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Research Article

Beyond the Trenches of International Criminal Justice: The Legacy of the Special Court of Sierra Leone

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Abstract

The Special Court for Sierra Leone (SCSL) was established on January 16, 2002, pursuant to an agreement signed by the United Nations (UN) and the Government of Sierra Leone with a mandate to prosecute persons who bore the greatest responsibility for serious crimes which were committed during the ten years armed conflict in Sierra Leone. The court officially closed in December 2013 and transferred its residual functions to the Residual Special Court for Sierra Leone (RSCSL). The RSCSL and its partners organized a legacy conference in Freetown, Sierra Leone, the seat of the Special Court, from 25-28 February 2024 to "Raise Awareness of the Contributions of the Special Court for Sierra Leone to International Justice, Peace and Security". The conference was attended by over 300 participants across the continent of Africa and different parts of the world. Participants included judges, legal experts, victims across legal cultures in Africa and other courts and tribunals; representatives of international organisations, the diplomatic corps, lawyers, politicians, academics, present and former staff of the court. The Sierra Leone Truth and Reconciliation Commission which operated side by side the SCSL and cultural mechanisms of justice were present at the conference. The Special Court experiment was a mix-bag of sterling successes, institutional challenges and innovations. From a conceptual and organizational perspective, the court set achievable standard-setting objectives without adequate resources to realize them. Nevertheless, the determination of victims and affected communities, often mischaracterised in some conflict situations as faceless actors in the theatre of war, led the court to success. This article highlights some of the challenges which the court encountered, successes which were recorded, innovations which were made, and the promises of hope that lie ahead. The paper examines African situations and victims 'whose international criminal justice? problem which has come up in different forms before international criminal courts and tribunals. The paper discusses the problem and the solution which was provided by the Special Court and highlights the complementarity role of the Truth and Reconciliation Commission of Sierra Leone and cultural mechanisms which enhanced popular participation, collaboration, success and the credibility of the court.

Keywords

Africa, Agreement, Complementarity, Court, Justice, Mechanism, Special, Victims

1. Introduction

The Republic of Sierra Leone was engulfed in a brutal war between the Revolutionary United Front of Sierra Leone (RUF) led by Corporal Foday Sankoh and the Government of Sierra Leone under the leadership of President Momoh from

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1991 to 2002. The RUF was aided in its war effort against the government of Sierra Leone by the National Patriotic Front of Liberia (NPFL) led by Charles Taylor. Soon after the start of the war, the then President of Sierra Leone, President Momoh was overthrown by Captain Valentine Strasser of the Sierra Leone Army in March 1993. Captain Strasser formed a governing junta, so-called the National Provisional Ruling Council (NPRC). Nevertheless, the RUF escalated the war and seized more territory, including the diamond fields of Sierra Leone.

Captain Strasser was overthrown in January 1996 by Brigadier General Julius Maado Bio who allowed elections to hold despite calls by the RUF for a delay. Ahmed Tejan Kabbah won the elections and became President of Sierra Leone in March 1996. The RUF pressed on with the war, leading to the organisation of peace talks in Abidjan facilitated by President Houphouet Boigny of Cote D'Ivoire between the Government of Sierra Leone and the RUF.

The peace talks were expected to end the war but failed to do so. This led to yet another coup d'état which was led by Johny Paul Koroma, a major in the Sierra Leone Army in May 1997. Johny Paul Koroma and the junta which brought him to power formed the Armed Forces Revolutionary Council (AFRC) and invited their erstwhile adversary the RUF to join the AFRC governing council.

The AFRC/RUF governing arrangement was opposed internationally and internally. Elements of the Sierra Leone Army who were loyal to President Tejan Kabbah and local militias under Chief Hinga Norman, a member of government under President Tejan Kabbah formed the Civil Defence Forces (CDF) also called Kamajors and mounted a ferocious campaign against the AFRC/RUF.

To protect and preserve their concomitant economic and regional security interests, regional and international actors intervened militarily in the conflict. Economic Community of West Africa (ECOWAS) deployed its peace-keeping force, Economic Community of West Africa States Monitoring Group (ECOMOG) to intervene and restore the government of President Tejan Kabbah; which it did in March 1998. ECOMOG was also given a mandate to safeguard peace and security in Sierra Loene to enable ECOWAS to attempt a negotiated settlement to the armed conflict. Nevertheless, the war continued with unprecedented scale of violence. The ferocious intensity of the war claimed over five hundred thousand lives and devastated the national economy of Sierra Leone.

In July 1999, a peace accords so-called the Lome Peace Accord was negotiated and signed between the Government of Sierra Leone and the RUF. In October 1999, 3 months after the Lome Peace Accord was signed, the United Nations Security Council (UNSC) established the United Nations Assistance Mission in Sierra Leone (UNAMSIL) with a mission to assist in the implementation of the Lome Peace Accord.

Taku [18] writes that UNAMSIL oversaw the disarmament of armed RUF combatants and the establishment of the Special Court for Sierra Leone (SCSL) in October 20002. The Special Court [30] fulfilled its mandate between 2002 to 2013 when it was closed and succeeded by the Residual Special Court for Sierra Leone (RSCL).

On 26-28 February 2024, the Residual Special Court organised a legacy conference for the Special Court in Freetown to "Raise Awareness of the Contributions of the Special Court for Sierra Leone to International Justice, Peace and Security".

Charles Taku, [2012] Contextual Foundations of International Criminal Jurisprudence: Selected Jurisprudence (Author House, Bloomington IN p xix.

There are aspects of the judicial journey of the SCSL which came under the scanner of national and international actors during the legacy conference from 26-28 February 2024 in Freetown Sierra Leone. While the momentous contributions of the Special Court to international justice were affirmed and acclaimed, questions about the fate and future of its legacy are awaiting solutions from international and regional guarantors of the international role of law, international peace and security. This paper highlights these contributions of the SCSL to international justice and the legacy it established. The paper identifies the lessons learnt from the Special Court hybrid justice experiment and potential risks to the legacy by an emerging world order of impunity which is threatening to eviscerate Post-World War II international justice, peace and security architecture within which the Special Court for Sierra Leone operated.

1.1. Jurisdiction of the Special Court

The Secretary General of the United Nations in his report for the establishment of the Special Court for Sierra Leone, specified the mixed international character of the court. UN Security Council established the Special Court for Sierra Leone by Resolution 1315 of October 4, 2000, upon receiving the Secretary-General's report with the following mandate:

To prosecute persons who bear the greatest responsibility for the commission of crimes against humanity, war crimes, and other serious violations of International Humanitarian Law as well crimes under Sierra Leonean law within the territory of Sierra Leone.

The statutory framework of the court contains provisions which define the parameters and limitations of its competence. The statute protected UN international peace-keeping personnel from prosecution under article 1 (2). The statute grants concurrent jurisdiction to the Special Court and National Jurisdictions in article 8(1) but asserts the primacy of the Court over national jurisdictions.

According to Malone [12, 18, 30] the Secretary General of the UN was concerned that the war situation in Sierra Leone represented a major test for United Nations Security Council's approach to complex peace operations and made a request of the UNSC for the establishment of the Special Court for Sierra Leone. On the authorisation of the UN Security Council, the

Secretary General of the UN and the Government of Sierra Leone entered into a formal agreement [30, 31] in October 2000 to establish the SCSL as an independent body which although the UNSC had no control over the Court," it had to deal with the political consequences of the court's decisions as they impact on the long-term durability of peace"

The United Nations Secretary General suggested that those most responsible for the crimes committed in Sierra Leone should include political or military leadership who ordered the crimes to be committed but could also apply to others farther down the ladder of the chain of command depending on the gravity of the crimes committed. The UN and Government of Sierra Leone agreed that the start date of the jurisdiction of the court was November 1996 marking the conclusion of the Abidjan Peace Agreement.

The jurisdiction of the court was limited by the requirement of gravity and scale of the crimes and the responsibility of the participants.

On the question of jurisdiction, Malone notes that, as of July 1999, the Special envoy of the Secretary General of the UN Francis Okelo appended a disclaimer to his signature to the Lome Peace Agreement that, the amnesty granted to the RUF did not apply to the crimes coming within the jurisdiction of the SCSL, David Crane, the Prosecutor indicated that, he would not be bound by political considerations in deciding who to prosecute. He eventually indicted the following:

RUF: Foday Sankoh leader of the RUF (dead), Sam Bockarie alias Mosquito, deputy leader, (dead), leader Isa Sesay, interim leader, Morris Kallon deputy interim leader, and Augustine Gbao RUF Security Chief.

AFRC: Major Johny Paul Koroma (unknown whereabout), Alex Tamba Braima alias Gullit (dead), SAJ Musa (dead), Ibrahim Bazzy Kamara, Santigie Borbor Khanu alias 55.

CDF: Chief Hinga Norman, deputy defence minister under President Tejan Kabbah and leader of CDF (dead), Monina Fofana, and Alieu Kondewa.

A sealed indictment against Taylor was presented on 7 June 2003.

Malone, D et.al, [2004] The UN Security Council: From the Cold War to the 21st Century (Project of the International Peace Academy, Lynne Rienner Publishers 531-532.

1.2. Aspiration and the Record of the Special Court

The SCSL was ambitious in its goals but short on realistic resources to attain them. Considering the limited number of accused persons which the court targeted and charged, the effect of these provisions on the development of a national reservoir of knowledge and experience on the prosecution of mass atrocity crimes was limited. It did not inspire a national policy of support for training and continuing education for national judicial actors to try such cases at the end of the mandate of the Special Court. A robust discussion by Judges, academic, civil society and other judicial actors of the national jurisdiction of Sierra Leone during the legacy third panel conference discussions passionately and critically examined this matter.

It is regrettable that despite significant successes of the Special Court, they did not sear into the operations of the national courts of Sierra Leone. This was a key objective of the treaty establishing the Special Court which was not achieved. The institutional dialogue which should have occurred between the national jurisdiction even in the form of judicial cooperation did not occur, making the court so close yet perceptibly distant. This created cultural anxieties which Tim Kelsall [20] reasoned, stemmed from the fact that international criminal law is Western in origin from which its ethical tenets flow.

Tim Kelsall et.al, [2009] Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone (Cambridge University Press 26.

Malone [12] explains this western cultural impulse citing the statement of Legal Scholar Scholar Drumbl that "the transplantation of domestic criminal law into international context is based on the pernicious fiction that Western justice modalities are value neutral and universal, when they are in fact deeply culturally contingent.

The statutory framework of the court did not encourage cross-cultural intercourse, which was a key objective of the court and so did not inspire a national policy of support for training and continuing education for national judicial actors to try such cases at the end of the mandate of the Special Court.

The statute, Article 14 (2) gave the entire conference of Judges the mandate to amend rules of Procedure and Evidence [30] and to be guided by the Criminal Procedure Act 1965 of Sierra Leone only when there is need to adopt additional rules.

This provision was of limited effect, considering that article 14(1) already adopted the rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (ICTR) for the court, mutatis mutandis. The International Criminal Tribunal for Rwanda was an ad hoc tribunal which was established by the UN Security Council Resolution 955 of (1994) and unlike the Special Court, was not a treaty-based court or tribunal.

The adoption of the Rules of Procedure and Evidence of the ICTR carried symbolic weight regarding the conduct of judicial proceedings before the court. Those rules were established by ICTR Judges, who were often called upon to interpret them in judicial proceedings before them. Judges of the Special Court, therefore, were expected to be guided by these rules and their interpretation. The amendment clause in this provision was of limited use. This explains the need for additional amendments which were to be guided by Criminal Procedure Act 1965 of Sierra Leone. No additional amendment which were guided by the Criminal Procedure ACT of Sierra Leone was made during the entire mandate of the Special Court.

The Statute of the Special Court [18, 30] states at Article 22 that imprisonment may be served in Sierra Leone but envisaged the enforcement of sentences with states which had concluded agreements with ICTR or the International Criminal

Tribunal for the Former Yugoslavia (ICTY) or to other states. The statute states that conditions of enforcement shall be bound by the law of the enforcing state and in accordance with the duration subject to article 23 of the statute.

Pursuant to this provision of the statute, all the Special Court convicts are serving their sentences in foreign countries. Charles Taylor is serving his sentence in England while Isa Sesay, Morris Kallon, Ibrahim Bazzy Camara, Santigie Borbor Khanu are serving their sentences in the Mpanga Prison in Rwanda.

Statute of the Special Court for Sierra Leone' http://www.rscsl.org/Documents/scsl-statute.html accessed 1 October 2025; Taku (n 1) 469, 476.

2. Court of First Impression

The Special Court for Sierra Leone may be characterised as a court of impression which has established impressive international standards and benchmarks. The agreement creating the court between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000 was a pacesetter in international treaty law. Article 1 of the Law of Treaties [4] states that "the present convention applies to treaties between states". Ian Brownlie (ed), Basic Documents in International Law (4th edn, Oxford University Press) 389.

The United Nations is not a state. It is a multilateral treaty, whose membership covers most of the countries of the world. The treaty establishing the Special Court between the UN and the Government of Sierra Leone was an important addition in treaty making between states and international organisations. The court established by the agreement was legitimate and fully realised its mandate effectively and expeditiously.

The Sierra Leone -United Nations treaty creating the Special Court for Sierra Leone as a mixed jurisdictional international treaty, defiled colonial and neocolonial taboos. Its successful implementation and positive outcome astounded them. The lessons learnt and new jurisprudence established are monumental contributions to the development of international justice and international law. Jeremy Levitt et.al [6] submit that "Africa states were born out of a successful normative challenge to the old order of legitimate colonialism that established a new norm of self-determination". This new norm of self-determination has impacted and changed the face of international law in ways which have mystified colonial mindsets, their entities indicators. Levitt complains that this reality is still illusive to people steeped in colonial and neo-colonial mindsets whereby, "in international law and studies, Africa is viewed as a pariah, a basket case not a market".

Jeremy Levitt (ed) [2010] Africa: Mapping New Boundaries in International Law, Studies in International Law, Hart Publishing 68.

Brian et. al, [1, 18] submit that "the political dimension of international justice is undeniable. The creation of international criminal courts, ad hoc and international criminal tribunals has been the result of political will, and whether they have been more or less successful, has depended on the political support". The creation of the Special Court for Sierra Leone would not have been possible without the political will of the Government of Sierra Leone and the UN and the support of regional and international partners.

It is remarkable that the idea of establishing the Special Court was midwifed at the Lome Peace talks in which regional leaders achieved a negotiated peace agreement between the Revolutionary United Front for Sierra Leone and the Government of Sierra Leone. This collaborative effort by regional leaders through ECOWAS, the UN and the Government of Sierra Leone to bring peace and transitional justice was a commendable achievement worth celebrating.

It is important to note that trials at the Special Court took place in the national territory of Sierra Leone close to victims and affected communities. This allowed for popular participation in the trials. Trial proceedings provided a platform for victims to provide accounts of their victimisation and contributed to national healing and reconciliation.

Justice at the Special Court was not selective and was not politicised. Justice at the Special Court, which targeted perpetrators from participating armed groups in the conflict. This conferred a significant vector of credibility and legitimacy to the court. This was a remarkable contribution to the fight against impunity through international justice.

This was a strong affirmation of the fact that, for justice to be credible, transparent and legitimate, it must be all inclusive; it must be depoliticised and must serve the interest of all. Indeed, it must tame the ghost of impunity and assert the supremacy of law without discrimination and enthrone an enduring rule of law culture for generations and posterity.

The unfortunate tag of victors' justice has been labeled on some international criminal courts and tribunals from Nuremberg and Tokyo Military Tribunals to the International Criminal for Rwanda. Victors' justice prioritises politics and retribution over fairness and equality. These are vectors of impunity which further conflicts and criminality.

In the case of ICTR, the Security Council [33] in Resolution 1534 (2004) at its 4935th meeting on the March 26, 2004, resolved and reaffirmed in Article 2 "the necessity of trials of persons indicted by the ICTR and reiterates its call on all states, especially Rwanda, Kenya, and the Democratic Republic of the Congo to intensify cooperation with and render all necessary assistance to the ICTR, including investigating of the Rwandan Patriotic Army…" This resolution was not implemented because the Rwanda Patriotic Army was not prosecuted despite the atrocity crime which it committed. The tribunal prosecuted only perpetrators from one party to the conflict. The International Tribunal for Rwanda therefore earned the victors' justice label of impunity and politicised justice.

Jenia Iontcheva Turner [5] explains politicised justice as follows: "The "Legal" and "Political" conceptions of international criminal trials are ideal types. To some degree all law is

political……when trials move further along the political spectrum, defendants' rights suffer. ……. Even trials which are exclusively political, there are instances in which political and adjudicative purposes clash, and one must prioritize above the other".

Jenia Iontcheva Turner [2008] Defence Perspectives on Law and Politics in International Criminal Trials' (Virginia Journal of International Law 543) 48.

Tensions, perceived or alleged because of selective victor's justice, are triggers for conflicts in which atrocity crimes are often committed. Selectivity of trials and victors' justice at the ICTR have been identified as triggers for ongoing conflicts and mass atrocity crimes in the East Democratic Republic of Congo (DRC) by Rwanda and its proxy M23 rebel forces. Rwanda has justified the incursions in the territory of the DRC on its alleged right of pursuit of the Front for the Liberation of Rwanda (FLDR), which it alleges are remnant of Interahamwe militia responsible for genocide which took place in its territory in 1994. This explanation is not persuasive by the fact that the alleged Interahamwe combatants from 1994 would be too old to pose a military threat to Rwanda. Although the UN Security Council [34] has condemned these crimes, the incursions and armed attacks have continued. They have set the entire region in armed conflict for the last thirty years after the armed conflict and trials at the ICTR. Selective justice and unaddressed historical wrongs, therefore, have created an impunity gap which is driving the conflict and atrocity crimes bordering on genocide; leaving millions of dead, devastating Eastern DRC and making Great Lakes subregion of Africa significantly unsafe.

Unlike the ICTR, International Justice at the SCSL was brought to the doorsteps of Sierra Leoneans through an effective and efficient outreach program. The outreach program of the Special Court did not only bring justice to the doorsteps of every Sierra Leonean, it brought every Sierra Leonean to the centre-stage of international justice.

The founding treaty of the court clearly defined the mandate of the court and identified the category of perpetrators who were targeted for prosecution. One of the decisions that arrived at the Lome Peace Agreement was amnesty for RUF fighters who did not bear the greatest responsibility for atrocity crimes. The Lome Peace Accord established a Peace Commission and other justice accountability mechanism to bring justice, reconciliation and national healing to the people of Sierra Leone. Through these platforms, people were able to contribute to the establishment of credible alternatives to war and atrocity crimes.

The President and Government of Sierra Leone granted amnesty to many perpetrators thus, widening paths to justice which are often unavailable to other conflict situations in Africa and other parts of the world.

The Truth Commission brought together victims and perpetrators and provided an opportunity for perpetrators to acknowledge their crimes and seek forgiveness. The symbolism of records of the Truth Commission and symbols of Justice at the Special Court lying side by side in the Peace Monument in Freetown, is a powerful testament of the powerful message and spirit of peace and justice from Sierra Leone to the world.

Sierra Leonean traditional and cultural mechanisms permitted members of affected communities to perform traditional rites of cleansing and atonement within their local communities for individual and collective expiation and healing. These forms of restorative justice provided a majority of victims in Sierra Leone to rebuild their lives and their communities. It facilitated their living together in the same communities once again without fear, bitterness and vengeance and with hope for a future in peace.

The activation of these mechanisms of justice; traditional and cultural, Truth Commission, justice at the SCSL provided fundamental paths to justice with enduring effects in Sierra Leone, in the subregion and other parts of the world.

3. Socio-political Solutions

Regional leaders at the Lome peace talk, the UN and the Government of Sierra Leone did not outlaw the RUF and did not characterize it as a terrorist organization. An important outcome of the Lome Peace Talk was the transformation of the RUF into a political party (RUFP) which was implemented with UN support.

The Special Court did not label RUF as a criminal organization. Before the transfer of Isa Sesay and Morris Kallon to Rwanda to serve their sentences, on their request, I obtained the permission from the Registrar of the Special Court to bring in Eldred Collins an erstwhile spokesperson for the RUF during the armed conflict, to take over leadership of RUFP from Isa Sesay. I thereafter visited the head office of the RUFP at Kissi Eastern Freetown and found over 2000 members, mainly young people present and waiting for me. The number of young militants who were present on that occasion was a clear indication of the wisdom in not outlawing the RUF but helping its leaders to transform it into a political party.

3.1. The Undaunted Spirit of Justice.

Lennox Hinds [10] who was the lawyer for Nelson Mandela for twenty years in the United States of America (USA) and a respectable international lawyer, writes that "whenever justice is vested in human's there exists the possibility of abuse."

Lennox Hinds [1978] Illusions of Justice: Human Rights and Abuses in the UN (2nd edn, University of Iowa 336.

The Special Court did not abuse justice by organizing victors' justice or criminalising the RUF. United Nations, regional leaders and the Government of Sierra Leone did not seek vengeance, they sought accountability through justice. They were aware of the limits of international justice and its illusive nature, the abuses it but decided to pursue it with the hope that taking the victims and the affected communities as

the focus of justice, significant results might be attained.

Joy Robert Nash [7] reasons that "justice like the coveted Holy Grail, is an elusive and fragile goal, compromised in endless betrayals, by the venal and the vindictive, where one strongly convicted person after another have been sent to prison, even to execution. In the modern era with its burgeoning population, police and judicial systems have been swamped with increasing crimes, and subsequent trials. By the 20th century, meting out justice became an industry."

Joy Robert Nash [2008] I Am Innocence: A Comprehensive Encyclopedic History of the World's Wrongly Convicted Persons: From Ancient Times to the Present: How Hate, Revenge, Lunacy, Deception.

These abused occurred at the ICTR where persons who were charged and acquitted and persons who had completed their sentences were under uncertain restricted status in Niger Republic under a tenuous agreement between the UN and Niger and are under continued threats by Rwanda. They are presumed stateless and not free although acquitted or have served their sentences.

Steve Crawshaw [17] recalls that "the past year, the dangers of a pick and choose approach to justice which some governments still seem to determine to maintain, have become more glaring than ever.Prosecutions of the powerful are not a cure all. They do not end the pain of the crimes committed. They do not wave a magic wand and create world peace. Justice can however provide at least the beginnings of a framework for stability. Conversely, lack of justice and the festering of resentments which result from that sense of injustice, provide fertile soil for insecurity and renewed cycles of violence. Three decades after the Rwanda armed conflict and selective victors 'justice at the ICTR ha not brought peace to Rwanda and the Great Lakes region. It has kept the wounds of conflict and incomplete justice wide open and encouraged impunity. The situation in Sierra Leone is different because all the parties to the conflict were investigated and prosecuted and alternative forms of justice encouraged and implemented.

Steve Crawshaw [2025] Prosecuting the Powerful, War Crimes and Battle for Justice, The Bridge Street Press, An Hachette UK Company 332.

Robert Lyons [16] was granted access to some major Rwanda prisons populated by thousands of Hutu alleged genocide perpetrators in Rwanda and published and asked, the following questions: The Rwanda Genocide raises some very difficult and important questions. How did it happen? What kind of history would give rise to this kind of violence? Why did the world look the other way when confronted with the kind of violence that many countries had pledged to "never happen again?". How can Rwanda rebuild? How can Rwanda reconcile? The same questions were asked at the ICTR for the purpose of selective justice which did not satisfy all victims and did not contribute to peace, truth and reconciliation.

Robert Lyons [2006] Intimate Enemy, Images and Voices of the Rwanda genocide, Zone Books New York 13.

The selective justice [32] by the ICTR, the Gacaca Proceedings in Rwanda, the Rwanda justice system and universal jurisdiction targeting Hutu, including persons who were not born in 1994 for the expansive crime of alleged genocide denial has driven many Hutu into exile, fueled violence and encouraged Rwanda in its impunity and aggression in the Great Lakes Region of Africa.

Understanding the Threat of Victor's Justice: The Case of ... (Columbia Library Journals) https://journals.library.columbia.edu/index/sjshr

The establishment of the Special Court targeted perpetrators who bore the greatest responsibility for serious crimes and not the cultural, political or ethnic composition of alleged perpetrators. Specific procedures for the supervision of sentences were put in place and enforced. The Special Court has facilitated the return of its convict Allieu Kondewa who completed his sentence to his community and his family. Fofana and Augustine Gbao [22] who was granted early release were brought back to their communities to fulfill the conditions of their early release under the supervision of the Registry of the court.

Prosecutor v Augustine Gbao (RSCSL-04-15-ES), Public Decision on Request for Review of Special Condition in Paragraph 83 Subparagraph (viii) of Decision of the President on Application for Conditional Early Release (21 July 2025).

The temptation to institutionalise hatred under the guise of justice came before the Military Tribunal in Nuremberg, Leon Goldenenshohn [9] an American Psychiatrist recounts the following conversion he had with Doenitz, a grand admiral commander in chief of the German Navy from 1943,

"Doenitz liked particularly the question Judge Biddle asked Justice Robert Jackson about how far the responsibility for criminal acts would go in the event the organizations were found criminal. Doenitz feels it is very dangerous to make these organizations criminal because so many thousands of people belonged to them, and every German had at least a relative belonging to the SA, SD, SS, and so forth. and so forth "You know what your General Clay said. He said that should this tribunal find these organizations criminal, he would immediately arrest 500,000 Germans. He said Justice Jackson answered that he did not intend for all members of these organizations to go on trial but that the leadership, and some individuals would be brought to trial"

Leon Goldensohn [2004] The Nuremberg Interviews: An American Psychiatrist's Conversations with the Defendants and Witnesses, ed Robert Gellately (Vintage Books, Random House Inc, New York) 4.

The International Military Tribunal in Nuremburg [23] decided on September 30, 1946, that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced".

Trial of the Major War Criminals before the International Military Tribunal (IMT), vol XXII, 477.

Victor Perskin [21] provides an insight account about how the impunity and belligerent conduct of Rwanda unraveled

right at the Security Council. Perskin writes that "Security Council members hoped that there would be unanimity on November 8, 1994, the day they planned to authorise the creation of the second ever UN war crimes tribunal. Yet Rwanda, the state most concerned with the question of justice had strong enough objections to cast the lone dissenting vote against the Council resolution that established the tribunal.

On the start side, the govern hoped that the earlier date of October 1, 1990, would enable the tribunal would indict Hutu suspects of planning the genocide in several years leading to 1994 massacres. On the end side, the government hoped that the shorter date July 17, 1994, would disallow tribunal prosecutions of RPF atrocities against Hutu civilians many of which occurred after July 1994.The Government won a partial victory because the Council retained January 1, 1994, but held firm on December 31, 1994."

Victor Perskin, [2008] International Justice in Rwanda and the Balkans, Virtual, Trials and The Struggle For State Cooperation, Cambridge 2008 p123, 161.

For members of the Security Council, the conduct of Rwanda should have sounded alarm bells to the Security Council about the prospects of Rwanda not cooperating with the court or pursuing violence with impunity and committing atrocity crimes against in the region. These prospects were predictable and occurred on the watch of the Security Council with no consequences. The result is that Rwanda has dragged out the rationale of pursuing alleged Hutu militias as justification for invading East Democratic Republic of Congo and looting its resources.

Thierry Cruvellier [19] who covered the tribunal for Hirondelle Newspaper and subsequently www.justice.info.com over two decades, writes that "By the time Louise Abor was appointed Prosecutor, an internal oversight investigation ordered by the UN concluded that the tribunal was a largely underperforming bureaucracy and the Government of Rwanda through Gahima declared that the tribunal should close down and the money used to run rehabilitation programs for victims, widows and orphans. In the alternative, he requested that the tribunal be transferred to Kigali with an autonomous prosecutor and not one for both ICTY and ICTR. He requested that Louise Abor should be dismissed or should be responsible solely for ICTY"

Nancy Armoury Combs [18] recalls at page 225 that former ICTR Spokesperson, Kingsley Moghalu described international criminal tribunals as "pursuing 'political justice'. Although political justice 'is a term which can bear different meanings in different contexts, it signifies at the most general level that political considerations influence key aspects of tribunal operations".

Nancy Armoury Combs [2010] Fact-Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions, Cambridge 225.

The legacy of the ICTR has revealed its politicised nature, which was not applicable to Special Court for Sierra Leone. The Special Court for Sierra Leone followed the path of wisdom, legality and fairness in prosecuting individuals not using the judicial mechanism of the court for a vengeful campaign of terror against the RUF and communities from which the accused came.

3.2. Innovative Approaches

The Special Court hybrid justice mechanism was innovative and the unlike Rwanda, Sierra Leone did not obstruct the business of the court or attempt to use the court for political purposes. The Special Court was aware that the law on criminal responsibility for categories of crimes against civilians has been developing since 1946 and therefore had to be innovative trying crimes which were committed within a specific cultural context. In 1946, crimes against humanity did not encompass a policy of persecution, repression, and murder carried out by a government against its own people. Nevertheless, the International Military Criminal Tribunals in Nuremberg and Tokyo [23] used their innovative judicial functions to establish jurisprudence which has overtime, found its way into the treaty regime of International Tribunals and Courts.

The Special Court was innovative in developing its jurisprudence on forced marriages, child soldering and age determination. It was culturally sensitive and painstakingly considered and incorporated cultural factors in the body of evidence which it received and conducted it proceedings with respect to other mechanisms while safeguarding its independence. The Special Court was confronted with significant fair trial issues which it resolved without compromising the integrity of the proceedings. It was innovative in its judicial function. The Military Tribunal in Nuremberg was a court of victory but proved that independent professional judges may place fairness above the politics of selectivity and vindictive justice.

A proponent of this innovative judicial function, US Supreme Court Justice Robert Jackson [23], the American Chief Counsel for the Prosecution at Nuremberg stated that "International law grows as did the common law, through decisions reached from time to time in adapting settled principles to new situations". Hence, he was not disturbed by the lack of precedent for such trials of individuals.

His equanimity was in contrast to the opinion of the Commission of 15, which was appointed by the Preliminary Peace Conference at the end of World War 1 which held that the German Kaiser and key officials of his government could not be brought to trial for starting the war, or for the violation of treaties guaranteeing the neutrality of Luxemburg and Belgium to which Germany was a party, and therefore, "no criminal charges can be made against the responsible authorities or individuals because there was no compulsory jurisdiction in an international tribunal" and because " a war of aggression may not be considered as an act directly contrary to positive law".

Report of 7 June 1945 from Justice Robert H Jackson, Chief Counsel for the US Prosecution of Axis War Criminals, (1945)

39 Am J Int'l L 1, 63, 178, 187, 264; see also Sheldon Glueck, 'The Nuremberg Trials and Aggressive War' (1946) 59 Harv L Rev 396, 397-98.

The Special Court was faced with a similar situation in deciding important evidential and legal issues which came before it for determination such as age determination in the cases of child soldering in situations where birth certificates were unavailable and parental evidence on the subject unavailable as well; and sex and gender crimes arising from the conduct on " bush wives" without criminalising different forms of marriages which are acceptable and legitimate in different communities in Sierra Leone but incompatible with Western forms of marriages. The Special Court for Sierra Leone was the first international court to established international jurisprudence on which the International Criminal Court (ICC) and other international courts have drawn inspiration to settle cases coming within their mandates.

3.3. Substantive Obligations

Like the International Military Tribunal in Nuremberg, the Special Court for Sierra Leone is significant for its decisions on law sources as on its substantive obligations.

Justice Robert H. Jackson [23] laid out the obligations of the Nuremberg Tribunal before the Military Tribunal in Nuremburg.in his opening statement on 21 November 1945. He reminded the judges of the obligation of fairness of the trials and the respect for the rights of the accused persons submitting, "Fairness is not weakness but an attribute of strength, we must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must commend itself to posterity as fulfilling humanity's aspirations to do justice".

The trials at the Special Court, despite the harshness of the sentences; with the harshest ranging between 40 years to 52 years on the accused and the additional pain of serving their sentences in foreign countries away from their families, the trials were deemed fair. The Court afforded victims a platform of hope, inspiration and the possibility of reclaiming and rebuilding their lives and established groundbreaking jurisprudence and precedents on the enlistment and recruitment of child soldiers and sex and gender-based violence.

The right to be tried in the language which an accused understands is a key factor in fair trials. This right is guaranteed by Articles 17(4)(a) of the Statute of the Special Court, Article 20(4)(a) of the Statute of the International Criminal Tribunal for Rwanda, Article 67(4)(a) of the Rome Statute and Article 13(3) of the International Covenant on Civil and Political Rights. The Special Court afforded this right to accuse people during trials.

John Floyd [8] who was counsel for Hassan Ngeze at the ICTR wrote at pages 142-143 of International Justice, Rwanda, Genocide and Cover Up, United Nations Media Trial, that, "Ngeze was arrested, tried and convicted because of the articles and cartoons that appeared in Kangura. the lack of translation hampered the defence of Hassan Ngeze throughout the trial. The tribunal translated just the copies which the Prosecutor required to prosecute Ngeze and refused to translate the rest on the grounds of lack of funds". Counsel wrote that he applied to the court for all the copies to be translated but the motion was denied for the reason of lack of funds. Meanwhile, the court found enough funds to translate selected copies which the Prosecution used to prosecute and convict Hassan Ngeze. John Floyd [2003] International Justice, Rwanda, Genocide and Cover Up United Nations Media Trial Kabuki Press, Inc, 1717 K Street NW Washington DC p 142-143.

Dominic Ongwen [24] suffered the same fate at the International Criminal Court (ICC). Article 50 of the Rome Statute states that the official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish and Article 67 (4)(a) guarantees the right of an accused to be tried in the language he understands. Dominic Ongwen who was tried as a victim/perpetrator who is a mentally disabled person was denied this basic right. The Trial Chamber in its judgment at paragraphs 690, 695, 701, 780, 786, 992, 798 and 84, stated that "The recording is of men speaking over the radio in a non-working language". At the commencement of Ongwen's trial, the Prosecution informed the accused that half of the case against him was intercepted radio communications between different commanders of the Lords Resistance Army (LRA). Apart from Dominic Ongwen who was commander of Sinia Brigade of the LRA, some of the commanders were Joseph Kony who was the Commander-in-chief, Vincent Otti was the deputy commander and commander of Control Alter Brigade, Okot Odhiambo, Raska Lukwiya, Buk Abudema, Charles Tabulay, and many others. The Prosecution translated only intercepts targeting Dominic Ongwen in the trial against him on multiples forms of criminal liability, such as perpetration, co-perpetration and indirect co-perpetration. A majority of these forms of liability required only his substantial contribution towards the commission of the crime. The content of the intercepts of communications by other commanders was necessary for the defence of Dominic Ongwen to ascertain whether his alleged contribution to alleged crimes which were allegedly committed by a plurality of people was essential or not.

Situation in the case of the Prosecutor v Dominic Ongwen, (Public) Trial Judgment No.ICC-02/04-01/15 Date: 4 February 2021 paragraphs 690, 695, 701 710, 780,786, 792, 798, 804.

3.4. Novel Legal Issues

Age determination is an important issue which have confronted judges in national and international jurisdictions particularly as it relates to criminals responsibility, fair labeling of crimes, jurisdiction, witness protection, youth justice, age of criminal responsibility, personal circumstances determinations in trials, psychosocial and mental health determinations

during trials. In the absence of hospital and birth certificates or records on scientific age determinations, the court received and relied on evidence of age determination in traditional Sierra Leone communities as well as circumstantial evidence which judges, decided, should have put the perpetrators on notice that victims were children under the age of fifteen. Ade determination from evidence provided by parents was admissible.

Trial Chamber 1 relied on these methods of age determination to establish ages of alleged victims in charges of the enlistment and conscription of child soldiers. The Chamber inferred based on physical appearance, paragraph 1702, page 507, trail Judgment SCSL-04-15-1 of 3 March 2009 that the victims were children under the age of fifteen. This decision was confirmed on appeal due to the notoriety of this method of age determination in Sierra Leonean communities, including for educational and administrative purposes. This was the first time that the jurisprudence on the crimes of enlistment and conscription of child soldiers in combat was established by an international criminal court.

The issue of "bush wives" also required careful consideration because of the possibility of criminalizing certain forms of marriage due to ignorance or lack of knowledge of the culture and traditions of affected communities on marriages or lack of cultural sensitivity by persons of different cultural backgrounds which recognize only monogamy or so-called statutory marriages in some Western communities. The evidence received and accepted enabled the judges to establish the first ever jurisprudence of bush wives in armed conflicts as forms of violence against women and thus criminalised. To establish this jurisprudence, evidence of the cultural and the traditions in affected communities and the theatres of war where atrocity crimes were committed was brought into the case and historical records of the Court. Trial Chamber 1 decided at page 51, paragraph 156 of the trial judgment that "the particular crime of sexual slavery was designed to draw attention to serious crimes that have been historically overlooked and to recognise the serious of sexual violence that has been historically overlooked and to recognise the particular nature of sexual violence that has been used often with impunity, as a tactic of war to humiliate, dominate and instill fear in victims, their families and communities during armed conflict".

4. Cultural and Traditional Mechanisms

Traditional mechanisms and cultural factors are important in that a majority of victims relied on cultural norms, rites and aged old societal justice mechanisms to rebuild their lives and their communities., Linda E. Carter [11] writes that traditional mediation practices permitted parties to a conflict, the victim and the one at fault to continue to live together Cultural factors were very relevant in providing context to Sex and gender-based violence crimes (SGBVC) and establishing cultural sensitivity in judicial proceedings before the Court. These cultural and traditional are key aspirations of The African Charter on Human and Peoples Rights [25] for the virtues of Africans historical tradition and the values of African civilization to inspire and characterize the reflection on the concept of human and peoples' rights in Africa.

African Charter on Human and Peoples' Rights (Banjul Charter) adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

The ICC was insensitive to Acholi cultural mechanisms in the Dominic Ongwen Case [24].The Acholi Religious Leaders Peace initiative (ARLPI) comprising of Christians and Muslim stressed that while "they did not condone impunity", they "wanted to see the ICC dispensing justice in the best interest of all the parties and therefore asked the court to consider granting them the opportunity to perform the traditional reconciliation of 'mato oput' between Dominic Ongwen and all the people who have been affected by the LRA". The ICC did not grant the request. The trial of Dominic Ongwen took place far away from home in The Hague Netherlands. Ongwen was an abducted former child soldier of Acholi ethnicity in Northern Uganda. Beth Lyons [2] writes that contends that the Trial Chamber's "biases on race and culture played a disportionately significant role in its decision-making" in the Dominic Ongwen case at the ICC, citing its ignorance and/or disregard for the social and cultural context of Mr.Ongwen as an abductee in the LRA and an Acholi from Northern Uganda".

Beth S.Lyons [2024] Race, Culture and Mental Illness in the International Criminal Court's Ongwen Judgment: Biases and Blind spots, Palgrave Macmillan p8, 60.

Dominic Ongwen is the only person who was prosecuted at the ICC. Millions of victims of the armed conflict in the more than twenty-year armed conflict in Northern Uganda, relied on Mata Oput to heal, reconcile and rebuild their lives and their communities. Although the Chamber eventually ordered during the reparations proceedings that he could arrange Mata Oput cultural restorative justice with Acholi cultural leaders if he wanted, the opportunity for the cultural leaders to intervene and represent the affected communities and contribute to international justice on their behalf was denied.

The opportunity for the court to demonstrate that the case was about the majority of victims of Acholi cultural ethnicity whom the cultural leaders represented and their community, their justice mechanism, and healing which mattered most to them was passed over. The cultural leaders retreated to their communities disappointed that the ICC had demonstrated that the justice was colonial European justice based on European values and not theirs. This perception was evident when the Trial Chamber at the close of the case during reparations estimated the number of potential victims at 53,000 people but only about 3,500 come forward. This was a demonstration that African justice mechanisms prioritise cultural factors and cultural sensitivity to money and foreign models.

Tim Kelsall [20] highlights the significance of respect for the cultures of victims referencing the case in the Tokyo Military Second World War Military tribunal where "One Asian

Judge in Tokyo castigated the Tribunal for its cultural narrowness, ethical dogmatisms and historical emptiness citing Shklar 1964 and 1986 128, the Prosecution justified its mission by Christian Judaic ethic, but [w] hat on earth' asks Shklar, could the 'Christian ethic' mean to the Japanese?'. The result was that the Tokyo trial 'was a complete dud'. Its impact on the popular memory of the Japanese has been 'virtually nil' and the bodies of the executed are today housed in official shrines" (Osiel 1997, 181, 182) p 11.

Kelsall writes that "David Crane formerly Prosecutor at the Special Court for Sierra Leone, asked rhetorically whether the justice 'we seek to impose' is not merely 'Whiteman's justice'? He proceeds to confess that: Our perspectives are off kilter. We simply don't think about or factor in the justice victims seek.We approach the inversion of international justice paternalistically. I could even say with a self-righteous attitude that borders on the ethnocentric. We consider our justice as the only justice as the only justice. We don't contemplate why the tribunal is being set up, and for whom it is established. After setting up, we don't' create mechanisms by which we can consider the cultural and customary approaches to justice within the region". In a footnote at page 11, Kelsall writes that "after making these startling admissions, Crane proceeds to imply that the Whiteman's justice is the best justice, and that the Special Court for Sierra Leone enforced it in a culturally appropriate way. But that the evidence presented in the book suggested otherwise. Kelsall states that "Studies of the law in Africa have suggested that African legal processes are participatory, conciliatory, consensual, restorative, and open to the wider notion of evidence than the typical Western court".

Tim Kelsall [2009] Culture under Cross-Examination International Justice and the Special Court for Sierra Leone, Cambridge Studies in Law and Society Cambridge University Press11.12.

4.1. Truth Commission and Cultural Mechanisms

The unique complementarity perspective of the legacy project which brought in one place under the burning light of the memorial, the Special Court, Truth and Reconciliation Commission and Cultural Mechanisms was fully embraced by victims, affected communities and participants. In this regard, not only did victims and people of Sierra Leone make a significant contribution, but they also contributed to the development of international law by establishing the enduring pillars of international criminal justice.

4.2. Outreach Program

The outreach program [15] of the court which was established in August 2002, brought justice to the doorsteps and bedrooms of victims and local communities throughout Sierra Leone. Information about judicial proceedings at the court was an integral part of their daily discussions. This effort made them feel integral stakeholders of the judicial process.

The Groundbreaking Role of the Special Court for Sierra Leone' Institute of Law, https://thelaw.institute/challenges-to-criminal-justice accessed 1 October 2025.

The outreach program is a significant contribution of the SCSL to international justice. It created awareness and made traditional mechanisms fully recognised, legitimised, effective, efficient and respected. Evidence about cultural and traditional factors formed part of the body of evidence before the court and its historical record.

The program permitted persons who came before the court to testify to familiarise with court procedures and to mitigate the difficulties they encountered during trials which Nancy Combs [18] disclosed, "International criminal trials employ Western-style criminal procedures that presuppose a smooth flow of questions and answers between counsel and witnesses. ……To be sure, clear communications between witnesses and fact finders is not always smooth even in domestic cases. International witnesses frequently maintain that they were not able to answer questions even questions about themselves. Some witnesses were unable to tell the court how old they are and others who are mistaken are mistaken. Some know their approximate ages but not their birthdates. Although most testimonial deficiencies receive no mention in international criminal judgments, some as early judgments at the ICTR, Akayesu pointed out the experience of witnesses with maps, film and graphic representation of locations".

Nancy Combs [2010] Fact-Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions (Cambridge University Press 21, 190.[14]

The Special Co Rachel Kerr and Jessica Lincoln [15] recorded the difficulties the program encountered and concluded that it recorded an admirable achievement stating that "The Court's Outreach program is far more extensive and ambitious than anything that has previously been undertaken, and marks a significant departure from the ad hoc tribunals, which were criticized for having made inadequate efforts to reach their target populations. The Outreach Programme has as its main mission to 'link the people of Sierra Leone with the Special Court'. Its activities aim to promote understanding of the SC and respect for human rights and the rule of law in Sierra Leone, to disseminate information and encourage dialogue, to foster two-way communication between the SC and Sierra Leone and to facilitate the participation of all Sierra Leone nationals in the judicial processes of the SC based on equality and mutual … The Court's Outreach Section is not funded from the core budget so has to battle for every penny and is heavily reliant on voluntary contributions from third parties".

Rachel Kerr and Jessica Lincoln {2008}, The Special Court for Sierra Leone Outreach, Legacy and Impact Final Report February 2008, War Crimes Research Group Department of War Studies http://www.kcl.ac.uk/schools/sspp/ws/groupresearch/int/wcrg/ pp 11, 12.

In light of the above, it is perhaps surprising that outreach has had the impact it has. Expectations of what could be

achieved far outstripped the reality of logistic, practical and financial obstacles.

5. Head of State Immunity

Head of State immunity is subject of great controversy in international law, particularly before international courts and tribunals. The Rome Statute, [27] explicitly states in Article 27 "official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute International Criminal Court *https://www.icc-cpi.int › sites › default › files › Rome-Statute-eng.pdf.*

The Malabo Protocol [26] states in Article 46 Abis that any AU Head of State or Government or anybody acting or entitled to act in such capacity or any other senior state officials based on their functions during their tenure of office.

African Unionhttps://au.int › en › treaties Protocol on Amendments to the Protocol on the Statute of the.

adopted in 2014 and signed in 201.9

The ICTR, ICTY and SCSL did not have expressed provisions on head of state immunity. However, the SCSL established a jurisprudence on head of state immunity in the cases of Charles Taylor and President Ahmed Tejan Kabbah. In the case of President Tejan Ahmed Kabbah, the question of the legality of a subpoena of former President Tejan Kabbah by Isa Sesay came up for determination. The question was whether the subpoena could be legally enforced considering the immunity enjoyed by President Tejan Kabbah as a former President for acts which occurred when he was the President of the Republic. The subpoena was served and he appeared and testified for Mr. Isa Sesay.

The ICC exercised on Libyan President Moamar Khadffi, Cote D'Ivoire's President Laurent Gbagbo, Sudanese President Al Bashir, Kenyan President Uhuru Kenyatta. They are all African Presidents. The ICC also with American support issued a warrant against Russian President Valdimir Putin. However, when the ICC issued a warrant against Israeli Prime Minister Natanyahu, a close American ally, the US has imposed sanctions on the entire court, 9 of its 18 judges, the former Chief Prosecutor, his two deputies and a senior Prosecutor in the Prosecutor's office.

Max Hillaire [13] writes that from the US evinced a determination to interfere with the independence of the court from inception after it signed but declined to ratify the Rome Statute creating the court and that the US, "sought exemptions for its nationals and also wanted the Security Council to have a veto the court's investigations".

Max Hilaire [2021], The Evolution and Transformation of International Law, Developments in International Law fro the Peace of Westphalia to the Post-United Nations Charter, Logos Verlg Berlin GmbH 216.

The US policy on head of state immunity is selective and informed by its national strategic interests.

Guy s. Goodwin-Gill, And Steffan Talmon [3] detail the subterfuges the US invoked to justify the abduction, detention and trial of Noreiga the President of Panama in 1989, in Operation "Blue Spoon "which was renamed "Operation Just Cause". The reasons oscillated between "safeguarding American Lives", self-defense, a lawful defense to Panama's declaration that a state of war existed, drug trafficking to US, defending democracy among others.

Gey S. Goodwin-Gill and Stefan Talmon [1999] The Reality of International Law, Essays in Honour of Ian Bownlie Clarendon Press-Oxford 58-94.

The exercise of jurisdiction by the Special Court, was over acts which occurred within the national territory of Sierra Leone which its was granted jurisdiction by its statute. The Special Court jurisprudence is consistent with "equality of all before the law", which is a universal tenet of fairness to all and of natural justice.

6. Privileged Communication Between Client and His Counsel

The question of the privilege of communication between Counsel and Mr. Taylor arose due to the presence of security lights and other intrusive equipment in the counsel consulting section and room in the ICC Detention Center in the Hague where he was detained for his trial which was taking place in the Hague. The Detention Centre keeps detained people from all the international courts in the Hague. Counsel for detainees from these courts complained without success, about these intrusive security measures which violated attorney-client privilege, a key canon of fair trials. When the President of the Special Court decided that the measures were intrusive and violated counsel / client privilege, the Detention authorities complied and removed them to the benefit of the defence in all the other courts.

7. Popular Expectations

The Legacy Conference ignited hopes and expectations and also elicited questions. The hopes and expectations and questions asked, were geared towards what must realistically be done to activate, maintain, guard, support and sustain the Special Court as a permanent signpost for international justice in regional conflicts in Africa and beyond. The delegates at the legacy conference were conscious of the fact that these are realistic and realisable expectations and hopes requiring the political will to realise.

Participants from many countries; South Sudan, Guinea, Mali, Liberia, the Gambia, Nigeria, Uganda, Ghana and several others made impassioned requests for their governments and the international community to establish mechanisms inspired and mirroring the Special Court model to prosecute atrocity crimes that occurred in their countries. Although they spoke about the situations in their countries, their observations

and requests apply to victims of atrocity crimes worldwide.

The legacy conference report cites a participant from Liberia who stated that international justice means a lot to her, given the situation in Liberia, which is a country that has not experienced justice after 14 years of crisis. She believes that international justice is imminent in Liberia "because as long as there is no justice, impunity continues to thrive and affect victims." Other participants from Liberia expressed the view that international justice plays a critical role in post-war reconstruction and sustainable peace, through healing, deterrence, accountability and justice.

They explained that the delegation from Liberia was attending the SCSL of international justice following the conflict that took the lives of more than 250,000 people in their country. Having had the opportunity to witness what happened in Sierra Leone and at the Special Court, the Liberian delegates wanted similar initiatives to happen in Liberia. Liberian delegates said that they were attending the SCSL Legacy conference [28] to enable them to utilize the lessons learned from the conference in accelerating their advocacy and campaign efforts for international justice in Liberia following the inability of their national justice system to prosecute atrocity crimes.

Residual Special Court for Sierra Leone Legacy Conference Report: Raising Awareness of the Contributions of the Special Court for Sierra Leone to International Justice, Peace and Security (CILPA) 21 https://cilpa.org/residual-special-court-for-sierra accessed 1 October 2025.

The Gambia lamented the fact that victims of atrocity crimes that took place in their countries have not been investigated and prosecuted, leaving victims without justice. Although Truth Commissions have been established in these countries, this has not satisfied their long quest for justice because they are not substitutes for criminal justice.

A participant from Uganda narrated that she was abducted at the early age of about 12 years by Joseph Kony, the leader of the Lord's Resistance Army (LRA), and transformed into a sex slave, a so-called "wife". She succeeded in escaping after several years in captivity with her children who were fathered by Joseph Kony. She formed an association of more than 860 former abducted girls and women who were transformed into sex slaves by the LRA and children born out of rape in that situation. She stated that although the first ICC situation was in Uganda, for over twenty years, the ICC has prosecuted only one person, Dominic Ongwen, a former child soldier who himself was abducted by Joseph Kony at the age of 8 years and 7 months. The Government of Uganda granted amnesty to former LRA combatants. Joseph Kony has not been brought to justice and may never be brought to justice. She explained that children born in LRA captivity have been abandoned to their formerly enslaved mothers by the Uganda Government and by the ICC. She came to the conference to find out how the Special Court may extend its outreach program to assist victims in her organization and victims in Northern Uganda, South Sudan, Central Africa Republic and other areas where Joseph Kony and the LRA have been operating for almost 30 years. Expressing concerns that the victims have not yet received reparations, she asked questions about how countries that have received reparations succeeded in doing so.

8. The Peace Museum and the Lessons Learnt

The Peace Museum in Freetown preserves the memory of the case; the history and horrors of war; the scars and tears of victims, the victorious ethos and symbols of justice, all wrapped in irascible memories of history. The RSCL organised a guided tour of the Museum during which delegates saw in one place symbols of a senseless misadventure which devastated communities and claimed the lives of victims and perpetrators alike and besmirched the soul of a nation in need of justice, healing and reconciliation.

It is a depository of victory of justice over impunity, a monument of justice, a commitment to take the torch of transformative justice which was ignited at the Special Court for Sierra Leone to all the nooks and corners of the world in which atrocity crimes are committed with unchecked impunity, on the watch of the civilised world. The memorial flame of justice on the Peace Monument is a symbol and a testament of the collective and individual commitment of humanity towards the preservation and sustenance of this successful experiment for regional and universal justice and peace.

This monument for now, is placed under the Residual Special Court for Sierra Leone (RSCSL) which with stakeholders and other partners, organised the legacy conference during which these observations and requests were made. They made their requests on the platform of the legacy conference with the expectation that they will be channeled to the appropriate actors who may provide solutions to them. They were conscious of the fact that the RSCSL is the custodian and guarantor of the legacy of the Special Court through which their expectations may be realised.

A notable participant at the conference, Prof Drumbl. was conscious of this fact and raised a pertinent issue regarding the Residual Mechanism and an enduring rule it may play in preserving the memory and legacy of the Special Court and the hope of international justice for victims in a complementarity role rather as opposed to being a winding down mechanism to extinguish this legacy and devastate the expectations of a people in dire need of justice, individual and collective survival. Drumbl [28] reasoned:

Perhaps what we ought to develop is a doctrine of residuals as complementarity. So, if these residual mechanisms at the international level just continue on almost indefinitely, even though circumscribed, but almost indefinitely, perhaps we need to develop not just winding down, but residuality as complementarity. As you pointed out, there's perhaps an occasion to investigate, prosecute in national courts, which is what's happening with these elderly Nazis. So that's something that I find interesting in that regard. But I think if you have residual

institutions that become part of the tapestry, then what ends up happening is residuality can just become a way in which justice is operationalized. And if it preserves internationality, at the expense of complementarity, in a sense, you know, it contradicts- I know the ICC is a different institution- but it contradicts one of the major theoretical center points of international criminal law, which is the doctrine of complementarity.

This reasoned proposal by Professor Drumbl was a hallmark of the legacy conference and constitutes another groundbreaking contribution from the Special Court of Sierra Leone towards the establishment of an enduring structure of sustainable international justice for the collective good of humanity. This proposal, if realized, will be a standing solution to the justice needs of communities at risks and in conflicts in which atrocity crimes require prosecution in the spirit of the Special Court which has been widely acclaimed and was commemorated in the legacy conference from 26-28 February 2024.

9. The Lessons Learnt

On 25 February 2008, when the Presiding Judge Hon Judge Boutet pronounced a guilty verdict on my client at the Special Court, Brigadier Morris Kallon and asked if he had something to say before sentencing, Mr. Kallon made a strong statement about the lesson he had learnt from his trial and conviction. He said inter alia, "War is bad. War is bad for everyone".

For the last 26 years of my involvement in international criminal trials, this was the first time, I heard a person who had gone through a trial in an international court utter those words and in this emphatic manner. Indeed, war is bad', war is bad for everyone'. For me, that was a positive scorecard for trials at the Special Court; the awareness and public expression of remorse for his participation in the crimes which were committed during the ten-year war in Sierra Leone. This spirit of individual and collection expiation was complementarily expressed by different individuals in the Peace and Reconciliation Commission in Sierra Leone and also in cultural mechanisms in different communities in the country.

The words of Mr. Kallon have come to define justice in the Special Court and maybe future generations who will not have the benefit of presence at the trials but the historical record to assess the legitimacy and lessons of the trials. That is a lesson learnt which must replicate throughout conflict zones of the world.

In faraway Atlanta, USA, one of the greatest prosecutors of all time, Ben Forenz who until his transition last year, was the last surviving prosecutor of the Nuremburg Military Tribunal echoed similar sentiments differently and from a different platform before students of Emory Law School on 2 January 2015. Ben Forenz [29] enjoined humanity to stop glorifying war and begin glorifying peace. 'You cannot kill an ideology with a gun', he said, 'you have to have a better ideology', which is an ideology of peace.

Emory University School of Law, 'Nuremberg Tribunals Prosecutor Ferencz Encourages Students to …' (Emory Law) https://law.emory.edu/news-andevents/releases/nuremberg-tribunals-prosecutor-ferencz-encourages-students

The lesson learnt from the trial at the Special Court for Sierra Leone and the remorseful plea of "war is bad, war is bad for everyone" 'is a genuine expression of the fact that the purpose of the trials at the Special at Court for Sierra Leone was attained.

But Justice does not end with trials, convictions and sentencing. The Residual Mechanism for the Special Court still has work to do. The Court needs resources to transform the unique model internationalized justice system, and its legacy into the bedside catechism of justice for West Africa, Africa and the world.

The lesson learnt from this experiment that 'war is bad, war is bad for everyone' is a legacy which must be preserved and translated into a realistic value of civilized human society. Human life should no longer lose its value on the watch of the so-called civilized world, when a mechanism of internationalized justice which operated at the Special Court for Sierra Leone may bring justice and reconciliation and save humanity from the infamy of unrestrained criminality.

10. Conclusion

The legacy conference of the Special Court for Sierra Leone provided victims of atrocity crimes and civil society actors from culturally diverse countries and communities to speak about the suffering they and members of their communities have been enduring without hope for justice. It provided them the opportunity to share their experiences. It provided them the opportunity to secure the attention of international organizations, diplomats, specialized international non-governmental organizations, judges, lawyers, prosecutors, academics, government officials, and representatives of other courts on the urgency of their plea for justice. They left the conference with a reassurance that the spirit of the Special Court Justice Mechanism which was explained and celebrated will neither be elusive nor fail them. The Residual Special Court for Sierra Leone which invited them and provided them a platform and voices, to present their complaints and make the appeals to the international community, will be there long enough to participate in providing a solution to their requests. And that, it will remain both a custodian, guarantor and sterling shield of protection against impunity.

The world is on fire and hopefully the supposed gatekeepers of international peace and security will stop glorifying war which is bad for everybody and embrace the humanity of the Special Court model as a viable and sustainable gateway to universal justice and peace.

Abbreviations

ARLPI Acholi Religious Leaders Peace Initiative

ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
LRA	Lord's Resistance Army
RUF	Revolutionary United Front for Sierra Leone
RUFP	Revolutionary United Front for Sierra Leone Party
RSCL	Residual Special Court for Sierra Leone
SGBVC	Sex and Gender-based Violence Crimes
UN	United Nations
UNSC	United Nations Security Council UNAMSIL United Nations Assistance Mission in Sierra Leone
UK	United Kingdom

Author Contributions

Charles Achaleke Taku: Conceptualization, Methodology, Resources

Conflicts of Interest

The author declares no conflicts of interest.

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