

Step 1: “Talking with the people” via radio and town hall meetings, carried out by David Crane

Step 2: Inviting people to come and see the Court

Step 3: Supporting civil society efforts to reach the people:

-Training of NGOs

-Talking Drums Studio: Art/Essay Contest

Step 4: Recruiting technical support from civil society to do groundwork on investigations

Step 5: Buttressing legal reform efforts:

-Legal Reform Initiative

-Legal Library Project

-Sister Bar Association Networks

-Legal Training Scholarships

-Capacity building of media

-University of Sierra Leone Lecture Series

background of failed legal reform initiatives in Sierra Leone that have attempted to achieve too much in too little time. The LRI would therefore seek to focus on limited ideas and run them as pilot projects. For instance, a small action group (4–5 individuals) would make draft amendments to laws under instruction of a larger advisory committee (15–20 individuals). The action group would contain young as well as experienced and respected barristers.¹² The following areas of law were proposed as suitable for reform under this initiative:

- Criminal Procedure Act and other matters of procedure and evidence
- Gender-based violence, including its investigation, prosecution, and defense

Staff in the Prosecutor’s office thought they might have an indirect role in facilitating this initiative, for instance, by serving on an advisory board to this organization.

The Prosecutor’s office was also interested in legal education. The OTP had proposed a lecture series called “Peace, Justice, Development” as part of a new course at the university on peace and conflict. It also proposed the convening of “Accountability Now” Clubs at 13 tertiary institutions throughout the country in 6 or 7 districts, which would come together to address issues of accountability in relation to human rights violations and corruption. These initiatives had been passed to the Registry together with the outreach program, and seemed to be dependent on the raising of ring-fenced contributions.

C. The Management Committee

Among the management committee there seemed to be a concern that legacy initiatives may divert the Court from what are perceived to be its core functions, while this Court is expected to function on a lean budget with much to achieve. We have taken due account of this concern, as well as the fact that the Court has limited resources, particularly compared to other ad hoc tribunals. For this reason, we stress the joint responsibility of legacy and structure our suggested projects so that they do not place undue burden on the Court. But we also suggest that outreach is a core function of the Court and has been increasingly recognized as crucial by the International Criminal Tribunals for the former Yugoslavia and Rwanda. Indeed, recent studies suggest that a lack of outreach greatly undermines the credibility, impact, and effectiveness of a mechanism such as the Court and its impact on long-term stability and development of the rule of law.¹³

¹² This format follows a similar initiative that led to the reform of the commercial and bankruptcy laws of Sierra Leone last summer. A similarly small group of practitioners was convened on a regular basis over the summer months to draft amendments to these laws, which are expected to be adopted by Parliament.

¹³ See studies conducted by the University of California, Berkeley’s Human Rights Center and particularly by Laurel Fletcher, Harvey Weinstein, and Eric Stover on the public perceptions of ICTY and ICTR, to be published, such as “*The Witnesses: War Crimes and the Promise of Justice in The Hague*” by Eric Stover.

We hope that the various units of the Court will continue to be supportive of the concept of legacy and that many of the good intentions expressed will translate into concrete activities, insofar as this remains to be done.

IV. Pervasiveness of Concept of Legacy Outside the Special Court

A. General

Public expectations of the SC-SL among those who know about the Court seem exceedingly high and are at times quite unrealistic. Part of this seems to stem from the fact that people have watched the speed with which the SC-SL has established itself in Freetown and the efficiency with which the New England site is being constructed. Some expect the Court to build clinics and fix roads. Some expect it to fix the judicial system. In general, there seems to be a perception that disproportionate attention has been given to the perpetrators of the conflict, particularly through benefits derived from Sierra Leone's successful Disarmament, Demobilization, and Reintegration program (DDR).¹⁴ Some feel that the money spent on the Court would have been better spent on the domestic system. Some conceive of justice as revenge and do not want it to be emphasized; on occasion, people have compared the resources available to the Court to those available to the Truth and Reconciliation Commission and are of the opinion that the latter should have been better funded than it has been.¹⁵

B. The Legal Profession

Among the members of the legal profession that we spoke to, there is a perception that disproportionate attention and resources are given to the Special Court, which has a very limited role and mandate, in comparison with the domestic legal system, which is in dire need of resources itself, and the breakdown of which is sometimes identified as a root cause of the conflict. At the same time, legal professionals admit that there is potential to benefit from the presence of the SC-SL in a variety of ways, including through professional development and interchanges.

The Attorney General of Sierra Leone described the legacy of the Court as a potential burden, in the sense that those convicted by the Court will be serving sentences for many years to come. This is an issue which will presumably be addressed in the Court's strategy for winding down its work at the end of its mandate (its "completion strategy").

¹⁴ International Peace Academy Conference Report on *Security and Development in Sierra Leone*, June 10–11, 2002, p. 5: "There is growing resentment among many Sierra Leoneans who claim that those responsible for committing atrocities and acts of violence are being supported to a much larger extent than their victims. While former combatants have received one-time reinsertion benefits of \$150 and are promised additional training, victims of sexual violence, mutilations, and displacement complain that they have not received sufficient support."

¹⁵ See for instance an opinion poll carried out by Campaign for Good Governance, in which 45 percent of those asked believed that the TRC should have had more funding than the Special Court (whereas 28 percent believed the Court deserves more funding than the TRC): <http://www.sierra-leone.org/cggpoll0303.html>. This is not to say that these institutions can be usefully compared for cost.

C. Civil Society

Civil society in general expects that the SC-SL will contribute to setting international standards of respect for human rights. A number of civil society groups suggested that the presence of the Special Court should be used to lobby the government to implement a number of international human rights instruments that it has ratified. Despite the fact that Sierra Leone is a dualist system, the position of the government has been that implementing legislation is not always necessary, but that a Resolution of Parliament will suffice to pass some of these instruments into law. Most NGOs do not agree with this view; in fact, the Agreement between the Government of Sierra Leone and the United Nations establishing the SC-SL still required the Special Court Ratification Act to implement it in domestic law, and civil society argues that similar domestic legislation is needed to implement several other conventions, such as the Statute for the International Criminal Court.

One particular issue on which civil society hopes the Special Court will have an impact is the death penalty. The Prosecutor has already said that he may hand over investigative material to domestic courts, despite the existence of the Lomé amnesty, and let them decide what to do with it. If he does support national prosecutions in this way, this raises the question of whether he should do so in cases where the death penalty may be imposed.

D. The International Community

Among the international community there are significant expectations that the SC-SL will make a lasting contribution to the rule of law and the domestic legal system of Sierra Leone. These expectations, however, are not usually articulated beyond the obvious, such as the material benefits the SC-SL will bring and the professional development of its Sierra Leonean employees.

Likewise, those currently involved in law reform in Sierra Leone also acknowledge the potential importance of the role of the SC-SL. DFID and the World Bank wrote in their report:

We recommend that the domestic justice system and the future DFID/WB assistance establish close links with the staff of the Special Court in order to promote any opportunities for the court to have a positive impact on the justice sector in Sierra Leone, perhaps playing a pedagogical role. Despite the reluctance of key funders to see the Special Court take on an extended capacity-building mandate, it could facilitate the process of restoring the respect and credibility to the settling of disputes through the formal justice system.¹⁶

¹⁶ DFID/World Bank Report, *Sierra Leone: Report on the Preliminary Review of Justice Sector*, July 2002, para. 72.

Likewise, the Commonwealth Human Rights Initiative (CHRI) comments in its report that:

Whatever the cost of the Special Court in the end, its value must be considered in terms of its long-term contribution to the rule of law in Sierra Leone. Certainly it will be a very visible display to the people of Sierra Leone that the international community is committed to ensuring some justice is done.¹⁷

But international actors also point to the danger that the presence of the Special Court may detract resources and attention from the domestic legal system. For instance, the CHRI report goes on to state that “the work of this court as it is proposed will not impact greatly on the operations of the judiciary” and “[t]here is a delicate balance to be found between employing local court personnel, and therefore building capacity and legitimacy, and using foreign personnel to bring a sense of impartiality and to ensure that resources are not sucked out of the existing judicial structures.”¹⁸ It also remarks that “[i]t would be easy for lavish, UN-standard provisions within the Special Court to generate considerable resentment among the legal community and the general population in Sierra Leone.”¹⁹ Likewise, international human rights groups such as Amnesty International have long stressed the need for rebuilding the domestic legal system as a logical and important parallel to the SC-SL.²⁰

E. Victims

Until now, there is little recorded about the expectations of victims in regard to the legacy of the Court, although the Amputee Association, one of the most well-organized victims groups in Sierra Leone, has expressed dissatisfaction at the amount of attention and benefits mechanisms such as the Special Court and the Truth and Reconciliation Commission have given to ex-combatants. However, due to a series of informal interactions between the Association and the SC-SL, tensions vis-à-vis the Court seem to be dissipated.

The experience of the ICTR has shown that victims may soon point out that persons in the detention center of the Special Court get benefits (nutritious diet, medical treatment, etc.) that are not available to victims. For example, at the ICTR, victims of rape have complained that the accused were being treated for HIV-AIDS, whereas they could not receive medical treatment.

Finally, victims may become disgruntled when their interaction with the Court does not result in immediate benefits to themselves in terms of financial assistance, successful claims for restitution of property, or even the ability to fully relate their experiences of victimization when testifying.

¹⁷ Commonwealth Human Rights Initiative, *In Pursuit of Justice: A Report on the Judiciary in Sierra Leone*, 2002, p. 31.

¹⁸ *Ibid.*

¹⁹ *Ibid* at 39.

²⁰ Amnesty International, *Sierra Leone: Renewed Commitment Needed to End Impunity*, 24 Sept. 2001.

V. POTENTIAL THREATS TO LEGACY

If the Special Court is not strategic about legacy, there may be a variety of dangers lurking which will seek to impede on its legacy. These may include:

- *Ignorance.* An obvious threat to the legacy is if people outside Freetown either do not know about the Court or do not believe it has any relevance in their lives. This can be countered by the effectiveness of the outreach program.
- *Lack of ownership.* Some people outside of the SC-SL said the Court is not perceived as a hybrid court, but as a mainly international mechanism. However, they expressed a preference for the Special Court being perceived as “international, yet impartial, as opposed to domestic, but tainted.”²¹ Some said that “ownership” will be determined by the extent to which the Court serves the people of Sierra Leone. Whether this will truly be the case, the composition of the Court will remain an issue important to how it is perceived.
- *Perceived bias.* The legacy of the Court would be damaged by a perception that it is biased. For example, the temporal jurisdiction from 1996 onwards could have formed a threat to the legacy if people feel that significant perpetrators are escaping justice just because of it. Likewise, if the indictments are not seen as equally spread or if all the accused from one side of the conflict are acquitted, legacy would be damaged. To date, the Prosecutor has indicted persons from the different major factions to the conflict, but there may still be potential gaps.
- *Lack of access.* If the Court is perceived as insensitive in its interactions with the public, this will harm legacy. Likewise, perceptions of the SC-SL may be harmed if journalists are denied access to documents or proceedings that should be public.
- *False expectations.* As mentioned above, public expectations regarding reparations may constitute a threat to legacy. But there is also the danger of inflated expectations of what the Court can realistically accomplish in terms of legacy.

Moreover, at worst the presence of the Special Court may not be a neutral factor but could actually have a detrimental effect on the domestic legal system, in term of draining its capacity without providing for professional development opportunities. Moreover, the perception of the Court may run a risk of further de-legitimizing perceptions of domestic courts if there is no public dialogue about the importance of criminal processes and accountability. From our conversations with the Court, it was apparent that the Court is aware of many of these issues and it should continue to take steps to actively redress them.

²¹ This is a quote and it is not to say that international should necessarily equal impartial or domestic should equal tainted.

VI. CONCLUSIONS FROM THE MISSION

A. General Observations

It is impressive that the notion of a SC-SL legacy is so pervasive. When the international tribunals were created for the former Yugoslavia and Rwanda, the impact of these institutions on the domestic legal systems in these regions was far from everyone's minds, although as the tribunals are under increasing pressure to finish their work, the question of their interaction with domestic systems is assuming a new relevance and urgency. Yet, while the will to leave something behind in Sierra Leone is undoubtedly strong, the notion of "legacy" needs sharpening, focus, and some prioritization.

In the broadest sense, one form of legacy will be to show people how justice can be meted out properly, thereby creating a demand for further justice. One person noted that the best legacy would be to "leave people wanting even more justice, more trials" to address the past war crimes and crimes against humanity committed over the past six years. This is the so-called "demonstration effect" of the SC-SL.²²

A second form of legacy, frequently expressed, was for the SC-SL to leave something behind on the material level: buildings, vehicles, books, computers, telephones, desks, and other equipment. This should be relatively easy and straightforward, but most Sierra Leoneans and internationals hoped that the SC-SL would leave behind much more. If the SC-SL is to achieve this, three factors must be considered.

1. *The general legal landscape.* The SC-SL is not operating in a judicial vacuum; the Sierra Leone domestic courts are functioning to various degrees.²³ Moreover, the United Kingdom, through the British Council and the Department for International Development (DFID), has elaborated an extensive and ambitious project for judicial reform in Sierra Leone.²⁴ Any SC-SL legacy projects need to take into account how they will relate to broader legal reform efforts. SC-SL projects should reinforce, and not complicate or undermine, these systemic reform efforts. Judicial reform in Sierra Leone realistically will take at least a generation, given the extent and nature of the problems facing the system and the pernicious legacy of the past 10 years. Some degree of modesty is in order when facing such a long-term and complex task as judicial reform in a country as devastated and traumatized as Sierra Leone. Nevertheless, those planning longer-term systemic

²² This is best summarized by two Sierra Leonean lawyers who note the SC-SL should provide "one of the best chances for Sierra Leoneans to observe and come to understand what 'due process' [means for] perhaps the first time in a decade. Most have never seen a court function, at least, not function well. For many, this will be the best chance to show them what they are entitled to expect from lawyers and judges. In terms of building local faith in the rule of law, broad exposure and education will be key." Miatta Maria Samba and Abdul Tejan-Cole, "*The Special Court for Sierra Leone: Its Basis and Benefits*," p. 10 (unpublished paper).

²³ For a brief description of the state of the Sierra Leone legal system based on our conversations with a variety of legal practitioners and others, see Annex 1.

²⁴ See Annex 2 for a discussion of other legal reform projects in Sierra Leone.

judicial reform have already noted the potentially positive impact of the SC-SL on their work and the need for integration with broad reform efforts.

2. *The role of Sierra Leoneans.* As mentioned, the legacy impetus cannot come solely or even primarily from the SC-SL itself. It is for Sierra Leonean institutions and individuals to identify how best to exploit the presence and work of the SC-SL to reinforce and accelerate judicial reform. Whenever possible, Sierra Leoneans themselves should direct and participate in legacy initiatives.
3. *Competing demands on Special Court staff.* Legacy projects should try to minimize any impact they might have on SC-SL and the time and resources of personnel. The SC-SL has a primary job: to investigate and try those most responsible for war crimes, crimes against humanity, and other stipulated crimes. As described, SC-SL personnel expressed their willingness to assist on legacy projects and reaffirmed that they viewed legacy as a significant element of the SC-SL's success.²⁵ Yet the demands on their time will be great. The challenge will be to identify projects that can either be grafted onto pre-existing SC-SL programs or, with a minimal further investment of time, a SC-SL initiative could have a multiplier effect if well planned. This is the so-called “no-cost, low-cost” approach.

B. Three Priority “Legacy” Projects

Based on our mission to Sierra Leone, we propose the following immediate priority initiatives that would use the presence of the SC-SL to buttress reform and the rule of law in Sierra Leone. In keeping with our general observations above, we have tried to identify initiatives that put a premium on pre-existing Sierra Leonean initiatives and do not burden the Court. We are also mindful of how these projects, if undertaken, need to be integrated or at least coordinated with longer-term legal reform efforts such as the British Council/DFID project.

We have chosen these projects in part because we believe these areas have already been identified as priorities by the Court itself; they correspond positively with some of the public expectations of the Court and conversely, go to answering some of the concerns that the Court will impact negatively on the domestic legal system. Finally, they form a coherent whole and are feasible and realistic in their scope (although it is hoped that they will be a starting point rather than an end goal).

1. Modernizing the Criminal Procedure Act and Other Criminal Laws and Procedures

The presence of the Special Court provides unique opportunities to create momentum behind long-needed reforms to archaic domestic laws. Because only a small number of individuals will be tried by the SC-SL, most nationals will not directly benefit from the presence of the institution and therefore may see it as a “rarified” international body that

²⁵ “If at the end of our stay all we have left behind is some buildings and equipment, then we will have failed,” said one senior SC-SL official interviewed in Freetown.

is abstract both in procedure and substance. In contrast, much of the domestic criminal law is still based on old English Statutes such as the Larceny Act 1916, many of which have long since been reformed in the UK. Likewise, the system of imposition of custodial sentences is in need of urgent review, as are levels of fines.²⁶ The impact of these laws and the condition of the legal system more generally on human rights standards are described in the Commonwealth Human Rights Initiative Report and include frequent denial of a range of rights of those accused of crimes.²⁷ The presence of the Court should therefore be used as an opportunity to bring about much-needed legal reform in criminal law and procedure, law reform that has not to date been brought about as part of Sierra Leone's transition.

In this regard, it is relevant to note that the Law Reform Commission, a government institution, has recently been reactivated.²⁸ However, this Commission will have many competing priorities, including inheritance law, land law, family law, and the codification of customary law. Its burdens may be eased by a complementary effort carried out by a small group of experienced lawyers. This recommendation is based on recent similar and very successful experience with updating the company, banking, and bankruptcy laws, initiated by the Bank of Sierra Leone. This approach, involving private practitioners, will also allow the review to be completed during the height of activity of the SC-SL, a time during which criminal law and procedure will receive much attention. A particular focus on criminal law reform therefore takes appropriate advantage of the presence of the Court.

A group of four or five experienced lawyers, meeting weekly with minimal administrative support, could review the major criminal laws in a few months, although extra time should be allowed for consultation with government, civil society, and judicial officials, as relevant. The primary burden would be on the working group, but it is foreseen and it would be beneficial if they could occasionally meet with relevant SC-SL personnel, use the SC-SL library or online resources and, ideally, ask the SC-SL to participate in law reform initiatives in an advisory role.²⁹ The goal would be to produce, within a relatively short time, high-quality draft legislation of a nature that is likely to be considered and adopted by Parliament by either passing through the Attorney General's office, perhaps via the Law Reform Commission, or alternatively by introduction to Parliament as a private member's Bill.

If this proves successful, similar efforts could be pursued in the fields of juvenile justice, anticorruption statutes, and regulations and a Code of Conduct for Lawyers, Judges, Prosecutors, and Penitentiary Officials.

²⁶ A. Renner-Thomas, *The Case for More Substantial Law Reform in Sierra Leone*, *Sierra Leone Law Review* [2000], Vol. 1, No. 1, p. 13.

²⁷ Commonwealth Human Rights Initiative, *In Pursuit of Justice: a Report on the Judiciary in Sierra Leone*, 2002, pp. 19–25.

²⁸ Members include a representative of the Bar Association, a number of barristers, and the principal of Fourah Bay College.

²⁹ Other actors may also be suitable for such an advisory role. For instance, representatives from other law reform initiatives, such as the British Council/DFID projects or UNDP, could also exercise an advisory role in order to ensure complementarity with their efforts.

2. Ensuring Cross-fertilization of Expertise Between the Special Court and the Legal Profession in Sierra Leone

As mentioned, the SC-SL has hired a number of Sierra Leone legal professionals, including judges, prosecutors, investigators, defense lawyers, administrators, interpreters, and prison officials. Mentoring, both formal and as the result of working alongside a colleague, will also be a crucial vehicle for imparting skills and experience.³⁰ This presumably will occur every day during the SC-SL's lifetime. The direct transfer of skills, knowledge, and professionalism to these national employees will have a potentially large impact on the performance of the Sierra Leonean legal profession, assuming that most of these people return to the domestic court system.³¹

The more difficult challenge is to spread the benefits of the presence of highly trained and skilled international legal, police, and prison experts to a constituency beyond those immediately employed by the court. Because the SC-SL is planning on training its own personnel in various areas of professional expertise, it would be possible, with minimal extra expense and time, to include some key personnel from the Sierra Leonean judiciary, police, and prisons to attend workshops, seminars, and roundtables. As long as security or confidential case information would not be compromised, SC-SL personnel could conduct professional education seminars for Sierra Leonean counterparts. SC-SL personnel we interviewed were most eager to participate in some form of "continuing legal education," which is not only common, but often required of practicing lawyers around the world. SC-SL personnel also noted, quite rightly, that their Sierra Leonean counterparts could teach them a great deal about Sierra Leone, which could be very helpful to the Court's work.

We recommend broad and creative thought in this area. The subjects that could be covered include:

- Advocacy, cross-examination, preparing a witness, appeals, legal drafting, writing judicial opinions,³² and other courtroom-related skills;
- Rules of evidence;
- Court administration, case management, information systems, etc.;
- Court clerks—administration and control of the courtroom;
- Special investigative skills, especially regarding victims of sexual violence, juveniles, and others needing special attention/protection;

³⁰ As one senior police official told us, regarding the mentoring system in the Sierra Leone Police (SLP): "People mostly learn how to do their jobs by watching other people, how they do it, they pick up the skills, social interactions and tools necessary to do the job right."

³¹ Some may join other international missions run by the UN and others may leave the country at the end of the SC-SL's term, but efforts should be made to retain SC-SL national personnel so that they use and share their experience afterward in the domestic legal system.

³² We see publishing court opinions, improving court reporting and reviving the Sierra Leone Law Reports as primarily falling within the British Council/DFID ambit. They already have initiatives under way to modernize court reporting, train court reporters, and restore the Law Reports and support publication of law reviews. Thus, the SC-SL activities in this area should reinforce this broader effort.

- Witness protection;
- Internal disciplinary mechanisms—investigations of judicial misconduct, hearings, and appropriate punishments, and similar mechanisms for the police and penal administration;
- Gender violence and domestic abuse;
- Working with the police, improving flow of information, preserving evidence for trial; and
- Modern penal management and administration.

The forum for such professional education development seminars could take whatever form and occur at whatever intervals most suit the various parties' existing schedules and demands. But we foresee this as a "low-cost/ no-cost" initiative that would have a multiplier and ripple effect throughout the Sierra Leonean judicial class. However, in order for this to be organized in a strategic and systematic fashion, we do not believe that it would be fair or efficient to impose this as an additional burden on a Court employee with other responsibilities. We therefore are of the view that a professional development program should be based in an institution outside of the SC-SL, with a staff-member who is able to spend significant time (70 to 80 percent of a full-time job) on organizing this program and acting as a focal point. This person should liaise regularly with Court staff on their availability or on the availability of visiting experts. Although this person need not be a lawyer, ideally he or she would have a good knowledge of Sierra Leone's legal system. Moreover, the professional development coordinator should liaise tightly with the outreach coordinator of the Court.

3. Raising Awareness of the Special Court as Exemplary of an Independent and Well-functioning Criminal Court in the Provinces

The final goal is to promote as widely as possible a "rule of law" culture in Sierra Leone. It is beyond the scope of this paper to explain all the challenges to such a culture in Sierra Leone, and others have already fully documented the state of the judiciary and its negative image among most Sierra Leoneans.³³ One lawyer underscored the point by noting that not a single practicing lawyer had accepted a post on the judiciary in the past years because of the abysmal salary and poor working conditions for judges and the lack of prestige of the courts; this had not been the case before the war, when accepting a judgeship, even at a reduced salary, was seen as a crowning achievement for a legal practitioner. One lawyer said that: "We don't value the system of justice in this country. Without a functioning judiciary, we are all in trouble in this country."³⁴

The SC-SL, by its presence, should be able to demonstrate to Sierra Leoneans how an independent, effective, and fair court functions. This is where the SC-SL's outreach

³³ See, e.g., the DFID/World Bank Report, *Sierra Leone: Report on the Preliminary Review of Justice Sector*, July 2002.

³⁴ Interview, Freetown, Feb. 18, 2003

program will have an important “legacy” impact.³⁵ The challenge is for the SC-SL to publicize itself effectively and to make its proceedings and personnel as accessible to the general public as security concerns permit. As one local NGO has stated: “For [the SC-SL and the Truth and Reconciliation Commission] to succeed, it is vital for the people of Sierra Leone to understand, cooperate, and support them in their quest to bring justice and lasting peace to the country.”

It appears that the SC-SL has already begun some effective and well-conceived outreach projects as described above.³⁶ In addition, No Peace Without Justice has sponsored short dramatic pieces, performed at town markets, that describe the SC-SL; this initiative also reaches many hundreds of people. Finally, various radio programs, especially on the station “Talking Drums,” provide a forum to discuss the court, and plans are being made to broadcast court proceedings over the radio in local languages.³⁷ In mid-March, the SC-SL opened its official website, and even though Internet access is severely limited in Sierra Leone, this is an excellent initiative (but in need of regular updating). But, at the same time, the SC-SL faces considerable hurdles in overcoming the Freetown-provinces divide, as the provinces of Sierra Leone have far less exposure to formal legal structures (as became apparent to us during a trip to Makeni).³⁸ In order to revive confidence in the rule of law, the Court needs to find ways to make its work relevant and comprehensible to large numbers, particularly outside of Freetown.

One way to make the Court proceedings accessible to those outside of Freetown is to tape selected segments and conduct interviews with some of the key players, including the Prosecutor, Defence counsel, Judges, Registrar, and representatives from the Victims and Witnesses Unit, where each explains their role in the process.³⁹ The objective would be to focus on the court process and to explain the elements of a criminal trial and stimulate discussion around these topics. For example, the video would explain clearly what are the various rights of the accused in the process. This footage could be copied and played in the various districts using a mobile video unit. The making of this video could involve a local video-technician.

³⁵ This is already well under way with a series of “town hall meetings,” one of which we were able to witness. National staff from the SC-SL met with about 75 local residents in Eastern Freetown and explained in Krio how the SC-SL works, what its jurisdiction is, and how it differs from the Truth and Reconciliation Commission. Residents asked many pertinent questions, especially about the “chain of command” and how it is decided who “bears the greatest responsibility” for war crimes, crimes against humanity, other serious violations of international humanitarian law, and certain crimes under Sierra Leone law.

³⁶ The SC-SL’s overall outreach strategy is well described in a paper prepared for the SC-SL Management Board, “*Outreach Proposal Paper*” (Dec. 14, 2002), stating that among the broad aims of outreach are that: “the people of Sierra Leone are aware of and engaged in the work of the Special Court,” and that the “Special Court conducts its work in a way that advances the broader goal of a just and sustainable peace in Sierra Leone.”

³⁷ A survey by the Campaign for Good Governance, which focused on outside of Freetown, showed that “The mode of dissemination of information also indicates that the radio has proven to be one of the most effective median of communication with 648 (71 percent) respondents hearing about the TRC over the radio and 628 (73 percent) of our respondents hearing about the Special Court via the same medium.” See <http://www.sierra-leone.org/cggpoll0303.html>.

³⁸ See Annex 3 for a description of the trip to Makeni.

³⁹ Much of this idea comes out of a meeting with Binta Mansaray, outreach coordinator, held in July 2003.

In conclusion, the overall program, including (1) a combination of programs that provide sharing of skills by the SC-SL with national counterparts working in Sierra Leonean institutions; (2) an outreach campaign that engages the general public in a wide-ranging dialogue on the rule of law (although this project will only form a small part of it); and (3) targeted legal reform, resulting in a higher standard of justice becoming available to the ordinary Sierra Leonean, would constitute an ideal legacy for the SC-SL. This would fulfill the goal, as one person inside the Special Court expressed, that “we should leave the people wanting even more justice.”

C. Possible Future Legacy Projects

We also identified several other initiatives that, if funding and resources could be found, could be medium-term priority projects once the preceding projects were under way.

1. Promoting the Role of Civil Society in the Justice Sector

To date, the only NGO coalition focusing exclusively on criminal justice issues in Sierra Leone has been the Special Court Working Group. The SCWG currently comprises local NGOs that meet regularly with each other and with representatives of the SC-SL. They convey concerns, ideas, and general feedback to the SC-SL on how society perceives it. However, we understand from recent conversations that many SCWG members are now working directly for the Court’s outreach unit. The SCWG is also based in Freetown, and the problem with engaging civil society is even more prevalent outside of Freetown.

More generally speaking, however, there is an almost complete disconnect between the legal profession, including the Bar Association, and the human rights movement in Sierra Leone, which has not traditionally used law as a tool to combat systematic human rights abuse. The exceptions to this are some young and talented legal professionals who have specialized in human rights and are keen to find ways to cross this divide. In order to promote better linkage between the legal sector and the human rights movement, NGOs should be encouraged and helped to engage in coalition activity around criminal justice issues and should actively monitor the activities of the Special Court. Legal professionals on the other hand should be provided with more opportunities to learn more about human rights issues.

We also think it would be useful to consider expanding the concept of the “Court User Committee” beyond the SC-SL to cover national courts.⁴⁰ This would increase “accountability” of the courts and reinforce the notion that civil society has an active and participatory role in strengthening the rule of law. “Serving the client”—in this case, society—is a new concept for the Sierra Leone judiciary and local user groups, and meeting regularly with Sierra Leone court officials would do much to restore faith and confidence in national institutions. The Sierra Leone Police have adopted this approach, and there is no reason the judiciary could not do the same. The goal would be to build on

Comment [B04]: An important element of the user group could be the expanded and re-named Special Court Working Group.

⁴⁰ The DFID/World Bank Report, *Sierra Leone: Report on Preliminary Review of Justice Sector*, July 2002, suggests the same. See p. 56.



the existing civil society networks, such as the former Special Court Working Group, and extend them, perhaps after some pilot testing, to courts across the country. Officials and representatives of the local population would regularly discuss information on how the courts work, as well as problems, concerns, and recommendations of the local population.

2. Anticorruption Initiatives

Corruption in Sierra Leone is a particularly serious and widespread problem that merits special attention. Article 39 of the Special Court Agreement 2002 (Ratification Act) criminalizes attempts to bribe court officers and other acts of corruption, so this provides a possible entry point for the SC-SL to illustrate its anticorruption stance.

The Anti-Corruption Commission, widely derided as weak and ineffectual, is being reinforced and may become a stronger and viable entity. The Commonwealth, via DFID, will provide two international judges and a prosecutor to strengthen the Anti-Corruption Commission.⁴¹ Their work directly with Sierra Leonean counterparts should have the same impact as the SC-SL's national-international lineup. Yet, some outreach and joint work could be envisioned between the reinvigorated ACC and the SC-SL. Transparency International, the leading international NGO that deals with corruption, could also be enlisted to provide information, expertise, and assessments to the ACC and the judiciary in general. The problem of corruption and its impact on accountability should not be underestimated.

3. Access to justice and building a "Culture of Representation"

Access to justice remains a fundamental problem in Sierra Leone. Also, a huge and obvious discrepancy between procedures before the Special Court and the domestic courts of Sierra Leone will be the availability, let alone the quality, of representation.⁴² Even those currently imprisoned for crimes that are equal in seriousness to those over which the Special Court will assert primacy will have trouble finding defense counsel. In this regard, the upcoming treason trials in domestic courts may also stand in stark contrast to cases before the Special Court.

The following are civil society initiatives seeking to build a culture of representation:

- *National Forum/ Open Society Institute Access to Justice Program*. This program is modeled on a similar program in South Africa and seeks to provide paralegals in the provinces (along with a citizen's advice bureau model).

⁴¹ See the DFID/World Bank Report, *Sierra Leone: Report on Preliminary Review of Justice Sector*, July 2002, at para 23: "[G]iven the critical nature of the fight against corruption, we recommend that the idea of recruitment of foreign judges be explored with the Office of the President."

⁴² This is in spite of a provision in the Sierra Leonean Constitution (Section 28 (5)) which reads: "Parliament shall make provision (a) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim; and (b) for ensuring that allegations of infringements of such rights are substantial and the requirement or need for financial or legal aid is real."

- *LAWCLA*. The Lawyers Center for Legal Assistance is Sierra Leone's only legal aid institution to consistently provide legal advice to poor people, although it is active mainly in Freetown, with limited operations elsewhere.
- *Campaign for Good Governance* (CGG) has had some money available for legal aid, but there are no lawyers to use that money in the provinces. CGG pointed to a reluctance to become involved in legal aid programs because revenge attacks against prosecution and defense counsel have been common. For example, after the courts-martial in 1998, prosecutors were killed and left out in the street in the 1999 violence in Freetown.
- The *Bar Association* operates a small legal aid program to provide assistance to prosecutions of gender and sexual violence.

There may also be ways to bolster the capacity of the defence unit within the Special Court while building capacity of criminal defense lawyers outside the Court, similar to the initiatives described above regarding professional development workshops and seminars. An initiative could also be launched to create formal links between the Defence Counsel Unit and the university, where the latter could provide research support to the former.

Comment [B05]: Law school!

VII. NEXT STEPS

We have tried to identify discrete, pragmatic, and achievable projects that could enhance the legacy of the SC-SL for the Sierra Leone justice system, writ large.⁴³ We believe these proposals do not require much funding, while they also use Sierra Leonean talent and experience as much as possible. We also think that these initiatives will not put an undue burden on the SC-SL, as these initiatives will be carried out mainly by domestic institutions and individuals or will draw on activities that the SC-SL already would be undertaking.

Some of these projects are already moving to implementation but much remains to be done in terms of the legacy of the Special Court and are generally on legal reform in Sierra Leone. We emphasize that these projects and other judicial reform projects should be seen as mutually reinforcing. As so many asserted, one measure of the SC-SL's success will be its effectiveness in supporting wider, long-term efforts to support the rule of law. Continued coordination of these various efforts will be crucial.

We wish to express our gratitude to everyone who generously donated their time and views to us during our trip to Freetown (see Annex 4). We are particularly grateful to Sylvia Fletcher and Alan Doss for facilitating this mission. We also wish to acknowledge the substantial assistance of Berthan Macaulay Jr. (Board of Advisors, Legal Reform Initiative and senior barrister), Abdul Tejan-Cole (SC-SL), Tom Perriello (SC-SL), and Binta Mansaray (Head of outreach, SC-SL).

⁴³ Other possibilities that were mentioned included prison reform, reform to customary law, and police reform, but these are currently deemed beyond the scope of our focus. Significant police reform has taken place under the auspices of CIVLPO and DFID, especially under the leadership of Keith Biddle.

ANNEX 1: Brief Background to Sierra Leone's Legal System

Sierra Leone's legal system was never strong. Some have termed the absence of a functional legal system as one of the root causes of the conflict.⁴⁴ Courts and legal professionals were targeted throughout the country during the conflict, and especially in the attack on Freetown in 1999, leaving the legal system dysfunctional and disdained. A major impediment to improvement of the situation is low public sector pay and poor conditions of service. There is indeed a need for a sector overhaul and a consortium of partnerships in order to bring change.⁴⁵

A. The Legal Profession

Post-independence Sierra Leone continued in the common law tradition imparted during colonial times under the United Kingdom. More specifically, the Sierra Leonean formal legal system resembles the English system. In fact, since independence and throughout the 1970s, Sierra Leonean barristers were called to the bar in England and many are members of the various Barristers Inns (they also had rights of appearance before the Privy Council). Only in 1990–1991 did Sierra Leone open its own law school, which imparts a practical degree, akin to the legal practice course given by law schools in England, with an emphasis on matters of procedure (civil and criminal).⁴⁶ The course of education is therefore to obtain a law degree from the University (LL.B) and then complete a year at the law school before entering practice. There are currently about 200 legal practitioners in Sierra Leone. Of these, about 98 percent practice in Freetown and only 2 percent in the provinces. Sierra Leone has a Bar Association with voluntary membership. The vast majority (about 150) are members, although judges are not. The Bar Association may make recommendations on law reform. The executive and full membership convene about once a month.

B. The Formal Courts and Judiciary

There are four levels of formal courts; Magistrates Courts, the High Court, the Court of Appeal, and the Supreme Court. The benches of all of these are severely understaffed.⁴⁷

⁴⁴ See for instance the DFID/World Bank Report, *Sierra Leone: Report on Preliminary Review of the Justice Sector*, July 2002, at para. 9: "Outside the legal community there is a wide consensus amongst informed commentators that a causal link exists between past abuses in the justice system and the conflict."

⁴⁵ For a comprehensive and recent report on Sierra Leone's legal system and particularly the state of the judiciary, see the Common Wealth Human Rights Initiative, *In Pursuit of Justice: A report on the judiciary in Sierra Leone*, 2002. For a recent update on the status of Sierra Leone's legal system, see the International Crisis Group's Report, *Sierra Leone: The State of Security and Governance*, 2 Sept. 2003 at pp. 23-25.

⁴⁶ The law school is under the Ministry of Justice and the Council for Legal Education (comprising the Chief Justice, the Attorney General, the Bar Association, the Minister of Educations, a judge nominated by the Chief Justice, and Prof. Tobuko-Metzger).

⁴⁷ For example, the Supreme Court should have no less than five judges but only has one, the Court of Appeal should have seven but has two substantive and two acting; the High Court should have nine but has five substantive and two acting. Chief Justice Timbo provided these statistics and gave a useful and informative paper on this at a meeting of the Commonwealth Human Rights Initiative, entitled *The Role of the Judiciary in Sierra Leone's Democracy*.

Whereas the profession of the judge seems to have held prestige in the era immediately following independence, it has become increasingly tainted by corruption, poor caliber of the judges, and a lack of willingness of senior barristers and even younger practitioners to go to the bench.⁴⁸ Also, many judges left the country during the war and particularly after the coup in 1997. One senior barrister told us that in the past 10 years not a single senior barrister has accepted appointment to the bench and barristers regularly refuse advances by the Chief Justice for such appointments.⁴⁹ The same senior barrister suggested that one answer to this may be more flexible terms of appointment, such as the part-time judges sitting in England under the recorder-system. This has not been done because it is said that full-time judges will object. Another suggestion is to abolish the Supreme Court and strengthen the Court of Appeal.

In response to the serious understaffing of the judiciary and in order to expand access to formal law, Chief Justice Timbo has undertaken the innovative step of appointing about 70 Justices of the Peace to be deployed to the regions. These are laypersons with some legal training who have standing and repute in local communities. They sit on customary issues, but not on criminal cases. Two Justices of the Peace sit in lieu of one Magistrate. Justices of the Peace are political appointments who are recommended by the government.

The Chief Justice is also looking to attract Magistrates from outside Sierra Leone, possibly from other Commonwealth countries.⁵⁰ The Chief Justice noted the fact that development projects by the World Bank and others are often loath to pay for salaries. Likewise, the Attorney General's office is severely understaffed: it should have 14 prosecutors but has only 7, most of whom are based in Freetown. (In the Magistrates courts there are police-prosecutors.) Some civil society groups gave negative feedback on the Department of Public Prosecutions, commenting that they are understaffed and lose files.

In his meeting with us, the Chief Justice stressed the lack of basic infrastructure and needs in this area (such as the need to computerize systems of information storage and filing). Judges still take notes in longhand and are therefore less able to observe witnesses' demeanor. The High Court has not had a functioning library since 1990. DFID and UNAMSIL have recently improved the physical infrastructure of the court buildings in Kabala, Port Loko, Lungi, and Miamba. DFID has also refurbished the main court in Freetown. They have also invested in furniture and contributed equipment such as

⁴⁸ Judge Gelaga-King further told us that the judiciary is often slandered by the press and that in his view journalists must be more responsible if the image of the judiciary is to be improved. Another interviewee remarked that the pride of the judiciary has been hurt further by the establishment of the Special Court.

⁴⁹ Chief Justice Timbo writes in his paper: "Since my appointment as Chief Justice I have myself made frantic efforts to lure especially some of the senior members of the Bar into the bench. Regrettably, all my endeavours have proved futile. Of course, I do understand the reason for their reluctance. Even the young do not show any interest in the judiciary."

⁵⁰ Likewise, the Attorney General hopes that the Commonwealth will be able to provide judges and prosecutors. Judge Gelaga-King, now a judge on the Special Court, suggested the recruitment of some English judges to rehabilitate the senior courts and raise standards that would hopefully result in competent and well-qualified lawyers joining the bench.

audiotapes. However, one official described these efforts as “a cosmetic approach to an endemic issue” and said that justice continues to be absent in the provinces.

The law- statutory and common: The substantive law of Sierra Leone is found both in statutes and in the common law. Some of the English statutes were incorporated into Sierra Leonean law wholesale during the colonial days and have not since been reviewed.⁵¹ There are hardly any pretrial procedures and no procedures for discovery. Main arguments and authorities are submitted at the same time. Most courts in Sierra Leone give reasoned judgments, with the exception of some Magistrates Courts that have summary jurisdiction. There has been no law reporting since 1974. People are therefore citing case law in court that has not been reported (only a single copy will exist, in the Registry of the Court of Appeal, but one must know about it to ask for it).

The law - customary: Large areas of provincial Sierra Leone are not subject to the reach of the formal law and paramount chiefs mostly deal with civil disputes through the application of customary law.⁵² The customary courts are not supposed to deal with more serious criminal offenses, such as rape and murder. They fall under the Ministry of Interior, rather than the Ministry of Justice. Barristers have no rights of audience in customary courts. There is a right of appeal from customary law to the Magistrates Court. In such cases, two assessors (experts in customary law) assist the Magistrate. The Magistrate applies common law in the resolution of these cases and they can be appealed all the way up to the Supreme Court. Some have raised the possibility of codifying customary law. There are, however, considerable concerns regarding the shortfall of customary law in terms of human rights standards. Some go so far as to say that the discriminatory application of customary law, which is regionally variable, was a root cause of the war. Codification exercises may attempt to instill some of these standards.

⁵¹ A. Renner-Thomas, *The Case for More Substantial Law Reform in Sierra Leone*, Sierra Leone Law Review [2000], Vol. 1, No. 1, p. 1.

⁵² For an excellent assessment of the customary law system in Sierra Leone, see National Forum for Human Rights' Report, *The Law the People See—The Status of Dispute Resolution in the Provinces in Sierra Leone in 2002*, written by Owen Alterman, Aneta Binienda, Sophie Rodella and Kimyia Varzi. The report recommends that both customary and common law mechanisms of dispute resolution should be built up; that the relationship between these two systems should be systematized; and that customary law should increase in transparency and be de-politicized.

ANNEX 2: Other Stakeholders—Sierra Leone Justice Reform

The following other law reform activities are currently taking place in Sierra Leone aside from the Legacy Project. The main donor actors in Sierra Leone on legal reform are DFID, the UNDP, and UNAMSIL. The descriptions included here are exemplary rather than exclusive.

Comment [B06]: Not clear why legacy project appears here.

DFID/World Bank Safety, Security and Access to Justice Project

DFID originally started out by running a small, three-year project of £2.2 million, directed by Roland Wright and managed by the British Council, with a steering committee comprised of the Chief Justice, Administrator, Registrar General and Attorney General, known as the “Law Development Project.” This project has sought to support the Law officer’s department (state counsel and customary law officers), the judiciary, and the state registration department for land, death, and marriage.



This project has renovated the Central Court, refurbished Magistrates and High Courts in Bo and Makeni, and is building a dual purpose High and Magistrate’s Court in Kenema. It has also appointed a legal draftsman, Jacob Aryee, and has allowed Dr. Peter Tucker to work on customary law issues. The project has appointed the Bar Association to review and publish law reports⁵³ and has installed court recording equipment in some courts, revamped all the archiving services of the three sections, and set up committees to look at certain pressing aspects requiring judicial reform, including the treatment of women and children by the courts and establishing standards for controlling housing rentals. Finally, it has started a pilot project to tackle the speed at which trials are conducted through small incentive payments to judges, magistrates, and court officials.⁵⁴

Subsequently, DFID and the World Bank started the process for designing a much larger initiative which takes an integrated, sector-wide approach to safety, security, and access to justice, and which will cost about \$50 million (described in their July 2002 report, “Sierra Leone: Report on Preliminary Justice Sector”). The World Bank is no longer involved. The project is intended to include the police force and prison services as well as the legal sector. At the moment, a task force made up of all the relevant institutions and civil society, is looking at issues and linkages.

Comment [B07]: When?

British Council Deputy Director Honor Flanagan is presently overseeing the project and a DFID judicial officer will be on the ground shortly to examine existing projects and establish a comprehensive program. Additional assistance will be required for project design and it is likely that DFID will put it out to tender. The project will probably

⁵³ Sierra Leone has not collated common law opinions for public use and legal precedent since 1974.

⁵⁴ DFID will hopefully  hve this. Sierra Leone trials are notoriously long and are frequently postponed up to 10 or 20 times. Dr.  had discussed a project that would encourage judges and lawyers in specific cases to expeditiously complete their trails. Judges would be rewarded for serving on the project. The hope is that the success of the pilot jurisdiction would increase the community’s interest in reforming the rules of evidence so that more cases would be completed more quickly.

continue with some work already started, such as building courts or equipping them.⁵⁵ However, it will require the institutions to work out “low cost / no cost” solutions and will have at its basis the needs of the poor and improving their security, safety, and access to justice.

As the DFID initiative is so large, other major donors, such as the EU and USAID, are not involving themselves in legal reform in Sierra Leone. The EU has concentrated on governance and is interested in strengthening certain accountability mechanisms such as the Anti-Corruption Commission and nongovernmental oversight mechanisms in civil society.

UNDP Training of the Judges

UNDP has undertaken a general access to justice and expansion of the formal law project, which includes some rights-awareness raising, affirmative action for women and children, access to political rights in local governance, and strengthening of institutions at the local level (e.g., by having elections of paramount chiefs, as those recently conducted). One aspect of this is to increase the supply of formal justice by seeking reform to customary law and by appointing Justices of the Peace (JPs). UNDP, in conjunction with the Chief Justice, conducted a three-week training of these laypersons, including modules on evidence, civil and criminal procedure, human rights, customary law, and the Special Court and TRC. The law school was in charge of the curriculum for this program. This training was for those already serving, and more JPs are expected to be appointed later (comprising a total of about 300). Clerk-bailiffs also participated in the training.

UNAMSIL Human Rights Section

UNAMSIL Human Rights section has trained police, sponsored a two-day workshop to coordinate actors in the justice field, and supported the implementation of prison reform. It has also convened at least two large conferences on the rule of law in Sierra Leone in 2001 and 2002.⁵⁶

⁵⁵ For example, the Sierra Leone justice system does not employ court reporters or use tape recorders; instead, the court relies on judges to write in longhand during the court session. This creates several problems, which include increased length of trials, the possibility of judicial impropriety (and subsequent difficulty in appealing based on a record that a judge wrote him or herself) and an often inaccurate or incomplete summary of facts elicited in the testimony. DFID has attempted to ameliorate this problem by including tape recorders in pilot courtrooms. However, according to national judicial officers, problems remain because even with the tape recordings, judges still insist on reporting in long hand. In addition, there is no process to monitor the management of the tape cassettes or consistently transcribe them.

⁵⁶ The papers presented at the first conference were published by the Sierra Leone Bar Association and No Peace Without Justice and UNAMSIL in a volume entitled “*Plea for Justice: Voices from Sierra Leone.*”

ANNEX 3: Trip to Makeni

Our day-trip to Makeni was a very sobering observation of the differences in access to justice in the provinces as opposed to Freetown. It is no exaggeration to describe the two as different countries (which corresponds with the colonial legacy, which was essentially restricted to Freetown). The lack of government presence in the provinces is startling. Later we learned that there is one lawyer in Bo, one in Kenema, and none in Makeni.

There is one Magistrates Court in Makeni with a single Magistrate (Shyllom) who covers a number of districts and only spends a week per month in Makeni. He has a backlog of about 30 cases and is usually able to handle about five or six per day.⁵⁷ Prosecutions are conducted by the police and most criminal cases come directly from the police (as opposed to customary courts).⁵⁸ There is some representation in the form of a paralegal provided by LAWCLA and sometimes lawyers from LAWCLA come to do some cases; but most accused are not represented and hence represent themselves. The registry is not located in Makeni, but in Freetown. The court building was refurbished by UNAMSIL and was in good shape (although the judge's room lacked ventilation and was unbearably hot). A new prison block was also being built.

There are eight Justices of the Peace in Makeni, and we met with two. One of them, a woman named Madam Baibetoh, spoke forcefully in favor of the Special Court and against the scourge of corruption. She also recalled with great satisfaction the training that UNDP had provided and said she had learned many useful things and would like more training (the second JP we spoke to concurred with this desire). A second Justice of the Peace also spoke in favor of the Special Court and said that families of victims have expressed their appreciation for the Special Court, although they prefer material restitution. He also spoke of the need to create links between the Special Court and local courts, and that people's observations of the Special Court would give them experience of how to deal with their own courts.

The local police headquarters seemed to be working and well organized. Complaint mechanisms and a capacity to investigate seemed to be in place. The police officer we spoke to was articulate and talked about some of the dilemmas facing transitional justice in Sierra Leone and the impossibility of forgiving and forgetting in light of the scale of the violence.

A. Perceptions of the Special Court in Makeni

The Magistrate's clerk in Makeni, Mustafa Kargbo, said that in general people in the area were not well informed about the Special Court, but that perhaps some would come with questions once the Court starts its trials. Much of what people know about the Court comes from radio, particularly Talking Drums Studio programs. Several people in

⁵⁷ We were told that salaries are very poor for Magistrates: about 200,000 Leones a month (which is about \$100).

⁵⁸ There is also a customary law office in Makeni.

Makeni spoke of fears people had about the Court and opposition to it (Makeni is a former RUF stronghold), including the fact that some fear that the Court will “trap them down.” There was some discontent on behalf of the district officer in Makeni that the Special Court had not gone through its auspices to conduct outreach in the province. The local police officer said that the police welcome the Special Court because they were often victimized in the conflict.

The Court will face considerable problems to spread word of its work to the provinces and to translate its procedures into something relevant to people whose only encounter with legal processes may be with the customary law. At times the Court may choose to sit away from Freetown (it already sat in Bonthe island for initial appearances). It is clear that the Court will be limited in what it can do in terms of outreach and will need external partners. For instance, it may consider engaging Magistrates and JPs to disseminate information about the Court in the provinces. Insofar as the Court is able to conduct two-way outreach via the Court Users Committee and District Resource Centers, these may eventually be used more generally for interaction between the public and the justice system.

ANNEX 4: List of Formal Meetings

- Special Court, Registry
 - Robin Vincent, Registrar
 - Mariana Goetz, Legal Officer
 - Wendy Hart, Assistant to Registrar
 - Georgia Totoro, Liaison with Government
 - Binta Mansaray, Outreach Coordinator
 - Mohammed Suma, Outreach
- Special Court, Office of Prosecutor
 - Tom Perriello, Legal Officer
 - Abdul Tejan-Cole, Legal Officer
 - Bruce McKay, Chief of Operations
 - Corinne Dufka, Human Rights Advisor and Investigator
 - Max Marcus, Investigator
- Law School
 - Prof. Tobuku-Metzger
 - Mr. Davies-Cole, Registrar
 - Judge Gelaga-King, Special Court Judge
- Special Court Working Group
- National Forum for Human Rights
 - Sheku Lahai, Executive Director
 - Paul James-Allen, Research Associate
- Amputee Association
- Toronto University / Coalition for Human Rights for Women During Armed Conflict
- Thierry Cuvellier, Journalist
- Legal practitioners (Senior Barristers)
 - Berthan Macaulay Jr.
 - J.B. Jenkins-Johnston
 - Reginald Fynn, President of Bar Association
- Attorney General (Mr. Eke Holloway)
- Chief Justice Timbo
- Sylvia Fletcher, UNDP Country Office
- Alan Doss, Deputy SR SG
- Peter Chaveas, US Ambassador
- Honour Flannigan, DFID / British Council
- Roland Wright, DFID
- Rene Mally, EU
- Bert Theuermann, UNAMSIL Child Protection
- Bertrand Njanja-Fassu, UNAMSIL, Child Protection
- Ahawanou Agbessi, UNAMSIL, Human Rights
- Adrian Hall, DFID/ UK police
- Raphael Abiem, UNAMSIL Human Rights Section (Special Court)
- Comfort Ero, International Crisis Group

Comment [B08]: DFID/UK Police. I would double-check his name too, I think Andrea has his card. He definitely is not with CIVPOL

- Campaign for Good Governance
 - Olayinka Creighton Randall, Coordinator
 - Lavina Dumbuya
 - Valnora Edwin
- No Peace Without Justice
 - Alison Smith, Country Director
 - Tom Longley
- Special Court Working Group
 - Kabba Sesay (CCYA)