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# The Legacy of the Special Court for Sierra Leone

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Following a decade of brutal conflict in Sierra Leone involving at least four armed factions, the Special Court for Sierra Leone (the court) was established pursuant to a treaty concluded on January 16, 2002, between the United Nations and the Government of Sierra Leone. The purpose of the court is to try leaders allegedly bearing the “greatest responsibility” for crimes against humanity, war crimes, and other serious violations of international humanitarian law committed in the small West African nation from November 30, 1996, to January 18, 2002.

The court, which is funded by voluntary contributions of interested states and administratively overseen by a management committee, consists of three principal organs: chambers, registry, and prosecution. Chambers consists of two trial and one appeals chamber, all of which are presided over by UN and Sierra Leonean government-appointed judges. The presiding judge of the appeals chamber serves as the president of the court. Appointed by the UN secretary-general, the prosecutor is responsible for the independent investigation and prosecution of all cases before the court. The registry, which is headed by a registrar also appointed by the UN secretary-general, is the administrative organ of the court and, as such, is mandated to ensure the smooth operation of all aspects of the tribunal.

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The Office of the Principal Defender (Defense Office), within the registry, was established after the court began its operations. The court's creation of a Defense Office, the so-called "fourth pillar," is an innovation within the structure of international criminal courts.<sup>2</sup> The Defense Office's mandate is to ensure the rights of suspects and accused persons, providing an institutional counterbalance to the prosecution.<sup>3</sup> The creation of the Defense Office gives practical meaning to the human rights principle that adversarial trials should manifest an "equality of arms;" that is, a reasonable equivalence in ability and resources of both prosecution and defense.

Given the traditional prosecutorial bias of international criminal courts, the establishment of a relatively autonomous Defense Office at the court has attracted the interest of other international criminal tribunals, including the International Criminal Court (ICC). It is particularly significant because it suggests that international criminal law is maturing into a balanced adversarial legal system whereby the presumption of innocence and the principle of prosecutorial proof is given effect to preserve the rights and interests of the accused, and not only those of their alleged victims.

The creation of the court, which is currently trying ten accused persons, is arguably the most important institutional development in international criminal law since the adoption and entry into force of the Rome Statute establishing a permanent ICC in July 1998. This importance is the court's status as the first *independent* treaty-based hybrid or "nationalized"<sup>4</sup> criminal tribunal of mixed-subject matter jurisdiction and composition. Until recently, the court was also the first to be located in the same country

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as the theater of conflict. While hybrid courts were set up by the UN for East Timor, Bosnia, Kosovo, and Cambodia, those tribunals formed a part of, and relied on the institutions/structures of, the national courts. The Special Court for Sierra Leone is however completely independent of national Sierra Leonean courts.

The location of the court within Sierra Leone has been lauded for its many advantages. It eases and reduces the costs of investigations and prosecutions; facilitates the collection and preservation of evidence and interaction with witnesses; builds the capacity of national staff in a range of areas; and leaves open the possibility that upon completion of its work, there will be a transfer of the court's physical infrastructure—including buildings and equipment—to the largely

dilapidated and impoverished Sierra Leonean courts. The court's location in Freetown, Sierra Leone's capital, also gives its people the opportunity to closely follow the trials and other activities of the tribunal.

While placing the seat of the court in Freetown poses some serious challenges to the tribunal's achievement of its mandate, particularly with respect to the security of its staff and operations, it also offers an unusual opportunity, hitherto unseen in international criminal practice, for the tribunal to leave a lasting legacy for the people of Sierra Leone. Principally because of its location, it is thought that the court could assist Sierra Leone in solidifying its fragile peace by contributing to the efforts to address the root causes of the conflict, in order to break the vicious cycle of violent war and mass atrocities, peace settlements, and internationally-funded criminal trials.

The court's desire to plan and leave a solid legacy in Sierra Leone is pragmatic, innovative, and consistent with its mandate.<sup>5</sup> The tribunal seems aware that "the poor state of the national judicial system, the serious erosion of the rule of law, and the lack of accountability, all contributing factors to the decade-long conflict in Sierra Leone, continue to plague the country."<sup>6</sup> The court also appears to recognize from the ongoing trials in Freetown that the embers of war still burn, and a failure to carve out its own role in attending to Sierra Leone's chronic problems of governance could undermine its primary mandate of ensuring the fair trials of the accused persons, as well as its broader objective of assisting to counter impunity. Indeed, drawing on the seminal *Report of the United Nations Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*,<sup>7</sup> the court readily acknowledges that in "operating in a context such as Sierra Leone, the prosecution of individuals must be pursued along with other transitional justice strategies in order to achieve the desired objectives: the restoration of the rule of law and the development of the national legal system, which are necessary conditions for the prevention of future conflict."<sup>8</sup>

The court is also aware that Sierra Leoneans, as well as the international community, have high and wide-ranging expectations of the role it can and ought to play in influencing positive reform of the national legal system.<sup>9</sup> While some of those expectations are so high as to be unrealistic,<sup>10</sup> they must be read in the overall context of the criticism put forth by some Sierra Leoneans, who claim that the ongoing trials are expensive and that the funds expended on the tribunal so far could have been better used to assist in rebuilding the shattered lives of the victims, instead of focusing on the punishment of the few alleged perpetrators of the war. This suggests that in the

eyes of at least some Sierra Leoneans, the court will likely cement its place in the postconflict dispensation if it is seen to have played a meaningful role in strengthening the capacity of the country's troubled judicial system.

It is against the above backdrop that the Registrar of the court authorized the creation of a Legacy Phase Working Group (Legacy Working Group) in 2004. Comprising eight<sup>11</sup> members drawn from various sections of the tribunal, the Legacy Working Group is mandated to examine possible areas that could be exploited by the tribunal to leave a lasting legacy in Sierra Leone. Implementation of most of the court's proposed legacy projects will require significant time and money. To the extent that it is successful in securing funding and implementing projects, the court will leave a tangible legacy that will exponentially multiply its impact on justice, accountability, and the rule of law in postconflict Sierra Leone, as well as its potential contribution to the institutional evolution of international criminal law.

#### **PLANNING LEGACY AT THE COURT FOR SIERRA LEONE: A NEW MODEL FOR INTERNATIONAL CRIMINAL TRIBUNALS?**

A review of the literature starting with the Nuremberg Tribunal<sup>12</sup> and ending with the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR, respectively) reveals that international lawyers tend to focus on the development of substantive crimes or legal principles when examining the legacy bequeathed by those tribunals.<sup>13</sup> This emphasis is partially explained by the fact that the legal regime established to hold individuals criminally accountable at the international level, as opposed to the national level, is a relatively new one that is slowly coming into its own. The substantive legal principles underpinning the international criminal justice regime will certainly solidify over time. However, the scope for evolution of legal rules will likely narrow as the fledgling international criminal regime matures.

Aside from the number of convictions secured, international lawyers are increasingly more interested in exploring the added value and legacy of international criminal tribunals, especially considering their cost. In this regard, the court for Sierra Leone will be of significant interest because it is engaged in an unprecedented type of legacy planning, largely because of its location at the scene of the conflict and the pressing demands of the Sierra Leonean legal system. Beyond trying a small group of ten individuals alleged to bear the "greatest responsibility," the court realizes that it could add value for Sierra Leoneans well outside the narrow confines of the

courtroom. Thus, to the extent that the court's approach to legacy serves as a model for existing or future international criminal tribunals to implement in their respective theaters of operation, the legacy initiatives of the court will arguably constitute fundamental contributions to the institutional development of international criminal law.

The process of establishing a Legacy Working Group at the court was initiated in 2004 as an aspect of the court's completion strategy, though the group did not actually come into being until 2005. The completion strategy,<sup>14</sup> which was adopted by the Management Committee on October 6, 2004, and is periodically updated to reflect the pace of trials, conceived of the operational aspects of the tribunal's work as belonging to two phases: completion and postcompletion.

During the completion phase, it was anticipated that the court would wind down its core activities following the issuance of final judgments. In the postcompletion phase, a skeletal version of the court will be retained and is expected to continue in the performance of certain residual functions inherent to the criminal justice process.

With the establishment of the Legacy Working Group, a legacy phase, focusing on the institutional impact on Sierra Leone of the court's presence, has been added to the completion and postcompletion phases. The first two phases clearly focus on the core mandate of the court to ensure that credible justice is implemented in Sierra Leone. However, the central thrust of the Legacy Phase is to address the concerns of the many Sierra Leoneans who feel that the restoration of the national judiciary, civil society, and the rule of law are critical for the long-term impact of the court to be felt beyond the narrow group of individuals said to bear greatest responsibility, especially considering the extent of the challenges facing the country after a decade of bloodshed. In that sense, the Legacy Phase may be said to reflect the popular will of Sierra Leoneans, which did not explicitly make it into the points for negotiation between the UN and Sierra Leone preceding the establishment of the court and its final founding instruments.

From the registrar's terms of reference for the Legacy Working Group, we can discern that it essentially has a two-pronged mandate: first,

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to *identify* and second, to *implement* a range of projects that the court could engage in to contribute towards a lasting legacy in Sierra Leone.<sup>15</sup> The Legacy Working Group is expected to reflect the mixed Sierra Leonean and international composition of the court; however, for sustainability reasons, the court rightly stresses the involvement of as many Sierra Leoneans in legacy-related work as possible because in the long run such participation will increase the viability of those projects after the court's international staff leave.

In identifying and implementing projects, the Legacy Working Group is mandated to focus on initiatives that complement the activities of the court and to engage the full gamut of stakeholders, from Sierra Leone and elsewhere, and to assist in determining specific and affordable projects in light of the paucity of resources available to the court. In this spirit, the group was careful not to build "unrealistic expectations amongst the Sierra Leonean public as to the extent of the projects"<sup>16</sup> the tribunal is capable of undertaking, as the court itself depended on voluntary contributions from UN member states to continue its work. It is no secret that fundraising for such work has had difficulties. This cautious approach to legacy is sensible because it implies that external funding, whether from bilateral or multilateral donors, must be generated for the implementation of the court's legacy projects. Obviously, those projects will be easier to fundraise for if they can be tied closely to the court's primary mandate of bringing justice to Sierra Leone.

In the fall of 2005, the Legacy Working Group nearly completed the identification-of-projects phase with the presentation to the registrar of the *Initial Legacy White Paper*,<sup>17</sup> which set out a detailed roadmap on legacy and how the court could make a lasting impact on the justice sector in Sierra Leone. With the Registrar's approval of the white paper, the Legacy Working Group has moved to the second prong of its mandate: taking steps to secure funding for the implementation of the project ideas contained in the white paper.

### **The Four Themes Underlying the Court's Legacy Proposals**

Taking into account the overwhelming need for reform in the Sierra Leonean legal system, and keeping in mind the efforts of multilateral and bilateral agencies and international organizations to address various judicial sector challenges in Sierra Leone, the Legacy Working Group identified four thematic areas in which the court could make a meaningful, practical, and lasting contribution. These themes, which exhibit consider-

able overlap, are: promoting the rule of law and accountability in Sierra Leone; promoting human rights and international humanitarian law; promoting the role of civil society in the justice sector; and developing the capacity of the national legal profession.

The Legacy Working Group selected these four themes primarily because it felt that the court could build on its existing legacy-oriented projects to ensure continuity after the tribunal had concluded its work.<sup>18</sup> The issue of resources also played an important role in the thematic selections, in the sense that seeking certain projects would maximize the use of the court's available personnel and physical resources in each of the four areas.<sup>19</sup>

### *Promoting the Rule of Law*

Strengthening the rule of law in a war-torn country like Sierra Leone could prove to be the most significant contribution of the court. A country without the necessary foundations of the rule of law in today's international arena cannot realize any meaningful development. Indeed, many developing countries in the world today incur the wrath of the international community for failing to adhere to its basic principles. Thus, it is important that Sierra Leone improves upon its practice of rule of law since most Western powers today maintain that the practice of the rule of law by states is a condition precedent for their support.

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Given the age-old controversy regarding the proper meaning of rule of law, the Legacy Working Group felt it was important to adopt a definition of the concept. It did so by adopting the definition proffered by the UN secretary-general in his recent *Transitional Justice Report*, which defined the phrase as:

a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.<sup>20</sup>

This broad definition informs the court's proposals in this area. In this regard, the Legacy Working Group has stated three objectives that the court will now aim to achieve.<sup>21</sup> First, it will educate Sierra Leoneans about

the importance of fair trials and an independent judiciary. Second, it will propagate information regarding international human rights and humanitarian law. Third, it will create space for exchanges about the role of the court and legal institutions in Sierra Leone between the public and law enforcement officers such as police and the military, as well as lawyers.

The court is already engaged in activities that reflect these objectives through the work of various sections. For instance, through the outreach section an extensive publicity campaign has been sensitizing Sierra Leoneans to the role and mandate of the tribunal in postconflict Sierra Leone. This campaign includes the holding of public meetings with local people in towns and villages throughout Sierra Leone with various organs of the court, such as the prosecution or the defense, then presenting and explaining their role in the trial process. The outreach section also routinely receives secondary school students for guided tours of the court, after which students can interact with and question officials representing the prosecution and the defense about the status, pace, and challenges regarding the ongoing trials. Outreach has also published illustrated booklets aimed at providing the general public with information about the court and international humanitarian law.<sup>22</sup> Some of the booklets are also available in Krio, Sierra Leone's lingua franca, which is important given the low levels of English literacy in the country.

Targeted training programs are also routinely hosted by the Office of the Prosecution to educate law enforcement officers, particularly the police, on topics ranging from investigative techniques to human rights sensitivity. In addition, the prosecution has encouraged the opening of Accountability Now clubs in high schools and tertiary institutions to educate students and others in the education field about transitional justice and human rights issues.

### *Promoting International Human Rights and Humanitarian Law*

The application of the concept of human rights in Africa in general and Sierra Leone in particular has been overshadowed in the recent past by incessant outbreaks of conflicts and bad governance. The international community today frowns upon governments that continue to deny their people fundamental human rights. The ten-year civil conflict in Sierra Leone was partly

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fought because of injustices emanating from denying weaker members of society their basic human rights. Such a situation should not be allowed to continue. It is therefore pertinent that the court undertakes projects that would ensure a culture of respect for human rights in Sierra Leone. Sierra Leone is a party to some of the most important international human rights instruments.<sup>23</sup> The Constitution of Sierra Leone<sup>24</sup> also ensures the protection of human rights for everyone within its territory. Putting in place a mechanism that would ensure Sierra Leone lives up to its obligation of protecting human rights under domestic and international law could be a vital component of the court's legacy for the country.

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The court's presence in Sierra Leone has created more discussion space for issues of concern to certain groups, such as women and children. Thus, under this aspect of the tribunal's legacy program, the Legacy Working Group aims to raise awareness among target groups about the court and aspects of international law implicated in its mandate that are relevant to them. In so doing, the court will: seek to identify and support projects that promote the core ideas of human rights and international humanitarian law; provide training to professional sectors; emphasize the importance of the rights of the accused and the presumption of innocence in fair judicial proceedings; and facilitate exchanges of experiences and expertise between organizations promoting the rights of marginalized and vulnerable groups and the court.

### *Promoting Civil Society in the Judicial Sector*

We noted earlier that the court has taken the sensible position that local ownership is the key that unlocks the future sustainability of whatever legacy projects it develops. Building on the good relationship between the outreach section of the court and Sierra Leonean civil society groups, specific measures have been taken since the court was established to encourage and bolster the engagement of nongovernmental organizations (NGOs) with the work of the tribunal.

In particular, in 2003 the registrar of the court set up a Special Court Interactive Forum (SCIF) that permits NGOs working in the justice sector to discuss issues relating to the court and the Sierra Leonean legal system

with senior court officials. These forums achieve some important objectives in that they disseminate accurate and up-to-date information about the court to Sierra Leonean civil society, thereby dispelling rumors about the inner workings of the court on issues that may not necessarily be appreciated by, and accurately reported on, by local media. At the same time, court officials receive feedback on the concerns of the NGO community about the processes, procedures, and developments at the court, especially with respect to the ongoing trials.

Part of the court's engagement with NGOs led to the hosting of the National Victims Commemoration Conference in March 2005. At that conference, delegates from all walks of life and regions of Sierra Leone participated in identifying the weaknesses of the national legal system, as well as possible steps that could be taken to rectify them. The action plan generated from those deliberations was passed on to SCIF members for implementation.

In light of the above activities, the Legacy Working Group has recommended that the court, through its judicial sector projects, build on this framework to broaden the scope of SCIF by establishing regional branches in the four regions of Sierra Leone; assist SCIF members in addressing the action plan adopted at the National Victims Commemorations Conference; and ensure training and capacity building for NGOs engaged in the justice sector in Sierra Leone.

### *Developing the Capacity of the Sierra Leonean Legal Profession*

Local capacity building also needs to be improved. On its path to reconstruction, Sierra Leone may find the process extremely difficult if its human resources are incapable of effectively running the various institutions of which it is comprised. There should be a framework whereby vital sectors such as the judiciary, parliament, and civil society groups, which are all major actors in promoting the rule of law, are reformed. Such a reformation takes the form of training judges, magistrates, lawyers, members of parliament, and human rights activists. It is only when these major actors are capable of carrying out their functions effectively and efficiently that a just and viable society can thrive.

Much has been made of the hybrid court's potential to contribute to the development of Sierra Leone through direct and indirect capacity-building programs for national staff inside or outside the tribunal. In seeking to transfer skills to national professionals, the Legacy Working Group recommended that the court prioritize three objectives: first, skills transfer from

SCIF staff to “national rule of law stakeholders;”<sup>25</sup> second, enhance the capacity of national legal professional organizations; and third, increase the accessibility of court materials for use by practitioners, students, and others.<sup>26</sup>

These priorities are important because the human resource capacity of Sierra Leone in the law and justice sector is particularly weak. While some of the training programs envisaged as part of the legacy have already been implemented by various sections of the court for national-level institutions on their own initiative, it is important that the Legacy Working Group coordinate and facilitate skills transfer in order to ensure that the process is managed in a coherent fashion and consistent with the objectives of legacy, rather than the peculiarities of each section’s training program and budgetary limitations.

### **The Court’s Proposed Legacy Projects**

Having identified the broad themes as the basis for the court’s legacy planning, the Legacy Working Group, in accordance with its terms of reference, has started identifying specific projects that the court could undertake to begin impacting Sierra Leonean institutions. While the scope for possible action is broad and is so recognized by the tribunal, three initial projects are seen as particularly suitable for the court to seek funding for with the view to implementation: the site project, radio justice, and the legal resources development project.

#### *The Site Project*

Though rich in natural resources, Sierra Leone was long ranked one of the poorest countries in the world.<sup>27</sup> The country’s already weak infrastructure suffered heavily during the decade-long war. Much of the impact was felt in rural areas outside of Freetown. However, even in urban centers, much of the infrastructure was further dilapidated.

In this context, the multimillion dollar<sup>11.5</sup>-acre court site constructed in the New England area of Freetown by a British company constitutes one of the most modern facilities in the city. Thus, the court’s transfer of its physical infrastructure has the potential to serve as one of its biggest legacy projects as the government could find plenty of other judicial uses for the compound. For example, the site could house the country’s Supreme Court. However, because it costs about half a million dollars per year to operate the site, the Sierra Leonean government has already signalled to the court that it does not have the requisite resources to maintain the property.<sup>28</sup>

The court is now working with the government to explore options regarding plans for the site. It is seeking to hire consultants to prepare a feasibility study that would examine the best possible use of the site (regrettably,

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funding for consultancy has not yet been found). Various options are being considered: use of the site as the seat of a regional court for an international legal body, for example, the ICC; use of the site as a training school for various professionals in the law and justice sector; as an institute focusing on international law and transitional justice issues; or as an institution

focusing on governance and rule of law reform.<sup>29</sup> It is expected that the advantages and disadvantages of each of these options will be weighed carefully in the discussions between the court and the government of Sierra Leone.

### *Radio Justice*

Radio is probably the best and most reliable means of communication in Sierra Leone. Its reach extends to every corner of the country through a string of FM stations located near urban centers, as well as short-wave programming focused on Africa from international broadcasters such as the British Broadcasting Corporation and Voice of America.

Therefore, since its founding, the court has relied heavily on radio to disseminate information to Sierra Leoneans about its mandate and ongoing activities. However, a key limitation is that the national broadcaster, the Sierra Leone Broadcasting Service, as well as many private stations, do not have adequate technical capacity and resources for effective programming with respect to rule of law and justice sector issues. Radio Justice, for which the court has already secured funding, will be aimed at filling this void by providing unbiased information to Sierra Leoneans and West Africans about the work of the court. As currently envisaged, Radio Justice will also provide targeted training to members of the Sierra Leonean media associated with its partner stations. The project will also serve as a pilot for possible replication by other international criminal tribunals.

### *Legal Resources Development Project*

Among the projects under consideration to expand the amount of legal resources available is a contribution by the court toward the develop-

ment of the library at the University of Sierra Leone, the country's sole university and arguably the oldest institution of higher education in sub-Saharan Africa. A related project currently under development is the Virtual Tribunal, which will aim at capturing, in electronic format, the documentation generated in the course of the tribunal's work.

### **Establishing a Public Defender System for Sierra Leone**

While not contained in the Legacy white paper, various rule-of-law-focused projects have since been discussed for inclusion in the legacy program of the court. For example, the Defense Office has proposed, as its main contribution to legacy, that the court assist in the establishment of a public defender system for Sierra Leone.

The 1991 Constitution of Sierra Leone provides for the establishment of the director of public prosecutions (DPP).<sup>30</sup> As in other commonwealth jurisdictions, the main function of the DPP, who is answerable to the attorney general and minister of justice, is to institute criminal proceedings against any person before any court in respect of any offense against the laws of Sierra Leone. Despite the fundamental human rights guarantees enshrined in the constitution regarding, *inter alia*, the presumption of innocence and the rights of accused persons to a fair trial and to counsel, the Sierra Leonean constitution and legislation do not establish any institutional mechanisms to provide legal aid to indigent suspects or accused persons, or to serve as an institutional counterweight to the DPP. This has led to the application of one-sided justice by the national courts, with many serious cases of individual detention without charge, trial, or legal assistance. This state of affairs offends the rule of law.

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To contribute towards the court's efforts to bolster the rule of law in postconflict Sierra Leone, the Defense Office is jointly developing a proposal with the Legacy Working Group which would be presented, as a discussion paper, to the Sierra Leonean government to establish the office of the director of public defense (DPD). Intended to serve as a structural counterbalance to the DPP, the DPD will give teeth to the presumption of innocence and other fundamental fair trial rights of indigent suspects and accused persons. In so doing, it will assist in bringing Sierra Leonean

criminal practice in line with the requirements of the country's constitution and international human rights law.

### POTENTIAL THREATS TO LEGACY AT THE COURT

It is clear that the concept of legacy is pervasive within the court and that the tribunal takes seriously its role in the broader efforts to put Sierra Leone back on a path of long-term stability, peace, and development. If the court is successful in implementing the various projects that it has envisaged, it will have contributed immensely not only to the domestic legal system of Sierra Leone but also to the international community if its model of deliberate legacy planning is replicated by other international criminal tribunals.

However, there are various challenges that the court must address in fulfilling its legacy proposals and objectives. These challenges could be divided into those that are within the control of the tribunal and those that are not. Obviously, the court should focus on mitigating factors within its control.

#### *Threats to legacy within the control of the Court*

Ignorance, lack of ownership, perceived bias, lack of access, and false expectations have all been identified as possible threats to the court achieving its legacy objectives.<sup>31</sup>

With respect to ignorance, human rights organizations claim that some Sierra Leoneans's lack of awareness about the activities of the court have led them to see the tribunal's process as irrelevant to their lives. This is probably partially a function of the low level of literacy in Sierra Leone. That should be an obvious concern from the perspective of legacy. In addition, the court should not unduly focus its programs in major urban centers, to the detriment of rural areas where most Sierra Leoneans live.

On the question of lack of ownership, it is imperative that the court ensure the inclusion of the Sierra Leonean government and other institutions, both from inside and outside of the tribunal, in its legacy planning. Without their input into programs from the design stage, the court is in danger of being seen as imposing its own views on the country, rather than reflecting the needs of the country. Moreover, the face of the court presented to the Sierra Leonean public will assist or detract from its legitimacy regarding core operations and aspirations with respect to its legacy.<sup>32</sup>

Legacy will also likely be threatened if Sierra Leoneans think that the court is biased. In this regard, the temporal jurisdiction, which started only

after the halfway point of the war—and questions about who was indicted and why—may fuel the perception of bias of the court. The exclusion of international peacekeepers, who are alleged to have committed violations, from the personal jurisdiction of the court also plays into the public's misperception.

The court has made significant efforts to reach out to the public in a way that probably exceeds any other international criminal tribunal. However, its location in Sierra Leone, amidst recurrent concerns about the security of its staff and operations, also means that there could be concerns that the tribunal is inaccessible to the people, based on people's responses to the often necessary security measures controlling access to court premises. Finally, on the issue of false expectations, the court must aim to leave behind a tangible legacy while not inflating expectations as to what can be accomplished.

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### *Threats to legacy outside the control of the Court*

The principal potential threat to the achievement of the court's legacy objectives, and one that is largely outside its control, will be inadequate funding. Unlike the ICTY and the ICTR, which are subsidiary organs of the UN that receive allocations from the UN budget, the court depends on the voluntary contributions of interested states to fund its operations. This mode of financing was presciently observed by the UN secretary-general as being too unstable to provide the assured and continuous funding required for the court to successfully achieve its mandate.<sup>33</sup> The inability of the court to raise sufficient funds for its core mandate—to try those allegedly bearing responsibility for serious crimes committed in Sierra Leone—meant that at one point it had to rely on a subvention grant from the UN to maintain its operations. In this context, if the court is experiencing difficulties raising funds for its primary operations, it is reasonable to infer that it could be unable to generate the funds required for the implementation of some of its legacy projects.

The Management Committee of the court apparently agrees that legacy projects may divert the tribunal from its core function of conducting trials for the ten accused who are currently in the tribunal's custody.<sup>34</sup> While the court must not overextend itself, it has an historic opportunity to broaden the functional activities of international criminal tribunals by responding to the rule

of law needs of Sierra Leone. For those that characterize international criminal justice institutions as expensive and inefficient because of their focus on prosecuting a limited group of individuals, the court's informal extension of its mandate to leave behind a tangible legacy offers hope that the international community will get a "bigger bang for each buck" that it spends on international prosecutions of those that mastermind atrocities. In this vein, the court must make efforts to enlist the Management Committee not only as a way of securing formal support for its legacy objectives, but also by tapping into available funding from those states geared only to rule of law development. On the other hand, the funding hurdle may be overcome if funding agencies of goodwill support the legacy issue.

## CONCLUSION

The Special Court for Sierra Leone has developed its own notion of legacy. Deliberate legacy planning of the kind being undertaken at the court is an important institutional innovation that will benefit Sierra Leone as well as the international community, assuming the tribunal succeeds in implementing its legacy projects. Legacy planning is fueled mainly by the location of the court within Sierra Leone, the court's mixed-subject matter jurisdiction and composition, and the high expectations of the tribunal from within and outside Sierra Leone to help nurture the rule of law and to rebuild the country's troubled legal system. Many of the areas in which specific projects were identified by the court are already being impacted through various activities in the different sections of the tribunal. It is hoped that because the reform of the justice sector in Sierra Leone will broaden the reach of the tribunal to more Sierra Leoneans, funding will be secured from the international community for the court to achieve its ambitious and unprecedented legacy objectives. ■

## ENDNOTES

- 1 *Statute of the Court for Sierra Leone*, January 16, 2002, Art. 1 and of the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, January 16, 2002, art. 1(1) <[www.sc-sl.org/documents.html](http://www.sc-sl.org/documents.html)> (accessed February 22, 2006).
- 2 For more on the role of the Defense Office, see John R.W.D. Jones et. al, "The Court for Sierra Leone: A Defense Perspective" (2004) 2 *J. Int. Crim J.* 211-230.
- 3 *Rules of Procedure and Evidence*, Rule 45. Adopted on January 16, 2002, as amended on March 7, 2003, as amended on August 1, 2003, as amended on October 30, 2003, as amended on March 14, 2004 <[www.sc-sl.org/documents.html](http://www.sc-sl.org/documents.html)> (accessed February 22, 2006).
- 4 Phakiso Mochochoko and Giorgia Tortora, "The Management Committee of the Special Court for Sierra Leone" in Cesare P.R. Romano et. al, *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (Oxford: OUP, 2004), x.

- 5 *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. Doc. S/2000/915, October 4, 2000 at para. 7.
- 6 Legacy Phase Working Group, *Special Court Initial Legacy White Paper*, September 26, 2005: 2 (on file with authors).
- 7 *Report of the United Nations Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, U.N. Doc. S/2004/616, August 23, 2004.
- 8 *Initial Legacy White Paper*, supra note 6 at 2.
- 9 *The "Legacy" of the Special Court for Sierra Leone* (New York: International Center for Transitional Justice, 2003), 8–10. <[www.ictj.org](http://www.ictj.org)> (accessed February 22, 2006).
- 10 *Ibid.* at 8.
- 11 The composition of the Legacy Working Group is as follows: Chief of Outreach; Deputy Chief of Press and Public Affairs; Trial Attorney, Office of the Prosecutor; Senior Defense Advisor, Defense Office; Senior Secretary to the Registrar; and a representative from Staff Council. The group is co-chaired by the Completion Strategy Co-ordinator and the Project Officer responsible for legacy. Both of the latter two work within the Registry of the Court.
- 12 For a discussion of the main issues, see for example, Francis Biddle, "The Nurnberg Trial" (1947) 33 Va. L. Rev. 679; and Hans Kelsen, "Will the Judgement in the Nuremberg Trial Constitute a Precedent in International Law" (1947) 1 Int. L. Q. 164.
- 13 For recent examples, see Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals* (Oxford: OUP, 2005); L.J. van den Herik, *The Contribution of the Rwanda Tribunal to the Development of International Law* (Leiden: Martinus Nijhoff, 2005).
- 14 *Special Court for Sierra Leone Completion Strategy*, May 18, 2005, <[www.sc-sl.org/documents.html](http://www.sc-sl.org/documents.html)> (accessed February 22, 2006).
- 15 Registrar, Terms of Reference for the Legacy Phase Working Group (on file with the authors).
- 16 *Initial Legacy White Paper*, supra note 6 at 3.
- 17 *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, supra note 14.
- 18 *Initial Legacy White Paper*, supra note 6 at 5.
- 19 *Ibid.*
- 20 *Transitional Justice Report*, supra note 15 at para. 6.
- 21 *Initial Legacy White Paper*, supra note 6 at 6.
- 22 The published titles include *Special Court Made Simple* and *International Humanitarian Law Made Simple* (on file with authors).
- 23 Sierra Leone has either acceded to or ratified the *International Covenant on Civil and Political Rights* (adopted December 16, 1966, entered into force March 23, 1976, UN Doc. A/6316 (1966) and its Optional Protocol (999 UNTS 171); the *International Covenant on Economic, Social and Cultural Rights* (adopted December 16, 1966, entered into force January 3, 1976, UN Doc. A/6316 (1966), 993 UNTS 3); the *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted December 21, 1965, entered into force January 4, 1969, 660 UNTS 195); the *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (adopted December 10, 1984, entered into force June 26, 1987, UN Doc. A/39/51 (1987) and the *Convention on the Rights of the Child* (adopted November 20, 1989, entered into force September 2, 1990, UN Doc. A/544/49 (1989).
- 24 *Act. No. 6 of 1991*.
- 25 This phrase is undefined by the paper but appears to refer to professionals in the law and justice sector, for example, lawyers, judges, police, detention officers, etc. See *Initial Legacy White Paper*, supra note 9 at 8.
- 26 *Ibid.*
- 27 *Sierra Leone: From Civil Conflict to Human Security*, UN Human Development Report, 1998. <<http://hdr.undp.org/>> (accessed February 22, 2006).
- 28 *Initial Legacy White Paper*, supra note 6 at 9.
- 29 *Initial Legacy White Paper*, supra note 6 at 9–10.
- 30 *Act. No. 6 of 1991* at s. 66.

- 31 The factors identified in *The "Legacy" of the Special Court for Sierra Leone*, supra note 9 at 11 inform the discussion in this section of this article though additional analysis is provided.
- 32 While much progress has been made, additional efforts should be made by the Registrar to bolster the level of engagement of the Court's various sections on the legacy issue.
- 33 Report on the Establishment of the Court, supra note 5 at 13.
- 34 The "Legacy" of the Special Court for Sierra Leone, supra note 9 at 7.