

A Viable Model for International Criminal Justice: The Special Court for Sierra Leone

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Introduction

The May 25, 1993, decision by the United Nations Security Council to invoke its Chapter VII powers to set up “an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia between January 1, 1991, and a date to be determined by the Security Council upon the restoration of peace”¹ was a jump-start in the development of the international system of criminal justice that had been effectively stalled since the conclusion of the International Military Tribunals at Nuremberg and Tokyo after World War II.² In the decade since its establishment, the International Criminal Tribunal for the former Yugoslavia (ICTY)—along with its companion, the International Criminal Tribunal for Rwanda (ICTR), created on November 8, 1995, to try “persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states between

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1. See S.C. Res. 827, ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993) (invoking the power of the Articles of the United Nations Security Council to establish an international tribunal); see also M. Cherif Bassiouni, *Current Development: The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780* (1992), 88 AM. J. INT'L L. 784, 791–92 (1994) (noting that the international criminal tribunal was established by the Security Council's unanimous vote); Louis B. Sohn, *Recommendation and Report: International War Crimes Tribunal*, 28 INT'L LAW. 545, 545 (1994) (describing the action taken by the United Nations to exercise its Chapter VII powers).
 2. See Kyle R. Jacobson, *Doing Business with the Devil: The Challenges of Prosecuting Corporate Officials Whose Business Transactions Facilitate War Crimes and Crimes Against Humanity*, 56 A.F. L. REV. 167, 170–71 (2005) (emphasizing that the International Military Tribunal at Nuremberg laid the foundation for the International Criminal Tribunal for the Former Yugoslavia (ICTY)); see also Thomas Hethe Clark, Note, *The Prosecutor of The International Criminal Court, Amnesties, and The “Interests of Justice”: Striking A Delicate Balance*, 4 WASH. U. GLOBAL STUD. L. REV. 389, 393–94 (2005) (noting that the Nuremberg legacy was “stunted” by post WWII politics, until the U.N. created the two international tribunals for the former Yugoslavia and Rwanda). See generally JACKSON NYAMUYA MAOGOTO, *WAR CRIMES AND REALPOLITIK: INTERNATIONAL JUSTICE FROM WORLD WAR I TO THE 21st CENTURY* 143–55 (2004) (describing the Security Council's creation of the ICTY as “groundbreaking,” and as a measure that would have been “unthinkable” four years before its establishment).

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January 1, 1994, and December 31, 1994”³—has seen tremendous progress in the global effort to prosecute violations of humanitarian and human rights law, including the first convictions for the crime of genocide and the consolidation of the jurisprudence regarding sexual violence as genocide.⁴ While the way forward has, on more than one occasion, been unsteady, advances in both procedure and substance have been significant.

Despite the tribunals’ accomplishments in combating the regime of impunity that has long shielded high officials responsible for abuse in many conflict situations, the tribunals have also been criticized for their inefficient administration.⁵ A decade into its operation, the ICTY, based at The Hague, employs 1,238 persons from 84 countries and costs over \$270 million annually.⁶ As of the end of 2004, the ICTR has handed down 17 judgments, involving some 23 accused. However, to accomplish that, the tribunal, based in Arusha, Tanzania, and staffed by 872 individuals from more than 80 countries, was spending about \$250 million annu-

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3. See S.C. Res. 955, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994) (exercising the Chapter VII powers of the United Nation’s Charter); see also Gregory S. Gordon, “A War of Media, Words, Newspapers, and Radio Stations”: *The ICTR Media Trial Verdict and A New Chapter in the International Law of Hate Speech*, 45 VA. J. INT’L L. 148, 148 (2004) (describing the creation of the ICTR, its purpose and subject matter); Theodor Meron, *War Crimes Law Comes of Age*, 92 AM. J. INT’L L. 462, 462–63 (1998) (stressing the importance and significance of establishing *ad hoc* international criminal tribunals).
 4. See, e.g., Prosecutor v. Jean-Paul Akayesu, Case No. ICTR 96-4-T, Judgment (Sept. 2, 1998), available at <http://www.ict.org/ENGLISH/cases/Akayesu/judgement/akay001.htm#8> (last visited Oct. 18, 2005) (finding Akayesu guilty of facilitating and encouraging the sexual violence, since he knew and witnessed women regularly being raped and subjected to sexual violence); see also David S. Mitchell, *The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying The Doctrine*, 15 DUKE J. COMP. & INT’L L. 219, 234 (2005) (emphasizing that the jurisprudence of the ICTY and the ICTR recognize sexual violence as an instrument of genocide); Thekla Hansen-Young, Comment, *Defining Rape: A Means to Achieve Justice in the Special Court for Sierra Leone*, 6 CHI. J. INT’L L. 479, 484 (2005) (stating that the ICTR issued the first conviction for genocide and humanity crimes based on sexual violence).
 5. See Daniel J. Hendy, *Is a Truth Commission the Solution to Restoring Peace in Post-Conflict Iraq?*, 20 OHIO ST. J. ON DISP. RESOL. 527, 546 (2005) (noting that the tribunal needs serious logistical and structural improvements); see also Geoffrey Nice QC & Philippe Vallières-Roland, *Procedural Innovations in War Crimes Trials*, 3 J. INT’L CRIM. JUST. 354, 355 (2005) (criticizing the tribunals for being too expensive, remote, ineffective, and slow). See generally J. Peter Pham, *Politics and International Justice in a World of States*, 4 HUM. RTS. & HUM. WELFARE 119 (2004) (reviewing JACKSON NYAMUYA MAOGOTO, *WAR CRIMES AND REALPOLITIK: INTERNATIONAL JUSTICE FROM WORLD WAR I TO THE 21st CENTURY* (2004)), available at <http://www.du.edu/gsis/hrhw/volumes/2004/pham-b-2004.pdf> [hereinafter Pham, *Politics and International Justice*] (tracing the historical events surrounding the creation of the tribunals, some of their accomplishments, and many of their shortcomings).
 6. See INT’L CRIM. TRIB. FOR THE FORMER YUGO., *General Information*, <http://www.un.org/icty/glance/index.htm> (last visited Sept. 25, 2005) (stating that the projected budget of the ICTY for its ordinary expenses for the 2004–2005 fiscal year is \$271,854,600). See generally Daryl A. Mundis, *The Judicial Effects of the “Completion Strategies” on the Ad Hoc International Criminal Tribunals*, 99 AM. J. INT’L L. 142 (2005) [hereinafter Mundis, *Completion Strategies*] (emphasizing that some have criticized the ICTY for being “slow to dispense justice and extremely costly to operate”); Michael P. Scharf, *The Tools for Enforcing International Criminal Justice in The New Millennium: Lessons from the Yugoslavia Tribunal*, 49 DEPAUL L. REV. 925 (2000) (expanding on the inadequacy of ICTY’s earlier budget).

ally⁷—a sum roughly fifty percent greater than the total annual revenues of the Rwandan government—and was poised to continue doing so at least through the end of the decade.⁸ In fact, dissatisfaction with the inefficiencies inherent to the use of *ad hoc* international tribunals as vehicles for pursuing international criminal justice was one of the arguments adduced in favor of the establishment of the permanent International Criminal Court (ICC)⁹ along with the Security Council's "tribunal fatigue" vitiating against the multiplication of *ad hoc* international tribunals.¹⁰

However, despite the adoption of its Rome Statute¹¹ being hailed by UN Secretary-General Kofi Annan as "a giant step forward in the march toward universal human rights and the

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7. See INT'L CRIM. TRIB. FOR RWANDA, *General Information*, available at <http://www.icttr.org/default.htm> (last visited Sept. 25, 2005) (stating that the gross budget for the 2004–2005 fiscal year for the ICTR is \$255,909,500); see also Christina M. Carroll, *An Assessment of the Role and Effectiveness of The International Criminal Tribunal for Rwanda and The Rwandan National Justice System in Dealing with the Mass Atrocities of 1994*, 18 B.U. INT'L L.J. 163, 181 (2000) (criticizing the ICTR for the scarcity of trials, despite having a multi-million dollar budget); Mark A. Drumbl, *Collective Violence and Individual Punishment: The Criminality of Mass Atrocity*, 99 NW. U. L. REV. 539, 601 (2005) [hereinafter Drumbl, *Collective Violence*] (admonishing the West for its lack of involvement in Rwanda's judicial infrastructure, leading to costs of roughly \$25 million per conviction).
 8. See *Completion Strategy of the International Criminal Tribunal for Rwanda*, U.N. SCOR, U.N. Doc. S/2004/341 (2004), available at <http://www.icttr.org/ENGLISH/completionstrat/s-2004-341.pdf> (last visited Sept. 28, 2005) (stating that the ICTR and the ICTY's work will be completed by 2010); see also International Panel of Eminent Personalities (IPEP): Report on the 1994 Genocide in Rwanda and Surrounding Events, July 7, 2004, 40 I.L.M. 141, 151 (noting Rwanda's dependence on foreign funding for a third of its already minimal budget); Mark A. Drumbl, *Law and Atrocity: Settling Accounts in Rwanda*, 31 OHIO N.U. L. REV. 41, 46 (2005) [hereinafter Drumbl, *Law and Atrocity*] (suggesting that Rwanda would significantly benefit if portions of the funding for the international tribunal were directed to the nation).
 9. See William Bradford, *Barbarians at the Gates: A Post-September 11th Proposal to Rationalize the Laws of War*, 73 MISS. L.J. 639, 650 n.35 (2004) (noting that the Rome Statute, which establishes the ICC, was ratified by a vote of 120 in favor and 7 opposed); see also Hans-Peter Kaul, *Developments at The International Criminal Court: Construction Site for More Justice: The International Criminal Court After Two Years*, 99 AM. J. INT'L L. 370, 370 (2005) (stating that the ICC officially opened in The Hague on March 11, 2003). See generally INT'L CRIM. CT., *Historical Introduction*, available at <http://www.icc-cpi.int/about/ataglance/history.html> (last visited Sept. 25, 2005) (detailing the establishment of the ICC as the first permanent treaty-based international criminal tribunal).
 10. See Anne K. Heindel, *International Human Rights & U.S. Foreign Policy: The Counterproductive Bush Administration Policy Toward the International Criminal Court*, 2 SEATTLE J. SOC. JUST. 345, 350 (2004) (stating that the birth of the ICC was due to "tribunal fatigue" and to the impracticality of establishing new *ad hoc* international tribunals); see also Larry D. Johnson, *Closing an International Criminal Tribunal While Maintaining International Human Rights Standards and Excluding Impunity*, 99 AM. J. INT'L L. 158, 174 (2005) (advising the Security Council, General Assembly, and members of the United Nations Organization that, although future challenges will arise, they should not succumb to "tribunal fatigue"); Michael P. Scharf, *The Politics of Establishing an International Criminal Court*, 6 DUKE J. COMP. & INT'L L. 167, 169 (1995) ("[Tribunal fatigue is] the process of reaching a consensus on the tribunal's statute, electing judges, selecting a prosecutor, and appropriating funds [that] has turned out to be extremely time consuming and politically exhausting for members of the Security Council").
 11. See INT'L CRIM. CT., *Rome Statute of the International Criminal Court* (July 17, 1998), 37 I.L.M. 999, 999, available at http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf [hereinafter Rome Statute] (detailing each part of the Rome Statute); see also Sean D. Murphy, ed., *Contemporary Practice of the United States Relating to International Law*, 95 AM. J. INT'L L. 387, 399 (2001) ("Under the Rome Treaty, the [ICC] will come into being with the ratification of 60 governments and will have jurisdiction over the most heinous abuses that result from international conflict, such as war crimes, crimes against humanity, and genocide."); Eric A. Posner & John C. Yoo, *Judicial Independence in International Tribunals*, 93 CAL. L. REV. 1, 11 (2005) (stating that the Rome Statute contemplated a permanent international criminal tribunal as opposed to the *ad hoc* tribunals that were formed as a result of crimes against humanity).

rule of law,”¹² the ICC faces two major limitations. First, the ICC has not been supported by the United States government.¹³ Under the Clinton Administration, the U.S. voted against the Court’s Statute at the Rome Conference and did not sign the treaty until the very last day on which it was open for signature.¹⁴ Even then, President Clinton left his successor with the recommendation not to submit for Senate ratification a treaty that, despite his signature, the outgoing chief executive described as “flawed.”¹⁵ The George W. Bush Administration took opposition to the ICC even further, formally declaring that the U.S. did not intend to become a party to the Court and that it had “no legal obligations arising from its signature of December

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12. See Heindel, *supra* note 10, at 347–48 (2004) (restating Secretary-General Kofi Annan’s words and noting that the establishment of the ICC is no less important than the establishment of the U.N. Charter itself); see also Jon M. Van Dyke, *Promoting Accountability for Human Rights Abuses*, 8 CHAP. L. REV. 153, 173 (2005) [hereinafter Van Dyke, *Human Rights Abuses*] (noting U.N. Secretary-General Kofi Annan’s support for ICC intervention into the crisis in Darfur); Kofi Annan, United Nations Sec’y-General, *Statement at the Ceremony Held at Campidoglio Celebrating the Adoption of the Statute of the International Criminal Court* (July 18, 1998), available at <http://www.un.org/icc/speeches/718sg.htm> (last visited Sept. 25, 2005) (memorializing Secretary-General Kofi Annan’s speech after the adoption of the Rome Statute).
 13. See John Dugard, *A Tribute to United States District Judge David Hittner: John W. Turner Lecture: The Implications for the Legal Profession of Conflicts Between International Law and National Law*, 46 S. TEX. L. REV. 579, 590–91 (2005) (citing the American Service Members Protection Act (ASMPA) as evidence of an American effort to destroy the ICC); see also Diane F. Orentlicher, *Unilateral Multilateralism: United States Policy Toward the International Criminal Court*, 36 CORNELL INT’L L.J. 415, 415–22 (2004) (elaborating extensively on American confrontational measures and opposition to the ICC); Jefferson D. Reynolds, *Collateral Damage on the 21st Century Battlefield: Enemy Exploitation of the Law of Armed Conflict, and the Struggle for A Moral High Ground*, 99 AM. J. INT’L L. 370, 380 (2005) (describing the nature of the United States administration’s opposition to the ICC).
 14. See Heindel, *supra* note 10, at 345 (stating that, despite the United States’ long-held position supporting international justice, both the Clinton and Bush Administrations have done very little to facilitate the formation of the ICC); see also Sasha Markovic, Note, *The Modern Version of the Shot Heard ‘Round the World: America’s Flawed Revolution Against the International Criminal Court and the Rest of the World*, 51 CLEV. ST. L. REV. 263, 268 (2004) (asserting that President Clinton signed the Rome Statute, hoping that future preparation meetings would alleviate any U.S. reservations); Mark E. Wojcik et al., *International Human Rights*, 37 INT’L LAW. 597, 597 (2003) (stressing the Clinton administration’s reluctance to ratify the Rome Statute and the Bush administration’s later withdrawal of the U.S. signature).
 15. See Julian Borger, *U.S. Will Join World Court*, GUARDIAN (London), Jan. 1, 2001, at 11 (noting that in signing the Rome Treaty, Clinton engendered a major foreign policy controversy within the Bush Administration, which for the most part, opposed it); see also William J. Clinton, *Statement of the President on the Signature of the International Criminal Court Treaty* (Dec. 31, 2000), available at <http://clinton6.nara.gov/2000/12/2000-12-31-statement-by-president-on-signature-the-icc-treaty.html> (last visited Sept. 25, 2005) (“In signing, however, we are not abandoning our concerns about significant flaws in the Treaty. In particular, we are concerned that when the Court comes into existence, it will not only exercise authority over personnel of states that have ratified the Treaty, but also claim jurisdiction over personnel of states that have not. With signature, however, we will be in a position to influence the evolution of the Court.”). See generally Steven L. Meyers, *U.S. Signs Treaty for World Court to Try Atrocities*, N.Y. TIMES, Jan. 1, 2001, at A1 (reporting that in announcing his decision to sign, Clinton said that he would neither submit the treaty for Senate approval nor recommend that his successor do so immediately).

31, 2000.”¹⁶ Moreover, further distancing the American government from the Court, the administration stated that ICC’s scope of activity, at least for the foreseeable future, is limited by the Rome Statute’s provisions in no less than two articles that, for all practical purposes, “the Court is a futuristic project, for a ‘future generation’ of criminals.”¹⁷ Article 11 of the Statute recognizes that “[t]he Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute,”¹⁸ while Article 24 holds that “[n]o person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.”¹⁹ The Statute entered into force on July 1, 2002, and even then, the ICC’s jurisdiction was generally limited to crimes that either occurred in the territory of a state party or were committed by a national of a state party.²⁰

But if “tribunal fatigue” works against the establishment of additional *ad hoc* international tribunals and its limitations—both internal and external—stymie the International Criminal Court, what model are we left to propose in response to war crimes and other violations of international humanitarian and human rights law that have occurred in recent years? While international criminal justice is not the only appropriate response to mass atrocities, trials do serve a number of salutary purposes, including bringing a measure of recognition for victims

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16. See Letter from John R. Bolton, U.S. Undersec’y of State for Arms Control and Int’l Sec., to Kofi Annan, Sec’y-General, U.N. (May 6, 2000), *available at* <http://archives.cnn.com/2002/US/05/06/court.letter.text> (last visited Sept. 25, 2005) (providing the cited quotation); *see also* Joel F. England, Note, *The Response of the United States to the International Criminal Court: Rejection, Ratification or Something Else?*, 18 ARIZ. J. INT’L & COMP. L. 941, 976–77 (2001) (noting that the Bush administration opposed the ICC and believed that ratification by the Senate was unlikely, but recognized that the United States’ signature signified certain obligations of good faith); Jonathan S. Landay, *Milosevic Extradition Boosts Support for International Criminal Court*, PITTSBURGH POST-GAZETTE, June 29, 2001, at A6 (reporting that the Bush administration has denounced the ICC as infringing on U.S. sovereignty and as a threat to national security).
 17. See GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY: THE STRUGGLE FOR GLOBAL JUSTICE 389 (2002) (explaining that governments represented at the Rome Conference “would never countenance a court with the power to reach back into history, or even to feel the collars of leaders who were currently in power”); *see also* Leila Nadya Sadat & S. Richard Carden, *The New International Criminal Court: An Uneasy Revolution*, 88 GEO. L.J. 381, 459 (2000) (“[T]he final product is a fragile compromise that may or may not succeed.”). *See generally* Rome Statute, *supra* note 11 (announcing that while the statutory policy is to ensure that crimes against humanity do not go unpunished, nations must not interfere with the territorial integrity of others).
 18. Rome Statute, *supra* note 11 (noting the prescriptive force of the Statute); *see also* Payam Akhavan, *Developments at the International Criminal Court: The Lord’s Resistance Army Case: Uganda’s Submission of the First State Referral to the International Criminal Court*, 99 AM. J. INT’L L. 403, 412 (2005) [hereinafter Akhavan, *Uganda’s Submission*] (summarizing Article 11 of the Rome Statute); Ruth Wedgwood, *The United States and the International Criminal Court: Achieving a Wider Consensus Through the “Ithaca Package,”* 32 CORNELL INT’L L.J. 535, 540 (1999) (interpreting the provision from Article 11 which limits jurisdiction to member states).
 19. Rome Statute, *supra* note 11 (recognizing the limits of the Statute’s force); *see also* Bradford, *supra* note 9, at 660 n.52 (mentioning Article 24, which limits jurisdiction to crimes committed after the entry into force of the Statute); Edward M. Wise, *The International Criminal Court: A Budget of Paradoxes*, 8 TUL. J. INT’L & COMP. L. 261, 277 (2000) (quoting Article 24 of the Rome Statute).
 20. Rome Statute, *supra* note 11 (propounding the Court’s jurisdiction); *see also* Jonathan I. Charney, *Progress in International Law?*, 93 AM. J. INT’L L. 452, 453 n.11 (1999) (elucidating that ICC jurisdiction is limited to persons who are nationals of states parties to the statute or who committed listed crimes within the territory of a state party). *But see* Jacobson, *supra* note 2, at 212 (explaining that the ICC can exercise jurisdiction only over crimes committed in the territory of, or by a national of, one of the parties to the Rome Statute, but that those limitations do not apply to cases referred to the ICC by the United Nations Security Council).

through the prosecution of those who committed atrocities and the creation of permanent records that acknowledge and condemn the horrors that transpired.²¹

This article proposes that the Special Court for Sierra Leone (SCSL), created by an agreement between the United Nations and the government of Sierra Leone,²² is a viable compromise model for international criminal justice, one that avoids some of the pitfalls encountered by the two *ad hoc* international criminal tribunals while still overcoming the judicial and political limitations of the ICC. If such is the case, this model might be applicable to other similar circumstances, including the eventual trial of former Iraqi leader Saddam Hussein and his principal collaborators, where, notwithstanding claims advanced otherwise,²³ the fitful starts of the exclusively national Iraqi Special Tribunal do not inspire confidence.²⁴

Part I of this study will begin by describing the context for the creation of the SCSL, including an overview of the decade-long civil conflict in Sierra Leone—itsself a part of a regional conflict that occurred in the context of several decades of political corruption, economic stagnation, social alienation, and government collapse, culminating in communal vio-

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21. See Antonio Cassese, *Reflections on International Criminal Justice*, 61 MOD. L. REV. 1, 1–6 (1998) (stating the principal aims of tribunal justice as: 1) distinguishing culpable perpetrators from others of the same ethnic or other group; 2) dissipating calls for revenge by showing victims that perpetrators are being punished; 3) fostering reconciliation by ensuring that perpetrators pay for the crimes; and 4) creating a reliable record of past atrocities); see also Allison M. Danner & Jenny S. Martinez, *Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law*, 93 CAL. L. REV. 75, 94–95 (2005) (explaining that international criminal trials serve as a method of recording history and are meant to create a record of horrific events for future generations). See generally MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE 47–51 (1998).
22. See Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, U.N.-Sierra Leone, Jan. 16, 2002, <http://www.sc-sl.org/scsl-agreement.html> (last visited Oct. 8, 2005) [hereinafter U.N.-Sierra Leone Agreement] (setting out the Articles to establish the Special Court); see also Joshua Rozenberg, *Just What Sort of Trial Will This Man Get? More Could Be Done to Meet International Standards*, DAILY TELEGRAPH (London), Dec. 18, 2003, at 19 (noting that the only hybrid court with both international and local judges in existence is the Special Court for Sierra Leone); Somini Sengupta, *Besieged Liberian*, N.Y. TIMES, July 11, 2003, at A7 (reporting that the Special Court for Sierra Leone was established by the government of Sierra Leone and the United Nations, but is independent with some of its judges being citizens of Sierra Leone and others being from other countries).
23. See, e.g., Michael J. Frank, *Justice for Iraq, Justice for All*, 57 OKLA. L. REV. 303, 332 (2004) (“[B]y subjecting Saddam and the Baathists to a trial by their primary victims, however, Iraq will take a substantial step away from its violent past and toward a democratic future.”); see also Joseph Betz, *Just a War: America’s 2003 War of Aggression Against Iraq*, 9 NEXUS 145, 155 (2004) (opining that the United States had no right to invade Iraq and that it was the task of the Iraqi people to try their former leader); John F. Burns, *Defiant Hussein Rebukes Iraqi Court for Trying Him*, N.Y. TIMES, July 2, 2004, at A1 (reporting that White House spokesman Scott McClellan emphasized the importance of Saddam Hussein “facing justice from the Iraqi people in an Iraqi court”).
24. See J. Peter Pham, *Bringing Saddam Hussein to Justice*, IN THE NAT’L INT., July 7, 2004, available at <http://www.inthenationalinterest.com/Articles/Vol3Issue27/Vol3Issue27Pham.html> (opining that it would be most efficient for there to be international involvement in the forthcoming trial of former Iraqi dictator Saddam Hussein in order to help cover the financial costs as well as “lend a certain legitimacy to the process”); see also Michael A. Newton, *Iraq’s New Court Finds Itself on Trial*, N.Y. TIMES, Nov. 24, 2004, at A23 (suggesting that international cooperation is needed for the trial of Saddam Hussein and criticizing the United Nations and Europe for not taking a more active role in the preparation); *Trying Saddam Hussein*, N.Y. TIMES, Dec. 17, 2003, at A38 (arguing that the best way to educate Iraqis and the world about the nature of Saddam Hussein’s regime, adhere to the highest international standards of fairness, and provide a mechanism for appropriate punishment is to create a U.N. tribunal inside Iraq staffed by Iraqi and international judges and prosecutors).

lence—that left the Court with the Herculean task of prosecuting the most grievous offenders against international humanitarian law and other human rights abusers.²⁵ Parts II and III will describe the establishment of the Special Court, its structure, and operation. Part IV examines the progress of the tribunal to date, the first trials having opened only on June 3, 2004. While recognizing that the SCSL is not without its drawbacks, the advantages of this mixed international-national system as a model for international criminal justice in the near term will be discussed in Part V.

I. The Context for the Creation of the Special Court

While the heaviest responsibility is borne by Foday Saybana Sankoh, the leader of the rebel Revolutionary United Front (RUF)—who died in prison in 2003 while awaiting trial before the SCSL²⁶—as well as his chief patron, former Liberian president Charles Ghankay Taylor—who has been indicted by the same tribunal but is still free in his Nigerian exile²⁷—it would be more accurate to decline to ascribe a single cause to the war in Sierra Leone. Rather, the conflict's origins are more complex, rooted in the very history of the country.²⁸

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25. See Nsongurua J. Udombana, *Globalization of Justice and the Special Court for Sierra Leone's War Crimes*, 17 EMORY INT'L L. REV. 55, 130 (2003) (mentioning the difficult task facing the Special Court in that it must investigate war crimes and crimes against humanity committed during an internal armed conflict, as opposed to international war); see also Laura R. Hall & Nahal Kazemi, Recent Development, *Prospects for Justice and Reconciliation in Sierra Leone*, 44 HARV. INT'L L.J. 287, 287 (2003) (explaining the Special Court's difficult task of separating the guilty from the innocent under a combination of international humanitarian and criminal law). See generally Rory Carroll, *U.N. Puts Seven on Trial for Sierra Leone Atrocities*, GUARDIAN (London), Mar. 11, 2003 (reporting that the Special Court indicted seven people, against whom there are allegations of murder, rape, extermination, acts of terror, sexual slavery, conscription of children into an armed force, and attacks on U.N. peacekeepers).
26. See Douglas Farah, *Foday Sankoh Dies; Rebel Group Leader in Sierra Leone*, WASH. POST, July 31, 2003, at B6 (reporting that Foday Sankoh, leader of one of West Africa's most ruthless rebel groups, died of a stroke after being in prison for three years, following an indictment by the Special Court for Sierra Leone on charges of mass murder, rape, abduction, use of child soldiers, and sexual slavery); see also Somini Sengupta, *African Held for War Crimes Dies in Custody of a Tribunal*, N.Y. TIMES, July 31, 2003, at A6 (stating that Foday Sankoh had died in the custody of the Special Court for Sierra Leone and that he was not the first to have been charged by the Special Court to then not live to experience a trial); David White, *Trials Off to Mixed Start Special War Crimes Court: Officials Warn About the Potential for Trouble Making*, FIN. TIMES (London), Feb. 14, 2005, at 5 (mentioning that RUF leader Foday Sankoh died in prison while awaiting trial).
27. See Ed Royce, *Bring Charles Taylor to Justice*, N.Y. TIMES, May 5, 2005, at A35 (reporting that Charles Taylor sits exiled in Nigeria and has been indicted on charges of fueling a brutal war in Sierra Leone); see also Betsy Pisik, *Power in Exile: Taylor Extends Political Reach; Nigeria Turns Blind Eye as World Finds More Evidence for Tribunal*, WASH. TIMES, June 2, 2005, at A17 (noting that there is pressure mounting in Washington and in the United Nations to transfer Charles Taylor, charged with 17 counts of war crimes and related charges, to the Special Court for Sierra Leone as accusations mount that the former Liberian president is working from exile to destabilize West Africa); *In Brief: Ex-Liberian Leader May Be Prosecuted*, HOUSTON CHRON., June 1, 2004, at A7 (documenting that the Special Court for Sierra Leone declared that the ousted Liberian leader, Charles Taylor, is not immune from prosecution for war crimes in the international court).
28. See Laurence Juma, *The Human Rights Approach to Peace in Sierra Leone: The Analysis of the Peace Process and Human Rights Enforcement in a Civil War Situation*, 30 DENV. J. INT'L L. & POL'Y 325, 327 (2002) (analyzing the conflict in the context of its historical evolution); see also J. Peter Pham, *Lazarus Rising: Civil Society and Sierra Leone's Return from the Grave*, 7 INT'L J. NOT-FOR-PROFIT L. 1, ¶5 (2004), available at http://www.icnl.org/JOURNAL/vol7iss1/ar_pham.htm (last visited Sept. 27, 2005) [hereinafter Pham, *Lazarus Rising*] (reaffirming the need to understand the historical roots of the conflict); Karen Gallagher, Note, *No Justice, No Peace: The Legalties and Realities of Amnesty in Sierra Leone*, 23 T. JEFFERSON L. REV. 149, 152 (2000) (explaining that an understanding of Sierra Leone's history was necessary background to a discussion of its civil war).

A. Historical Background

Founded in 1789 by an eponymous company of British abolitionists and other philanthropists and intended as a haven for freed black slaves (thus the name of the capital, “Freetown”)—including some 1,200 who had supported the loyalist cause during the American War of Independence and had consequently been driven from the 13 newly independent United States—Sierra Leone is one of the oldest modern polities in Africa, having become a Crown Colony in 1808.²⁹ The establishment in 1827 of Fourah Bay College, the oldest university-level institution in sub-Saharan Africa, assured the country its pioneering role in higher education on the Continent.³⁰ Unfortunately, the seeds of political and ethnic division were also sown early, with a marked cleavage between the anglicized “Krio” (the local variant of “Creole”) freedman-settlers of the Crown Colony and the diverse inhabitants of the country’s interior, where a British Protectorate was only proclaimed in 1896 and where the colonial administrators exercised an indirect control through traditional rulers, designated “paramount chiefs,” until independence.³¹

Sierra Leone received its autonomy within the British Commonwealth in 1961 under the leadership of Sir Milton Margai and the Sierra Leone People’s Party (SLPP).³² Although the proud scion of a Mende chiefly family from the former Protectorate, Sir Milton was also thor-

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29. See JOHN L. HIRSCH, *SIERRA LEONE: DIAMONDS AND THE STRUGGLE FOR DEMOCRACY* 23 (2001) (explaining that Freetown became a British post and settlement area for repatriated slaves in 1787); BANKOLE THOMPSON, *THE CONSTITUTIONAL HISTORY AND LAW OF SIERRA LEONE (1961-1995)* 1 (1996) (stating that Sierra Leone was established in 1722 by Granville Sharpe as a settlement for freed slaves, and proclaimed a crown colony of Great Britain in 1808); Babafemi Akinrinade, *International Humanitarian Law and the Conflict in Sierra Leone*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 391, 392 (2001) (acknowledging that Sierra Leone, founded in 1808, was the first modern political state in sub-Saharan Africa).
30. See John D. Hargreaves, *The Idea of a Colonial University*, 72 AFR. AFF. 26, 26–27 (suggesting that Fourah Bay College, founded in 1827 by the Church Missionary Society, was an exception to the establishment of universities as part of Britain’s post-1945 political strategy for gradual and controlled decolonization); see also John Karefa-Smart, *Africa in World Affairs*, 6 AFR. STUD. BULL. 4, 5 (1964) (reflecting on Sierra Leone’s pioneering role in higher education for all of tropical Africa); BUREAU OF AFRICAN AFF., U.S. DEP’T OF STATE, *Background Note: Sierra Leone*, available at <http://www.state.gov/r/pa/ei/bgn/5475.htm> (last visited Oct. 8, 2005) [hereinafter *Sierra Leone Profile*] (recognizing Fourah Bay College’s place as the only European-style university in western sub-Saharan Africa for more than a century).
31. See JAMES W. ST. G. WALKER, *THE BLACK LOYALISTS: THE SEARCH FOR A PROMISED LAND IN NOVA SCOTIA AND SIERRA LEONE 1783-1870* 318–21, 362–64 (1976) (explaining that the upward mobility of the Creoles and assimilation into European culture established a more common identity with white colonists than other repatriated natives); see also AKINTOLA WYSE, *THE KRIO OF SIERRA LEONE: AN INTERPRETATIVE HISTORY* 70–71 (1989) (suggesting that although there was a significant cultural and political divide between the Krio elite and people of the protectorate, the two groups did intermingle and co-exist in limited spheres). See generally JOHN PETERSON, *PROVINCE OF FREEDOM: A HISTORY OF SIERRA LEONE* 283–84 (1969) (describing the various social classes and cultures of Freetown).
32. See EARL CONTEH-MORGAN & MAC DIXON-FYLE, *SIERRA LEONE AT THE END OF THE TWENTIETH CENTURY: HISTORY, POLITICS, AND SOCIETY* 75 (1999) (stating that Sierra Leone achieved independence in 1961); see also A. P. KUP, *SIERRA LEONE: A CONCISE HISTORY* 207–10 (1975) (explaining that although political parties were dissolved in the wake of independence in 1961, the 1957 election confirmed the ascendancy of the SLPP with Margai as its leader); *Sierra Leone Profile*, *supra* note 30 (explaining that Sir Milton Margai’s SLPP led the country to independence in April 1961, at which point the country opted for a parliamentary system within the British Commonwealth).

oughly at home in the westernized world of Freetown's "Kriodom."³³ Before venturing into politics, he had been the first native of the Protectorate to earn a bachelor's degree from Fourah Bay College and the first to qualify as a physician.³⁴ Sierra Leone inherited from its departing colonial rulers a healthy foreign reserve account, as well as a Westminster-style parliamentary democracy that was the envy of the region.³⁵ The new country was admitted to the United Nations as the one-hundredth member state, an event that observers noted for its great symbolism, since the country was founded as a haven for freed Africans and the world body was instrumental in bringing about decolonization of the African Continent.³⁶ One prominent American scholar of Africa, Thomas Patrick Melady, later United States Ambassador to Burundi and Uganda and Ambassador to the Holy See,³⁷ was typical of his contemporaries in his enthusiastic optimism about the future of the new West African state:

Sierra Leone can emerge as a showcase of West Africa, progressive in its politics and forward-looking in its policies. Its prime minister, Sir Milton Margai, is strongly opposed to Communist infiltration. Building on a solid agricultural base, the economy has profited from diamond deposits and [a] growing interest in its promising industries, which range from fish to oil.

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33. See CHRISTOPHER FYFE, *A SHORT HISTORY OF SIERRA LEONE* 144 (1979) (reporting that Margai was a descendant of the ruling family of Banta chiefdom); see also John Cartright, *Some Constraints Upon African Leadership*, 11 CAN. J. AFR. STUD. 435, 449 (1977) (underscoring Margai's ability to maintain legitimacy with both Chiefs and Creoles through various avenues of appeal); SIERRA LEONE WEB, *Sierra Leonean Heroes: Achievement of Independence*, <http://www.sierra-leone.org/heroes8.html> (last visited Oct. 18, 2005) [hereinafter *Sierra Leonean Heroes*] (recognizing Margai's ability to distance himself from political rivalries to remain admired by all Sierra Leoneans).
34. See FYFE, *supra* note 33, at 144 (noting that Margai was educated at Fourah Bay College, studied medicine in England, and was the first man from the Protectorate to qualify as a doctor); see also MARTIN KILSON, *POLITICAL CHANGE IN A WEST AFRICAN STATE: A STUDY OF THE MODERNIZATION PROCESS IN SIERRA LEONE* 147 (1966) (noting that prior to his political career, Dr. Margai was the first Protectorate medical doctor, serving as Medical Officer in the 1930s and 1940s); *Sierra Leonean Heroes*, *supra* note 33 (recognizing Margai's paramount achievements).
35. See KILSON, *supra* note 34, at 170–76 (explaining that the newly independent Sierra Leone adopted a representative form of government but maintained many of the vestiges of the colonial regime to diffuse tensions between the African elite and colonial authorities); see also Amanda Bryant Banat, Note, *Solving the Problem of Conflict Diamonds in Sierra Leone: Proposed Market Theories And International Legal Requirements For Certification of Origin*, 19 ARIZ. J. INT'L & COMP. L. 939, 942 (2002) (noting that Sierra Leone adopted a parliamentary government upon gaining independence in 1961). See generally Alan Cowell, *The World: Britain in Africa; Colonialism's Legacy Becomes a Burden*, N.Y. TIMES, June 4, 2000 (reflecting on Britain's post-colonial role in quelling Sierra Leone's civil unrest from competition over the country's diamonds).
36. See John Karefa-Smart, *Africa in World Affairs*, 16 AFR. STUD. BULL. 4, 4–5 (1963) (reflecting on the historical context of being admitted to the U.N. and contribution of Sierra Leone to the development of Africa); see also *Sierra Leone is 100th U.N. State by Unanimous Vote in Assembly State*, N.Y. TIMES, Sept. 28, 1961, at 19 (describing the Prime Minister's vision for his country, as expressed in his address to the U.N. General Assembly). See generally *The 100th Member*, WASH. POST, TIMES HERALD (1959–1973), Oct. 2, 1961 (recognizing the significance of Sierra Leone's admission to the U.N.).
37. See generally THOMAS PATRICK MELADY, FAITH, FAMILY, FRIENDS: A FEW GLANCES AT THE LIFE OF THOMAS PATRICK MELADY, DIPLOMAT, EDUCATOR, SOLDIER (2003) (rendering a personal account of Thomas P. Melady's career as United States ambassador to the Vatican, Burundi, and Uganda).

Sierra Leone is more than a symbol of freedom; it is an embodiment of the aspirations of Africa.³⁸

Tragically, the ensuing decades turned this promise on its head and made Sierra Leone the poster child for all that has gone wrong in Africa since the heady days of its liberation from colonialism—the veritable embodiment of the continent’s dysfunctional politics, environmental exploitation, economic misery, and fratricidal conflicts.³⁹ Today, despite the wealth of both its human capital and natural resources, as well as the billions of dollars in international assistance it has received in recent years, Sierra Leone enjoys the dubious distinction of apparent tenure in the absolute last place in the annual rankings of the United Nations Development Program (UNDP) Human Development Index (HDI), currently occupying the 177th place among 177 countries surveyed.⁴⁰

The slide began after the hotly contested general elections of 1967, which the SLPP, led by the deceased Sir Milton’s brother, Sir Albert Margai, who had transformed the ruling party from a national institution into one dominated by the southeastern Mende, narrowly lost to their opposition, the All Peoples’ Congress (APC), which was heavily backed by Temne tribesmen from the North, as well as Krio urban dwellers.⁴¹ However, the new prime minister, Siaka Probyn Stevens, had barely been sworn in by the Governor-General on March 21, 1967, when he was overthrown in a *coup d’état*.⁴² After a year in exile, Stevens regained power in 1968 when

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38. THOMAS PATRICK MELADY, *FACES OF AFRICA* 39 (1964); see Karefa-Smart, *supra* note 36, at 4 (echoing Melady’s enthusiasm for the future of Sierra Leone and the increased attention from the international community and the U.S.). See generally John Karefa-Smart, *Africa and the United Nations*, 19 INT’L ORG. 764 (1965) (discussing the diplomatic importance of U.N. membership to African countries, and recognizing Sierra Leone part of the initial group of African states to gain admission).
39. See Michael A. Corriero, *The Involvement and Protection of Children in Truth and Justice-Seeking Processes: The Special Court for Sierra Leone*, 18 N.Y.L. SCH. J. HUM. RTS. 337, 337 (2002) (asserting that Sierra Leone is struggling to deal with economic and political strife); see also Juma, *supra* note 28, at 331 (discussing that leadership after Sierra Leone’s independence has caused the civil war to continue raging today); Jeana Webster, Note, *Sierra Leone: Responding to the Crisis, Planning for the Future: The Role of International Justice in the Quest for National and Global Security*, 11 IND. INT’L & COMP. L. REV. 731, 733 (2001) (stating that the conflict in Sierra Leone has undermined Africa’s ability to achieve long-term stability).
40. See Andrew Child, *Mines that Fuel and Sustain War Sierra Leone: Andrew Child on the Catalyst for a Crippling Conflict*, FIN. TIMES (London), June 18, 2005, at 3 (stating that Sierra Leone ranked at the bottom in the 2005 United Nations Human Development Report); see also UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2004: CULTURAL LIBERTY IN TODAY’S DIVERSE WORLD 142 (2004), available at http://hdr.undp.org/reports/global/2004/pdf/hdr04_HDI.pdf (last visited Oct. 18, 2005) (indicating that Sierra Leone ranks at number 177 in the Human Development Index). See generally U.N. *Rates Us Third*, HERALD SUN (Austl.), Sept. 9, 2005 (reporting that Sierra Leone ranked among the least prosperous countries in the United Nations Human Development Report).
41. See Akinrinade, *supra* note 29, at 393 (asserting that the 1967 election in Sierra Leone was corrupt and mismanaged); see also Juma, *supra* note 28, at 331 (declaring that the All People’s Congress was supported by the Temne, while the SLPP was supported by the Mende); Lucinda Saunders, Note, *Rich and Rare are the Gems They War: Holding De Beers Accountable For Trading Conflict Diamonds*, 24 FORDHAM INT’L L.J. 1402, 1423–24 (2001) (stating that Siaka Stevens represented the All People’s Congress).
42. See Akinrinade, *supra* note 29, at 393 (explaining that David Lansana declared martial law on the same day Stevens was appointed); see also Juma, *supra* note 28, at 331 (asserting that martial law was declared after Stevens was sworn in in 1967); Gallagher, *supra* note 28, at 154 (stating that a military coup resulted after Stevens won the 1967 election in Sierra Leone).

a popular uprising overthrew the erstwhile *putschists*.⁴³ The experience changed Stevens, however, who soon evinced signs of paranoia about conspiracies perceived to be swirling around him.⁴⁴ In 1971, Stevens used a legally questionable legislative maneuver to amend the Sierra Leonean Constitution, substituting the parliamentary democracy with a highly-centralized presidential republic.⁴⁵ Several years later, he held a farcical referendum to transform the country into a one-party state with the APC as the only legal political organization.⁴⁶

Perhaps even worse than what Stevens did to Sierra Leone's political system was what he did to the country's economy.⁴⁷ Having inherited a sound, if not necessarily rich, economy with a diversified base of diamonds, iron mining and agriculture—primarily coffee and cocoa production—that expanded between 1965 and 1973 at the respectable, if not spectacular, annual rate of 4 percent against an annual population growth rate of 1.9 percent,⁴⁸ Stevens and his cronies gradually destroyed it all.⁴⁹ The annual rate of growth dipped to an average of 0.7

43. See Akinrinade, *supra* note 29, at 393 (stating that one year later, Stevens returned from exile); Gallagher, *supra* note 28, at 154 (noting that one year after the uprising, Stevens returned from exile and took over as Prime Minister).

44. See generally *Gambia: Governance and Conflict in Africa: The Gambia as a Case Study*, AFR. NEWS, Sept. 8, 2003 (explaining that African dictators become paranoid); *Gambia: Of State House Consultations and the Real Big Issues in Africa News*, AFR. NEWS, Jan. 20, 2003 (suggesting that Stevens became paranoid during his dictatorship); THOMAS S. COX, CIVIL-MILITARY RELATIONS IN SIERRA LEONE: A CASE STUDY OF AFRICAN SOLDIERS IN POLITICS 113–217 (1976) (noting that Stevens was paranoid about talk of conspiracy in Sierra Leone).

45. See Akinrinade, *supra* note 29, at 393 (stating that Stevens became the executive president of Sierra Leone); Amanda Bryant Banat, Note, *Solving the Problem of Conflict Diamonds in Sierra Leone: Proposed Market Theories and International Requirements for Certification of Origin*, 19 ARIZ. J. INT'L & COMP. L. 939, 942 (2002) (asserting that Stevens established a one-party state and instituted a dictatorship). See generally THOMPSON, *supra* note 29 (stating that Stevens created a highly centralized government).

46. See THOMPSON, *supra* note 29, at 145–46 (detailing how Stevens established an incredibly centralized government); Banat, *supra* note 35, at 942–43 (explaining that Stevens established a one-party state in Sierra Leone); Saunders, *supra* note 41, at 1423–24 (indicating that the All Peoples Congress was the only party in Sierra Leone).

47. See CONTEH-MORGAN & DIXON-FYLE, *supra* note 32, at 75–87 (analyzing Stevens' detrimental effect on the economy of Sierra Leone); see also Jamie O'Connell, *Here Interest Meets Humanity: How to End the War and Support Reconstruction in Liberia, and the Case for Modest American Leadership*, 17 HARV. HUM. RTS. J. 207, 211–12 (2004) [hereinafter O'Connell, *Interest Meets Humanity*] (noting that President Stevens caused the political institutions and economy of Sierra Leone to collapse); David Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World*, 18 BYU J. PUB. L. 1, 26 (2003) (remarking that Stevens' policies accelerated the decline of Sierra Leone).

48. See Paul Collier, *The Market for Civil War*, FOREIGN POL'Y, May 1, 2003, at 38, available at 2003 WLNR 6594355 (asserting that Sierra Leone experienced the most rapid decline of any country despite its vast diamond deposits); see also *Portraits of the South: Stories of Development [Brazil: North & South Together/South Korea: The Han River Miracle/Sierra Leone: Life at the Bottom]*, CAN. AND THE WORLD BACKGROUNDER, May 2000, at 3 (commenting on the vast resources in Sierra Leone).

49. See Juma, *supra* note 28, at 333 (stating that Sierra Leone's corrupt government contributed to its decline in growth); O'Connell, *Interest Meets Humanity*, *supra* note 47, at 211–12 (asserting that Stevens' placement of his cronies into government positions led to Sierra Leone's demise); see also Vesel, *supra* note 47, at 26 (remarking that Stevens and his chosen successor, Momoh, set the stage for the conflict in Sierra Leone today).

percent between 1980 and 1987, before going into negative figures.⁵⁰ Dwindling revenues from the government's diamond monopolies and agricultural marketing boards, compounded by governmental corruption and profligate spending on non-essential "prestige projects," only served to accelerate the sharp rate of economic decline.⁵¹

Sierra Leone went from being the model for democratic governance and economic prosperity that it had been under Milton Margai to an example *par excellence* of Africa's post-colonial "neopatrimonial" malaise where national resources were redistributed as "marks of personal favor to followers who respond with loyalty to the leader rather than to the institution that the leader represents."⁵² In the words of William Reno, Sierra Leone had degenerated into a "shadow state": a system of personal rule founded on neither concepts of legitimacy nor even governmental institutions, but on the control of markets and on the ruler's ability to manipulate access to resources created by those markets such that his own power was enhanced.⁵³ In short, the "shadow state"—a patrimonial network working for private interests normally, but not necessarily, constructed behind the façade of formal statehood—was the very antithesis of

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50. See *Africa; Powell Isn't Pandering to Africa's Big Men*, L.A. TIMES, June 3, 2001, at 2 (stating that Sierra Leone's economic growth rate averaged far below the rate needed to reduce poverty). See generally *Kenya: World Bank's Dim Picture of Kenya's Economy*, AFR. NEWS, May 1, 2001 (stating that Sierra Leone's GDP growth rate is lower than negative eight percent); Michael Chege, *Sierra Leone: The State that Came Back from the Dead*, WASH. Q., Summer 2002 (discussing Sierra Leone's decline into a negative growth rate).
51. See Chege, *supra* note 50, at 151–53 (critiquing President Stevens' economic mismanagement on "prestige projects" when he spent millions of dollars to host an African Summit in 1980); see also ADEKEYE ADEBAJO, LIBERIA'S CIVIL WAR: NIGERIA, ECOMOG, AND REGIONAL SECURITY IN WEST AFRICA 31 (Lynne Reiner Publishers 2002) (noting that Liberia was not invited to Sierra Leone's African Summit due to history of conflicts); LANSANA GBERIE, WAR AND PEACE IN SIERRA LEONE: DIAMONDS, CORRUPTION AND THE LEBANESE CONNECTION 7 (Ian Smillie ed., 2002), available at http://action.web.ca/home/pac/attach/sierraleone2002_e.pdf (last visited Oct. 3, 2005) (noting that British mining company's monopoly essentially robbed natives of their resources and situation did not improve with time).
52. See PAUL RICHARDS, FIGHTING FOR THE RAIN FOREST: WAR, YOUTH AND RESOURCES IN SIERRA LEONE 34 (2002) [hereinafter RICHARDS, FIGHTING FOR THE RAIN FOREST] (stating that patrimonialism includes redistributing national resources as marks of personal favors for the individual leader); see also O'Connell, *Interest Meets Humanity*, *supra* note 47, at 211–12 (addressing how Sierra Leone's institutions were destroyed by corrupt political leaders). See generally Margo Kaplan, *Carats and Sticks: Pursuing War and Peace Through the Diamond Trade*, 35 N.Y.U. J. INT'L. & POL. 559 (2003) (noting that Sierra Leone's early national history was full of promise because of its abundant natural resources and skilled civil servants).
53. See WILLIAM RENO, CORRUPTION AND STATE POLITICS IN SIERRA LEONE 80 (1995) (applying the term "shadow state" to President Stevens' methods of increasing his power at the cost of destroying state institutions); see also WILLIAM TORDORF, GOVERNMENT AND POLITICS IN AFRICA 16 (1984) (2002) (stating that leaders of "shadow states" in countries such as Sierra Leone and Zaire manipulated informal markets for personal interests and financial gains). See generally Gregory Fox, *Perspectives on Globalization from Developing States: Strengthening the State*, 7 IND. J. GLOBAL LEGAL STUD. 35 (1999) (questioning the ability of nations controlled by illegitimate means to function as government).

civil society, understood as organizations outside government that function as constraints upon it and upon advocates of the common good.⁵⁴

In no sector was the “neo-patrimonial” corruption of the “shadow state” more evident than in the fabled alluvial diamond fields of Sierra Leone’s east.⁵⁵ Before the APC took over, the diamond trade constituted one-third of national output and contributed over 70 percent of Sierra Leone’s foreign exchange reserves.⁵⁶ By the mid-1980s, less than \$100,000 worth of the precious minerals passed through legal, taxable channels.⁵⁷ Most of the rest was appropriated by Stevens and a coterie of his closest associates, who also embezzled profits and other assets from various state enterprises.⁵⁸ Having looted an estimated \$500 million and leaving a balance of barely \$196,000 in foreign reserves in the Bank of Sierra Leone on the day he left office, Stevens retired in 1985 after anointing the army chief, Major General Joseph Saidu Momoh, as his successor.⁵⁹ Unfortunately for Sierra Leone, Momoh’s regime did no better than its prede-

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54. See PIERRE ENGELBERT, STATE LEGITIMACY AND DEVELOPMENT IN AFRICA 182 (2000) (explaining that the informal markets co-exist with legitimate state institutions and uses the state’s resources for private gain); see also Jeremy I. Levitt, *The Responsibility to Protect: A Beaver Without a Dam?*, 25 MICH. J. INT’L L. 153, 160 (2003) (reviewing THOMAS G. WEISS & DON HUBERT, THE RESPONSIBILITY TO PROTECT (2001)) (commenting that other nations such as Liberia had a stronghold in Sierra Leone’s government functions and profited from the illegal markets that existed). See generally CHRISTOPHER CLAPHAM, AFRICA AND THE INTERNATIONAL SYSTEM: POLITICS OF STATE SURVIVAL 248 (1996) [hereinafter CLAPHAM, POLITICS OF STATE SURVIVAL] (discussing how the informal markets in Sierra Leone undermine the formal economic sphere of the state).
 55. See GREG CAMPBELL, BLOOD DIAMONDS: TRACING THE DEADLY PATH OF THE WORLD’S MOST PRECIOUS STONES 18 (2004) (stressing how the Kono District provided endless illicit mining opportunities); see also Sheryl Dickey, *Sierra Leone: Diamonds for Arms*, 7 HARV. HUM. RTS. J. 9, 9 (2000) (emphasizing how the Eastern Kono District was the source of conflict). See generally Michael Pugh, WAR ECONOMIES IN A REGIONAL CONTEXT: CHALLENGES OF TRANSFORMATION 119 (2004) (addressing the illicit mining in Sierra Leone’s alluvial diamond fields, such as the Kono District).
 56. See GBERIE, *supra* note 51, at 1 (addressing the strength of Sierra Leone’s foreign exchange earnings in the 1970s); see also Akinrinade, *supra* note 29, at 393 (noting that by the 1980s, economic decline was rampant due to inflation and deficits). See generally Ian Martinez, Student Article, *Sierra Leone’s “Conflict Diamonds”: The Legacy of Imperial Mining Laws and Policy*, 10 U. MIAMI INT’L & COMP. L. REV. 217 (2001) (explaining that the foreign exchange reserves in Sierra Leone significantly dropped under the leadership of Major General Momoh).
 57. See Fred Hayward, *State Consolidation, Fragmentation and Decay*, in CONTEMPORARY WEST AFRICAN STATES 165–80 (2nd ed. 1989) (citing the amount of precious materials that were traded by legal means); see also WILLIAM RENO, WARLORD POLITICS AND AFRICAN STATES 116 (1998) [hereinafter RENO, WARLORD POLITICS] (asserting that only about \$100,000 were passed through legal means in Sierra Leone). See generally Ian Smillie et al., THE HEART OF THE MATTER: SIERRA LEONE, DIAMONDS & HUMAN SECURITY (Bernard Taylor, ed., 2000), available at <http://www.sierra-leone.org/heartmatter.html> (last visited Oct. 18, 2005) (discussing the continuous trend of illicit mining in Sierra Leone, starting in the 1930s through the 1980s).
 58. See JOHN OATES, MYTH AND REALITY IN THE RAIN FOREST: HOW CONSERVATION STRATEGIES ARE FAILING WEST AFRICA 82 (1999) (explaining that President Stevens maintained his power by distributing wealth to his associates who were influential businessmen); see also Juma, *supra* note 28, at 333 (commenting that Stevens handed over the entire diamond and fishing industry to a close business associate). See generally Martinez, *supra* note 56 (explaining that Sierra Leone’s new leader Major General Momoh continued the corrupt practices of enriching his close associates, similar to former Sierra Leone President Saika Stevens’ government).
 59. See RENO, WARLORD POLITICS, *supra* note 57, at 116 (stating that President Stevens amassed a personal fortune of about \$500 million through his corrupt government); see also Ndiva Kofele-Kale, *Patrimonicide: The International Economic Crime of Indigenous Spoliation*, 28 VAND. J. TRANSNAT’L L. 48, 99 (1995) (reporting examples of President Stevens’s corruption which included his real estate portfolio of 16 houses with an estimated value of \$5 million). See generally HIRSCH, *supra* note 29 (noting that in 1985 when President Stevens was in his 80s, he handpicked Major General Momoh as his successor).

cessor's, thus perpetuating the already vicious cycle of political, economic, and social malaise.⁶⁰ As former United States Ambassador to Sierra Leone John Hirsch reported:

Unpaid civil servants desperate to keep their families fed ransacked their offices, stealing furniture, typewriters, and light fixtures. . . . One observer has noted that the government hit bottom when it stopped paying school-teachers and the education system collapsed. Without their salaries, teachers sought fees from the parents to prepare their children for their exams. With only professional families able to pay these fees, many children ended up on the streets without either education or economic opportunity.⁶¹

B. The Civil War

Bereft of the resources to provide its potential clients with jobs and educational opportunities, the ruling APC lost its base of support and began to unravel altogether at the very moment when contracting services and collapsing infrastructure left the Sierra Leone state itself most vulnerable to attack.⁶² The *coup de grâce* came in the form of a spillover from the civil war in neighboring Liberia.⁶³ In March 1991, Foday Sankoh, a charismatic former Sierra Leonean army corporal who had been jailed for several years in the 1970s for his role in an alleged plot against the Stevens regime and who subsequently underwent military training with a small group of Sierra Leonean dissidents in Libya (where Libyan warlord and later President Charles

60. See Paul Richards, *War and Peace in Sierra Leone*, 25 FLETCHER F. WORLD AFF. 41, 42 (2001) [hereinafter Richards, *War and Peace*] (commenting on how Major General Momoh's regime could not withstand the military attacks); see also Shana Eaton, Article, *Sierra Leone: The Proving Ground for Prosecuting Rape as a War Crime*, 35 GEO. J. INT'L L. 873, 876 (2004) (highlighting that the Sierra Leone government under Major General Momoh was equally corrupt as President Stevens' prior regime). See generally Akinrinade, *supra* note 29 (reporting that former President Stevens' selection of Major General Momoh was first received warmly by the people of Sierra Leone because they thought changes would take place to improve the corrupt government).

61. See HIRSCH, *supra* note 29, at 30 (describing his observations during a visit as United States Ambassador to Sierra Leone); see also Kaplan, *supra* note 52, at 570–71 (stating that Sierra Leone was unable to pay its civil servants). See generally O'Connell, *Interest Meets Humanity*, *supra* note 47 (commenting that the Sierra Leone government under President Stevens did not put resources into education).

62. See HIRSCH, *supra* note 29, at 32 (indicating that Sierra Leone government lost support from the army's junior officers); see also Chege, *supra* note 50, at 153 (commenting on the inability of the APC to provide economic opportunities that caused youths to be attracted to the promises by political opportunists in nearby nations). See generally Webster, *supra* note 39 (noting that the All People's Party mismanagement of potentially rich resources led to the social and economic destruction of Sierra Leone, which made the nation susceptible to rebellion).

63. See Gregory Copley, *Sierra Leone's Capt. Valentine Strasser Ousted in Predictable, If Belated, Coup*, DEF. & FOREIGN AFF. STRATEGIC POL'Y, Jan. 1996, at 4 (stating that the civil war in Sierra Leone was a direct overflow of violence and instability from the civil war in Liberia); see also GLOBALSECURITY.ORG, *Liberia —First Civil War*, available at <http://www.globalsecurity.org/military/world/war/liberia-1989.htm> (last visited Sept. 14, 2005) (stating that Charles Taylor continued the war in Liberia which spilled over into Sierra Leone in 1991 when Foday Sankoh led a group of Liberians and Sierra Leoneans into eastern Sierra Leone). See generally J. Peter Pham, *A Nation Long Forlorn: Liberia's Journey from Civil War to Civil Society*, 6 INT'L J. NOT-FOR-PROFIT L. (2004), available at http://www.icnl.org/journal/vol6iss4/ar_pham.htm (last visited Sept. 26, 2005) (explaining the background of the Liberian civil war and also that the former Liberian warlord Taylor had helped to precipitate civil war in Sierra Leone).

Taylor had also drilled his insurgents), invaded Eastern Sierra Leone from Libya.⁶⁴ Sankoh, supported by Taylor, issued a call for anti-government uprising in the name of the heretofore unknown RUF.⁶⁵ The rebels, initially little more than a few dozen disaffected rural youth whom Sankoh enticed to his cause with promises of free education and medical care, ostensibly fought for a redress of the iniquities of a Sierra Leonean society in which the APC regime continued to exploit the country's rich diamond resources for the benefit of its elite cadres, while the living standards of the rest of the citizenry declined.⁶⁶ Despite the banner of justice, however, as they sent the government's forces reeling and quickly seized control of most of the eastern part of the country, including the diamond fields, the RUF rebels themselves soon proved to be an even worse plague.⁶⁷ Before long, RUF terror tactics—including the amputation of the limbs of civilians as a terror tactic, the systematic rape of women and girls, and the abduction of young boys to swell their ranks—provided rich fodder for Robert Kaplan's sensational article on "The Coming Anarchy."⁶⁸

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64. See Jorg Raab & H. Brinton Milward, *Dark Networks as Problems*, J. OF PUB. ADMIN. RES. & THEORY, Oct. 1, 2003, at 413 (stating that Sankoh and Charles Taylor were trained at a Libyan terrorist training camp by Colonel Moammar Gaddafi and attacked Sierra Leone in the late 1990s); see also Nsongurua J. Udombana, *Can the Leopard Change Its Spots? The African Union Treaty and Human Rights*, 17 AM. U. INT'L L. REV. 1177, 1215 (2002) (claiming that Foday Sankoh's RUF was largely the creation of dissidents living and/or training in Libya); *Foday Sankoh*, TIMES (London), July 31, 2003, at 33 (reporting that after he was released from prison in the 1970s he joined other Sierra Leonean dissidents in Libya, staged a first attack in March 1991, and took control of Eastern Sierra Leone within a month).
65. See Juma, *supra* note 28, at 331 (claiming that the inherent enmity for government had emerged early on and Foday Sankoh began a military campaign against the government in the name of RUF); see also Richards, *War and Peace*, *supra* note 60, at 41 (explaining that angry exiles who wanted to end corruption and political mismanagement of the government formed the RUF); REVOLUTIONARY UNITED FRONT PARTY OF SIERRA LEONE, *Ideas and Ideals*, available at http://web.archive.org/web/20020202034026/rufp.org/rufp_ideas_and_ideals/rufp_ideas_and_ideals.htm (last visited Sept. 14, 2005) (claiming that RUF is committed to democratic ideals and recognizing three phases of struggle, which are arms to the people, power to the people, wealth to the people).
66. See Victoria Brittain, *Foday Sankoh: Rebel Leader who Helped Unleash a Decade of Carnage in Sierra Leone*, GUARDIAN (London), July 31, 2003, at 18 (explaining how RUF attracted a wide range of frustrated intellectuals and youths who demanded education and social justice and how the diamond mines were necessary to RUF's ability to continue the war); see also Tom Masland, *The Gems of War*, NEWSWEEK, July 10, 2000, at 18 (reporting how the documents found at Foday Sankoh's house prove that he logged more than 2000 diamonds mined by the RUF and how the rebels traded illicit gems for guns). See generally REVOLUTIONARY UNITED FRONT PARTY OF SIERRA LEONE, *The Armed Struggle*, available at http://web.archive.org/web/20020202040329/rufp.org/why_the_armed_struggle/why_the_armed_struggle.htm (last visited Sept. 14, 2005) (stating that the APC regime will "intimidate the people by a show of force" and that the only way to stop the corruption is to take up arms and take back the power).
67. See Ryan Lizza, *Where Angels Fear to Tread*, NEW REPUBLIC, July 24, 2000, at 22 (describing terror tactics of the RUF in trying to control people's behavior); see also *Foday Sankoh*, TIMES (London) July 31, 2003, at 33 (stating that Sankoh wanted to create a "revolutionary egalitarian society," and yet he committed atrocities). See generally Tom Rawstorne, *Diamonds to Die For*, DAILY MAIL (London), Oct. 25, 2004 (reporting how RUF took control of diamond mines by terrorizing people into submission).
68. Robert D. Kaplan, *The Coming Anarchy: How Scarcity, Crime, Overpopulation and Disease are Rapidly Destroying the Social Fabric of Our Planet*, 273 ATLANTIC MONTHLY 44, 44 (1994); see also *Foday Sankoh: Guerrilla Leader Whose Followers Raped, Tortured, Amputated and Murdered Their Way Through Sierra Leone*, DAILY TELEGRAPH (London), July 31, 2003, at 25 (describing atrocities by RUF including amputations of legs, buttocks, genitals, ears and lips, gouging out of eyes, indiscriminate rape, injections with acid, burning alive and beating). See generally Steve Coll, *The Other War*, WASH. POST, Jan. 9, 2000 (Magazine) (illustrating RUF's brutality by telling stories of how the victims were raped and how they lost their limbs and family members because RUF wanted to demonstrate their power to the government of Sierra Leone).

In April 1992, a group of disgruntled soldiers on leave in Freetown from the warfront, led by a 27-year-old captain named Valentine Strasser, overthrew President Momoh and formed a military junta, the National Provisional Ruling Council (NPRC).⁶⁹ The coup was actually popular at the time, as most Sierra Leoneans had grown disgruntled with the APC's corrupt and ineffectual rule.⁷⁰ However, disaffection at the inexperienced ruler's inability to end the war as well as his increasingly autocratic rule led to his overthrow in January 1996 by his deputy, Brigadier Julius Maada Bio.⁷¹ Under increasing foreign and domestic pressure, the new Sierra Leonean leader Bio was forced to hold elections which were boycotted and sporadically disrupted by the RUF.⁷² Despite various glitches, the elections took place and were won, after two rounds, by the newly-revived SLPP, led by Ahmad Tejan Kabbah, a veteran UNDP official, who became the country's first directly elected head of state.⁷³

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69. See Mark Fritz, *Africa's Youngest Dictator Keeps Tight Rein*, L.A. TIMES, Mar. 20, 1994, at A20 (explaining that junior officers became malcontent because Momoh did not pay them and nine officers led a 60-soldier convoy to demand their pay at gunpoint which caused Momoh, who had no support, to flee the country); see also Tod Pitman, *Ex-Dictator Runs Home to His Mum*, SUNDAY HERALD SUN (Austl.), July 28, 2002, at 35 (providing that Strasser became the world's youngest head of state when he led a group of officers to demand unpaid salaries, which led to a coup that ousted then dictator Joseph Momoh); Cindy Shiner, *Growing Unruliness by Soldiers Sparks Coup Fear in Sierra Leone*, WASH. POST, Oct. 6, 1994, at A21 (stating that poor conditions on the war front prompted junior officers to overthrow Momoh, and that Strasser automatically became the "redeemer" and chairman of the National Provisional Ruling Council's government).
70. See Lee F. Berger, Note, *State Practice Evidence of the Humanitarian Intervention Doctrine: The ECOWAS Intervention in Sierra Leone*, 11 IND. INT'L & COMP. L. REV. 605, 615–16 (2001) (stating that Strasser took Freetown by a wave of popular enthusiasm); see also Abdul Tejan-Cole, *The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission*, 6 YALE HUM. RTS. & DEV. L.J. 139, 141 (2003) (stating that due to the deteriorated social conditions and heightened unrest the coup was extremely popular); Fritz, *supra* note 69, at A20 (indicating that he was hailed as a savior by many people who overlooked his regime's human rights violations including execution of 27 coup plotters without trial).
71. See Copley, *supra* note 63, at 4 (remarking that Strasser's failure to address the fundamental economic and security problems led to insurrection of RUF and his inability to deal with it was the cause of his overthrow); see also Juma, *supra* note 28, at 344–45 (suggesting that Strasser's lack of tangible efforts to make peace with RUF, and corruption, looting, and opulence of the military leadership were the causes of Strasser's exile); Gus Constantine, *Military Coup Ousts Sierra Leone Leader: February's Civilian Elections Canceled*, WASH. TIMES, Jan. 17, 1996, at A9 (claiming that there was evidence of opposition to democratic elections by Strasser's second in command Brigadier Julius Maada Bio and that this is likely the reason for overthrowing Strasser).
72. See David Hecht, *Sierra Leone Changes Power Without Coup, Despite Ongoing War*, CHRISTIAN SCI. MONITOR, Apr. 1, 1996, at 6 (finding that despite RUF's refusal to participate in the elections and then cutting off the hands of civilians to prevent them from voting, civilian leaders wanted to go ahead with the elections); see also Akinrinade, *supra* note 29, at 395 (suggesting that pressure mounted on Bio to hold elections since overthrowing Strasser was construed as an attempt to hold on to power); Howard W. French, *West African Surprise: Suddenly, Peace Takes Root in Sierra Leone*, N.Y. TIMES, May 5, 1996, at 1 (explaining how Bio wanted to put off elections by asserting that peace was close, but pressure from foreign diplomats along with various civic groups, religious organizations, and student and labor union's desire for election caused him to relent).
73. See Webster, *supra* note 39, at 737 (noting that despite conflicts, Ahmed Tejan Kabbah was elected as the President of Sierra Leone in the country's first free, democratic election); see also Lizza, *supra* note 67, at 22 (explaining that RUF tried to dissuade people from voting by cutting their hands off, but two thirds of the electorate voted and Kabbah was elected as the President as a result); U.S. DEPT OF STATE, BUREAU OF DEMOCRACY, Human Rights, and Labor, Country Report on Human Rights Practices for 1996—Sierra Leone, available at http://www.usemb.se/human/1996/africa/sierra_leone.html (last visited Oct. 3, 2005) (stating that President Kabbah won the first free and fair election since 1967 and that the transfer of power from NPRC was a peaceful one).

Given the lackluster performance of its own army and the reluctance of the international community to intervene in the conflict, the Sierra Leonean government hired a private military company from South Africa, Executive Outcomes, to lead its fight against the insurgents.⁷⁴ Executive Outcomes was instrumental in halting the RUF offensives and, in fact, rolled the rebels back for the first time, driving them out of the Kono diamond mining areas and the Sierra Rutile mines, both assets of great importance to the government, not the least because of their revenue potential.⁷⁵ Kabbah's new government, with the support of the Executive Outcomes mercenaries and its newly organized "*kamajor*" (traditional tribal hunter) irregulars, pushed the RUF to the brink of defeat, literally driving Sankoh to the negotiating table.⁷⁶ Under the leadership of Kabbah's deputy defense minister, Chief Sam Hinga Norman, the *kamajors* were transformed from an irregular "home guard" into the Civilian Defense Force (CDF), a veritable military arm capable of pursuing the rebels into the bush.⁷⁷

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74. See Michael Ashworth, *Privatizing War, by 'The Executives'*, INDEPENDENT (LONDON), Sept. 16, 1996, at 1 ("Executive Outcomes has shown it can deliver . . . 500 rebels lay dead and the remaining force scattered."); see also Jeremy Harding, *The Mellow Mercenaries*, GUARDIAN (LONDON), Mar. 8, 1997, at 32 (discussing the operations of Executive Outcomes against rebel groups in Western and Southern Africa). *But cf. A Continent in Crisis; Africa*, DOLLARS & SENSE, July 1, 2001, at 13 (denouncing the Executive Outcomes and other transnational corporations for the economic exploitation of African countries in the name of peacekeeping).
75. See Lansana Fofana, *Sierra Leone-Politics: Mercenary Exit Leaves Some Hearts Heavy*, IPS-INTER PRESS SERVICE, Feb. 10, 1997, at 1 (quoting Kai Bockarie, a 43-year-old miner who said, "[n]ever did rebels attack Kono district in all the years the Executive Outcomes was here."); see also Simon Barber, *Stars & Stripes—Bring Executive Outcomes Back to Fight In*, BUSINESS DAY (S. AFR.), May 10, 2000, at 2 (explaining that Executive Outcomes was able to drive RUF rebels out of Freetown and the country's principal diamond fields within two months). See generally PROHIBITION OF THE IMPORTATION OF ROUGH DIAMONDS FROM SIERRA LEONE, H.R. REP. NO. 107-24 (2001) (issuing an Executive Order which prohibits the importation of rough diamonds from Sierra Leone).
76. See Elizabeth M. Evenson, Note, *Truth and Justice in Sierra Leone: Coordination Between Commission and Court*, 104 COLUM. L. REV. 730, 736 (2004) (indicating that "[p]ressed and on the brink of defeat, the RUF acquiesced in peace negotiations."); see also Daniel J. Macaluso, Note, *Absolute and Free Pardon: The Effect of the Amnesty Provision in the Lomé Peace Agreement on the Jurisdiction of the Special Court of Sierra Leone*, 27 BROOK. J. INT'L L. 347, 349 (2001) (outlining that after the election of Ahmed Kabbah, Foday Sankoh, the leader of the rebel movement, signed the Abidjan Accord "which purported to end the conflict"). See generally HUM. RTS. WATCH, HUMAN RIGHTS WATCH REPORT OF SIERRA LEONE—BACKGROUND, available at <http://www.hrw.org/reports/1999/sierra/SIERLE99-02.htm> (last visited Sept. 13, 2005) (informing that the RUF and Kabbah's government signed the Abidjan Peace Accord which called for a cease-fire and demobilization of all forces).
77. See The Secretary-General, *Report on the Secretary-General on Sierra Leone*, ¶ 17, U.N. Doc. S/1997/80 (Jan. 26, 1997), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N97/013/27/IMG/N9701327.pdf> (last visited Oct. 18, 2005) (stating that village-based hunters, known as Kamajors, were organized by paramount chiefs to protect their villages from rebel forces); see also Akinrinade, *supra* note 29, at 402 ("The Kamajo forces were comprised of local youths supported by the local population, whose shared knowledge of local bush tracks and ambush points were usually superior to the enemy's."). *But see* HUM. RTS. WATCH, HUMAN RIGHTS WATCH WORLD REPORT OF 1999—SIERRA LEONE, available at <http://www.hrw.org/worldreport99/africa/sierraleone.html> (last visited Oct. 14, 2005) [hereinafter HUMAN RIGHTS WATCH WORLD REPORT OF 1999—SIERRA LEONE] ("[T]he Kamajors were responsible for the majority of abuses committed by those fighting on behalf of the Kabbah government.").

In November 1996, a peace agreement was signed in Abidjan, Côte d'Ivoire, between the new government of President Kabbah and the RUF.⁷⁸ The accord granted amnesty for all acts committed prior to its signing and called for the transformation of the RUF into a political party.⁷⁹ The agreement quickly unraveled, however, as violence resumed after only the briefest lull.⁸⁰ When Sankoh was arrested on trumped up charges while visiting Nigeria in March 1997, allegedly at the urging of the Kabbah government, the accord collapsed altogether.⁸¹ Two months later, however, yet another group of disgruntled Sierra Leonean soldiers, led by Major Johnny Paul Koroma, drove President Kabbah into exile, replacing his government with an Armed Forces Revolutionary Council (AFRC) that invited the RUF to join it.⁸² The country fell into complete chaos as most of the judiciary system—judges, attorneys, police officers, and other law enforcement professionals, all of whom had previously been targeted by RUF

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78. See Peace Agreement Between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, R.U.F.—Sierra Leone, Nov. 30, 1996, available at <http://www.sierra-leone.org/abidjanaccord.html> (last visited Sept. 13, 2005) [hereinafter Abidjan Accord] (codifying the Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone); see also Gallagher, *supra* note 28, at 156–57 (summarizing the events which led up to the signing of a peace agreement called the Abidjan Accord between RUF and Kabbah's government).
79. See U.N. Doc. S/1997/80, *supra* note 77 (“[U]nder the Accord, the parties declared an immediate end to the armed conflict and reaffirmed their commitment to observing the ceasefire and to undertaking every effort to ensure the full implementation of its provisions.”). Compare Abidjan Accord, *supra* note 78 (codifying Art. XIII which says “the necessary conditions shall be created to enable the RUF/SL to register as a political movement according to law,” and Art. XIV which says “no official or judicial action is taken against any member of the RUF/SL in respect to anything done by them in pursuit of their objectives as members of that organization up to the time of the signing of this Agreement.”), with Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, R.U.F.—Sierra Leone, July 7, 1999, available at <http://www.sierra-leone.org/lomeaccord.html> (last visited Sept. 13, 2005) [hereinafter Lomé Agreement] (codifying the Lomé Agreement, which is the comprehensive peace agreement stemming from the failed Abidjan Peace Agreement, and the ECOWAS Peace Plan).
80. See *Restructuring Sierra Leone: Hearing Before the Subcomm. on Africa of the Comm. of International Relations*, 105th Cong. 1 (1998) (statement by Hon. Edward R. Royce, Chairman of Subcomm. on Africa) (asserting that President Kabbah's term in office was “shortened by a coup last May, [1997], led by Major General Johnny Paul Koroma”); see also *Statement by the Pres. of the Sec. Council*, U.N. SCOR, 3809th mtg., U.N. Doc. S/PRST/1997/42 (Aug. 7, 1997) (condemning the “overthrow of the democratically elected government of President Ahmad Tejan Kabbah and calls upon the military junta to take immediate steps to bring about the unconditional restoration of that government”); Stephanie H. Bald, Note & Comment, *Searching for a Lost Childhood: Will the Special Court of Sierra Leone Find Justice for Its Children?*, 18 AM. U. INT'L L. REV. 537, 556 (2002) (revealing that in May 1997, the government army faction Armed Forces Revolutionary Council (AFRC), led by General Johnny Paul Koroma, overthrew Kabbah's government).
81. See Gallagher, *supra* note 28, at 158 (explaining that Sankoh was arrested in Nigeria and returned to Sierra Leone to be tried in a court of law); see also *Sierra Leone Rebel Leader Charged*, BBC NEWS, Sept. 5, 1998, available at <http://news.bbc.co.uk/1/hi/world/africa/164833.stm> (last visited Sept. 10, 2005) (reporting that RUF rebel leader, Corporal Foday Sankoh, was returned to Sierra Leone after being held under house arrest in Nigeria for a year, to face charges of treason); Indictment of Foday Sankoh in the Freetown Magistrate's Court, available at <http://www.sierra-leone.org/indictment.html> (last visited Sept. 27, 2005) (detailing the offenses against Sankoh).
82. See Akinrinade, *supra* note 29, at 431 (“[A]fter the AFRC took power in May 1997, the RUF and the AFRC combined forces to form the Peoples' Army of Sierra Leone. . . . There were several extra judicial tortures, mutilations, rapes, beatings, illegal searches, arbitrary arrests and detentions, and killings of unarmed civilians.”); see also Richards, *War and Peace*, *supra* note 60, at 45 (“[M]utineers promptly invited the RUF to come out of the bush to join a government of national unity. The resulting, inherently unstable, junta called itself the Armed Forces Ruling Council (AFRC).”); Berger, *supra* note 70, at 617 (noting the coalition between the RUF and AFRC).

rebels—fled the country before what it imagined to be the imminent entrance of the dreaded insurgents into government.⁸³ The angry populace, fearful not only of the RUF but also of the continuing decline of the country as schools, banks, and commercial services ceased to function, launched a series of civil disobedience campaigns.⁸⁴

The international reaction to the AFRC/RUF coup was swift and, for once, unequivocal.⁸⁵ The overthrow of President Kabbah took place on the eve of the annual summit meeting of the heads of state and government of the Organization of African Unity (OAU) in Harare, Zimbabwe.⁸⁶ Despite the fact that many of the leaders present at the meeting had themselves come to power through military coups, and in contrast to the OAU's usual practice of non-interference in the internal affairs of member states, the 66th session of the OAU Council of Ministers called for "the immediate restoration of constitutional order" in Sierra Leone and urged "all African countries and the international community at large to refrain from recognizing the new regime and lending support in any form whatsoever to the perpetrators of the *coup*

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83. See HUMAN RIGHTS WATCH WORLD REPORT OF 1999—SIERRA LEONE, *supra* note 77 ("[During the nine-month rule] many judges, lawyers, and police fled the country, causing a total collapse of the judicial system."); see also *Sierra Leone: Prospects for Peace and Stability: Hearing Before the Subcomm. on Afr. of the Comm. on Int. Rel.*, 104th Cong. 1 (Mar. 23, 1999) (statement by Hon. Edward R. Royce, Chairman of the Subcomm. on Afr.) ("[T]here are currently one million internally displaced persons in Sierra Leone. Today the city is devastated."); AMNESTY INTERNATIONAL, SIERRA LEONE: 1998—A YEAR OF ATROCITIES AGAINST CIVILIANS, available at [http://web.amnesty.org/library/pdf/AFR510221998ENGLISH/\\$File/AFR5102298.pdf](http://web.amnesty.org/library/pdf/AFR510221998ENGLISH/$File/AFR5102298.pdf) (last visited Sept. 8, 2005) (denouncing the poor quality of life under the AFRC/RUF regime).
84. See The Sec'y-General, *Second Report of the Secretary-General on the Situation in Sierra Leone*, ¶ 19, U.N. Doc. S/1997/958 (Dec. 5, 1997), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N97/350/71/PDF/N9735071.pdf> (last visited Oct. 18, 2005) ("[T]he health and nutritional status of the population has been especially affected, owing to a combination of insecurity, a drastic breakdown in public services and limited supplies of essential drugs, vaccines and food."); see also *United States Policy in Sierra Leone: Hearing Before the Subcomm. on Afr. of the Comm. on For. Rel.*, 106th Cong. at 4 (Oct. 11, 2000) (statement of Hon. Susan E. Rice, Asst. Sec. of the State for Afr. Aff., Dept. of State) ("[T]he people under RUF's power also do not have access to the most basic social services, including health care and education. As a result, they are condemned to lives of fear, sickness, and poverty."); Berger, *supra* note 70, at 617 (commenting on the ongoing resistance from civilian groups, such as labor unions).
85. See Berger, *supra* note 70, at 617 (asserting that the OAU, which condemned the coup as being "unacceptable to the continent," ECOWAS, the Commonwealth, and the European Union quickly denounced the AFRC coup); see also Kofi Oteng Kufuor, *The O.A.U. and the Recognition of Governments in Africa: Analyzing Its Practice and Proposals for the Future*, 17 AM. U. INT'L L. REV. 369, 389 (2002) [hereinafter Kufuor, *O.A.U.*] (addressing that the OAU refused to recognize the AFRC as a government, because President Kabbah was a popularly elected president, which marked the beginning of OAU's policy to not recognize regimes that overthrow constitutional democracies); *Sierra Leone: Country Profile*, AFR. REV. WORLD INFO., Aug. 30, 2000 (explaining that the international community immediately condemned the coup and began taking action to try to put an end to the revolutionary overtaking of the government, imposing economic, oil, arms and travel sanctions).
86. See Theophilus Fuseini Maranga, *The Colonial Legacy and the African Common Market: Problems and Challenges Facing the African Economic Community*, 10 HARV. BLACKLETTER L.J. 105, 105 (1993) (explaining that the OAU, which today is made up of all 51 independent African countries, has its main headquarters in Addis Ababa, Ethiopia, and holds annual summits in its member countries with Heads of State and Government attending the summits); *Nigeria Takes Action in S. Leone at Invitation, Report Says*, XINHUA NEWS AGENCY, June 2, 1997 (asserting that the coup that ousted President Kabbah was condemned during the OAU summit held in Harare, Zimbabwe); AFRICA POLICY E-JOURNAL, *Sierra Leone: Documents on Coup*, AFR. ACTION, May 26, 1997, available at <http://africaaction.org/docs97/sl9705.htm> (last visited Oct. 14, 2005) (stating that President Kabbah was overthrown by the AFRC/RUF on the eve of the ministerial meeting of the 33rd OAU Summit, which was held in Harare from June 2-4 1997).

d'état.”⁸⁷ In particular, the African leaders called upon “the leaders of [the regional Economic Community of West African States, ECOWAS] to assist the people of Sierra Leone to restore constitutional order to the country” and to “implement the Abidjan Agreement which continues to serve as a viable framework for peace, stability and reconciliation in Sierra Leone.”⁸⁸ In October 1997, when the UN Security Council unanimously adopted a resolution⁸⁹ imposing economic sanctions against the AFRC/RUF junta, the embargo was scrupulously enforced by a regional military contingent, the ECOWAS Ceasefire Monitoring Group (ECOMOG).⁹⁰ Koroma quickly capitulated and promised to allow Kabbah to return to power by April 1998.⁹¹ However, when the junta was slow to cede power, ECOMOG forces under the command of a Nigerian general and supported by the British-based firm Sandline International, yet another mercenary outfit, which had been hired by the exiled President Kabbah, launched an offensive

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87. Org. of African Unity Council of Ministers [OAU], *Decisions Adopted by the Council of Ministers*, 66th Session, at 27, CM/Dec. 356 (LXVI) (1997), available at <http://www.africa-union.org/home/Welcome.htm> (last visited Oct. 14, 2005); see also *Sierra Leone: A Disastrous Set-Back for Human Rights*, available at <http://web.amnesty.org/library/index/engaf510051997> (last visited Sept. 26, 2005) [hereinafter OAU Decisions] (explaining that the OAU Secretary immediately denounced the coup overthrowing President Kabbah and called for immediate restoration to the constitutionality to Sierra Leone and urged the international community to support efforts by the leaders of the ECOWAS). See generally Kufuor, *supra* note 85 (arguing that that the OAU was not consistent in its recognition of a country's government).
88. See OAU Decisions, *supra* note 87 (asking for support from ECOWAS leaders to restore order and to impose the Abidjan Agreement); Ademola Abass, *The Implementation of ECOWAS' New Protocol and Security Council Resolution 1270 in Sierra Leone: New Developments in Regional Intervention*, 10 U. MIAMI INT'L & COMP. L. REV. 177, 182 (2001-2002) (asserting that starting in 1997, ECOWAS was the force that was predominantly responsible for resolving the crisis occurring in Sierra Leone); Nancy Kaymar Stafford, *A Model War Crimes Court: Sierra Leone*, 10 ILSA J. INT'L & COMP. L. 117, 122 (2003) (“[The Abidjan Peace Accord called for the] immediate cessation of the armed conflict between the parties, the disarmament and demobilization of the insurgents, the restructuring of the military to integrate members of the RUF into Sierra Leone's armed forces, the release of prisoners of war, the transformation of the RUF into a political party, and provided a blanket amnesty for members of the RUF.”).
89. See S.C. Res. 1132, U.N. Doc. S/RES/1132 (Oct. 8, 1997) (detailing the contents of Resolution 1132, adopted in Oct. 1997); Akinrinade, *supra* note 29, at 404 (discussing how the U.N. Security Council adopted Resolution 1132 on October 8, 1997, which imposed arms and petroleum embargos and restricted the travel of the military junta); see also Karsten Nowrot & Emily W. Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321, 328 (1998) (informing that the Resolution called for the military junta to “relinquish power” in order to allow the “restoration of the democratically elected government,” and for the imposition of sanctions against the regime, only stopping at allowing the authorization of military intervention).
90. See ADEKEYE ADEBAJO, BUILDING PEACE IN WEST AFRICA: LIBERIA, SIERRA LEONE, AND GUINEA-BISSAU 87–93 (2002) (explaining the role and the purpose of the ECOMOG); Akinrinade, *supra* note 29, at 403–04 (noting that ECOWAS created a cease fire monitoring group in 1990, in order to stop the wanton destruction of human life and property and the problems resulting from the armed conflict in Liberia, which then became involved in the conflict in Sierra Leone); see also Vesel, *supra* note 47, at 28 (explaining that the U.N. Resolution proclaimed that, due to the threat to international peace and security, it was imposing oil and arms embargos, which ECOWAS had the power to strictly implement).
91. See Marissa Miraldi, *U.N. Report: Overcoming Obstacles of Justice: The Special Court of Sierra Leone*, 19 N.Y.L. SCH. J. HUM. RTS. 849, 850–51 (2003) (stating the Conakry Peace Agreement had six key elements: 1) cessation of all hostilities, 2) re-installment of President Kabbah, 3) receipt of humanitarian assistance, 4) disarmament, demobilization, and re-integration of demobilized personnel, 5) release of Sankoh, and 6) the formation of a government overseen by the ECOWAS and assisted by the U.N. military observers); Stafford, *supra* note 88, at 123–24 (claiming that Koroma's delegation came to an agreement with ECOWAS on the six terms of the peace agreement). See generally *Sierra Leone: Country Profile*, AFR. REV. WORLD INFO., Aug. 30, 2000 [hereinafter *Sierra Leone Country Profile*] (reporting that when signing the peace accord Koroma pledged to step down in April 1998).

in conjunction with the CDF against the now-combined AFRC/RUF forces in February 1998, which restored Kabbah to power the following month.⁹²

The restoration, however, was tenuous, with the government's writ extending barely beyond the municipal boundaries of the capital.⁹³ Increasing numbers of regional peacekeepers were required to prop up the Kabbah government.⁹⁴ The RUF military commander, Sam 'Mosquito' Bockarie, backed by Major Koroma, now designated Deputy Commander of the RUF, threatened to make the country ungovernable if Sankoh, sentenced to death sentence for treason by the Kabbah government, was not freed and included in the government.⁹⁵ In January 1999, rebel forces encircled the capital.⁹⁶ During this phase, apocalyptic scenes were commonplace at every rumor.⁹⁷ Using women and children as human shields, some RUF units

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92. See Akinrinade, *supra* note 29, at 404 (claiming that President Kabbah requested that in addition to the ECOWAS troops being sent to Sierra Leone, NIFAG also send more troops, who then merged to launch a military attack in order to remove the AFRC/RUF from power); see also Juma, *supra* note 28, at 351–52 (describing how ECOWAS backed by Nigerian troops and Kamajor militias, were provided with arms and ammunition by Sandline International in order to remove the junta from power, which resulted in Kabbah being restored to power); Nowrot & Schabacker, *supra* note 89, at 402 (providing that the AFRC breached the Conakry Agreement when the immediate cessation of hostilities and the disarmament of troops never occurred, so there was no breach when the Nigerian troops invaded Freetown before the six months the treaty called for had elapsed).
 93. See Akinrinade, *supra* note 29, at 432 (demonstrating that after the ECOMOG forces took over Freetown, but the violence by the AFRC/RUF did not end, as they were brutally killing, abducting women and children, and causing terror to the civilians throughout the country); Stafford, *supra* note 88, at 123 (arguing that although the ECOMOG were successful in their takeover, this only caused the AFRC to “retreat to the bush” and split up into disorganized groups of troops in the country); *Sierra Leone: Country Profile*, *supra* note 91 (asserting that although the ECOMOG had taken over Freetown and ousted the AFRC from the city, the RUF still had the control of other large areas throughout Sierra Leone).
 94. See J. Peter Pham, *Democracy by Force, Lessons from the Restoration of the State in Sierra Leone*, 6 WHITEHEAD J. DIPL. & INT'L REL. 129, 134 (2005), available at <http://diplomacy.shu.edu/journal/new/> (last visited September 26, 2005) [hereinafter Pham, *Democracy By Force*] (stating that nearly a quarter of the Nigerian army, approximately 20,000 men, were in Sierra Leone to “prop up the Kabbah government”); Pham, *Lazarus Rising*, *supra* note 28, at 54 (emphasizing the increase in the Nigerian army to 20,000 men in order to back the Kabbah government). See generally Juma, *supra* note 28 (illustrating that Nigerian troops in Sierra Leone led ECOWAS on numerous occasions throughout this period, so that when President Kabbah regained his power, there was no coherent policy on national security causing the country to continue relying on Nigerian troops).
 95. See Pham, *Democracy By Force*, *supra* note 94, at 134 (indicating that Sam “Mosquito” Bockarie was sentenced to death for treason after threatening to make the country ungovernable); Pham, *Lazarus Rising*, *supra* note 28, at 54 (recognizing that Sam Bockarie was not freed or included in the government after he was sentenced to death for treason). See generally Gallagher, *supra* note 28 (stating that Sankoh was arrested in Nigeria and brought back to Sierra Leone upon which he was convicted of treason and sentenced to death).
 96. See The Secretary-General, *Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, ¶ 1, U.N. Doc. S/1999/237 (Mar. 4, 1999) (describing the rebel attack on the capital and its subsequent effects); Macaluso, *supra* note 76, at 350 (stating that rebels had gained control over most of the capital by January 1999). See generally *Armed Rebels Rampage in Sierra Leone Capital*, N.Y. TIMES, Jan. 7, 1999 (detailing the confusion that ensued on the first day of the rebel attack).
 97. See *Brutal Rebellion Rips Sierra Leone; Civil War*, CHRISTIAN CENTURY, Feb. 3, 1999, at 106 (reporting that 30,000 to 50,000 persons sought refuge in Freetown's National Stadium). See generally Jon M. Van Dyke, *The Fundamental Human Right to Prosecution and Compensation*, 29 DENV. J. INT'L L. & POL'Y 77 (2001) [hereinafter Van Dyke, *Prosecution and Compensation*] (noting that the most concentrated and horrific human rights violations of Sierra Leone's civil war were committed by rebel forces during the invasion on the capital); Miraldi, *supra* note 91 (describing the terror tactics and human rights violations that rebels systematically engaged in).

managed to bypass ECOMOG forces and join comrades who had already infiltrated the city.⁹⁸ Kabbah fled the country once more.⁹⁹

Eventually, after ferocious fighting, ECOMOG forces managed to reestablish control over the capital and its environs, but at the cost of some 7,000 dead civilians and with two-thirds of the city leveled.¹⁰⁰ Compounding the human tragedy, the retreating RUF units abducted some 3,000 civilians, many of whom were never seen again.¹⁰¹ As a result of the mayhem, about 600,000 of Sierra Leone's estimated 4 million people sought refuge in neighboring countries, while two-thirds of those who remained were internally displaced.¹⁰² The Nigerians, worn out by the fighting which claimed an estimated 800 of their peacekeepers and cost them about \$1 million daily, announced their intention to withdraw and forced the two Sierra Leonean parties to enter into negotiations, resulting in the July 7, 1999, Lomé Peace Agreement,¹⁰³ signed in the Togolese capital. The deal made Sankoh the "Chairman of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development" and

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98. See HUMAN RIGHTS WATCH WORLD REPORT OF 1999—SIERRA LEONE, *supra* note 77 (stating that the rebels planned and effectively used civilian human shields to bypass ECOMOG troops and enter the capital); see also *President, Rebel Agree to Cease-Fire in Sierra Leone; Doubts about Truce Dampen Celebrations in African Nation*, BALTIMORE SUN, Jan. 8, 1999, at 12A (reporting that ECOMOG's efforts to suppress the incursion were hindered by the rebels use of civilians as human shields); *Sierra Leone Rebels Assault Capital Districts*, N.Y. TIMES, Jan. 8, 1999, at A6 (recounting witness statements that rebel forces were using civilians as human shields).
99. See Jason Burke, *War in Sierra Leone: In the Depths of the Jungle a Dark Nightmare Unfolds*, OBSERVER, June 18, 2000, at 24 (stating that Kabbah fled as rebel forces infiltrated the capital); see also Allieu Ibrahim Kamara & Jenny Percival, *Ceasefire Call in Freetown Battle*, SCOTSMAN, Jan. 8, 1999, at 12 (remarking that the siege on the capital forced Kabbah to flee to Lungi Airport); *Rebel Leader Rules out Freetown Truce*, GUARDIAN (London), Jan. 9, 1999, at 18 (reporting that rebel forces ordered the launch of an offensive on the Lungi airport to which Kabbah had fled).
100. See U.N. Doc. S/1999/237, *supra* note 96, at ¶ 5 (estimating the total number of casualties to be between 3,000 to 5,000, with civilian deaths comprising about 2,000); see also *World Briefs*, HOUSTON CHRON., Feb. 2, 1999, at A11 (reporting that the rebel attack on the capital resulted in some 3,000 civilian deaths). See generally Laura Forest, Note, *Sierra Leone and Conflict Diamonds: Establishing a Legal Diamond Trade and Ending Rebel Control over the Country's Diamond Resources*, 11 IND. INT'L & COMP. L. REV. 633 (noting the extensive destruction inflicted upon the capital and its surrounding areas during the rebel attack).
101. See Bald, *supra* note 80, at 557 n.92 (noting that by the time peacekeeping forces regained control of the capital, an estimated 3,000 children were already abducted by rebels); Gallagher, *supra* note 28, at 159 (stating that approximately 3,000 children were abducted as rebel forces withdrew from the capital). See generally *The Cost of News*, WASH. POST, Jan. 15, 2000 (reporting that thousands of children were abducted by rebels in Sierra Leone).
102. See The Secretary-General, *Sixth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, ¶ 9, U.N. Doc. S/1999/645 (June 4, 1999) (outlining the current status and living conditions of refugees and internally displaced persons within Sierra Leone); see also Evenson, *supra* note 76, at 733–34 (noting the number of refugees and internally displaced persons of Sierra Leone, and suggesting that the sheer size of these numbers is illustrative of the horrors experienced during the civil war); Celina Schocken, Notes and Comments, *The Special Court for Sierra Leone: Overview and Recommendations*, 20 BERKELEY J. INT'L L. 436, 436 (2002) (remarking on the number of Sierra Leoneans who sought refuge or who were internally displaced as a result of the civil war).
103. See Lomé Agreement, *supra* note 79; Akinrinade, *supra* note 29, at 437 (noting that due to the exorbitant cost of its peacekeeping operations Nigeria placed enormous pressure on Kabbah to enter into a peace agreement with the rebels). See generally Tom Masland & Jeffrey Bartholet, *Fury and Fear*, NEWSWEEK, May 22, 2000 (reporting that the Nigerian forces suffered heavy casualties in the rebel attack on the capital).

accorded him “the status of Vice-President answerable only to the President of Sierra Leone.”¹⁰⁴ The accord also promised the rebel leader and his followers a “complete amnesty for any crimes committed . . . from March 1991 up to the date of the agreement.”¹⁰⁵ The Lomé Agreement was initiated by the two parties as well as by an impressive array of international guarantors, including a special representative of the UN Secretary-General, although the latter signed with the proviso that the amnesty provisions did not apply to “international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law.”¹⁰⁶

The Lomé Agreement was ratified by the Sierra Leonean National Assembly and initially endorsed by a UN Security Council resolution.¹⁰⁷ A second UN resolution also authorized the creation of the United Nations Mission in Sierra Leone (UNAMSIL) with 6,000 military personnel charged with assisting the implementation of the peace agreement and facilitating humanitarian assistance.¹⁰⁸ However, the accord, like its predecessors, quickly fell apart. In several incidents in late 1999 and early 2000, UN peacekeepers were themselves disarmed by RUF

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104. See Lomé Agreement, *supra* note 79, at Art. IX (detailing the pardon and amnesty terms of the Agreement); see also Akinrinade, *supra* note 29, at 443 (criticizing the Lomé Agreement for awarding Sankoh with such a powerful economic and political position); Diane Marie Amann, *International Law Weekend Proceedings: Message as Medium in Sierra Leone*, 7 ILSA J. INT'L & COMP. L. 237, 240 (2001) (arguing that the Lomé Agreement rewarded Sankoh for his past actions by appointing him chairman of the Commission for Management of Strategic Resources).
105. See Lomé Agreement, *supra* note 79, at Art. V (detailing the Agreement terms with regard to enabling the RUF/SL to join a broad-based government of national unity, through cabinet appointments); Juma, *supra* note 28, at 355 (noting the Lomé Agreement's requirement that the government take affirmative steps to ensure the amnesty of the rebels and their leaders for all acts committed prior to the signing of the agreement); see also Saunders, *supra* note 41, at 1425 (stating that rebels and their leaders were given amnesty under the Lomé Agreement).
106. See The Sec'y-General, *Seventh Report of the Secretary General on the United Nations Mission in Sierra Leone*, ¶ 2, U.N. Doc. S/1999/836 (July 30, 1999) (listing the parties who signed the Lomé Agreement and stating that the Special Representative of the Secretary General was instructed to attach a proviso that the United Nations would not recognize violations of international law as part of the amnesty and pardon); see also James Rupert, *Tenuous Peace In Brutal War; Sierra Leone Sides Sign Accord*, WASH. POST, July 8, 1999, at A17 (reporting that while the United Nations supports the Lomé Agreement it would not recognize its amnesty and pardon provisions). See generally Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT'L L. 295 (2003) (quoting the former U.N. Ambassador as stating “the Lomé agreement created this amnesty provision in domestic law, but the United Nations did not accept it in international law”).
107. See S.C. Res. 1260, ¶ 1, U.N. Doc. S/RES/1260 (Aug. 20, 1999) (welcoming the Lomé Agreement and commending those involved in its facilitation); see also Peter Salama et al., *Health and Human Rights in Contemporary Humanitarian Crises: Is Kosovo More Important than Sierra Leone?*, 319 BRIT. MED. J. 1569, 1569 (1999) (noting that the Sierra Leonean Parliament unanimously ratified the Lomé Agreement); William A. Schabas, *Rethinking Reconstruction after Iraq: Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, 11 U.C. DAVIS J. INT'L L. & POL'Y 145, 149 (2004) [hereinafter Schabas, *Sierra Leone Truth*] (remarking on the United Nations' welcoming of the Lomé Agreement and its failure to expressly state its opinion of the agreement's amnesty provisions).
108. See S.C. Res. 1270, ¶ 1, U.N. Doc. S/RES/1270 (Oct. 22, 1999) (deciding to establish the United Nations Mission in Sierra Leone (UNAMSIL), with the purpose of implementing the Peace Agreement); see also Juma, *supra* note 28, at 358 (indicating that the U.N. Security Council established UNAMSIL and implemented 6,000 military personnel); Anna Roberts, “Soldiering on in Hope”: *United Nations Peacekeeping in Civil Wars*, 35 N.Y.U. J. INT'L L. & POL. 839, 858 (2003) (holding that UNAMSIL was authorized by the Security Council with a maximum of 6,000 military personnel to assist in enforcing the agreement).

forces.¹⁰⁹ In response, the Security Council increased UNAMSIL's personnel to 11,100 and revised UNAMSIL's mission to include protecting the government of President Kabbah.¹¹⁰ The situation only worsened, however, when in early May, the RUF killed seven UN peacekeepers and captured fifty others.¹¹¹ The number of peacekeepers captured soon increased to over 500 as UN forces apparently surrendered to the rebels without firing a shot.¹¹² British forces, operating independently of the UN command structures, then landed in Freetown, ostensibly to help evacuate foreign nationals, but in fact to shore up the Kabbah regime and rescue the beleaguered UN force.¹¹³

The capture of Sankoh while he led an incursion in Freetown, however, saved the situation, as the UN prisoners were released and the leaderless RUF forces began to disintegrate. Meanwhile, the Security Council authorized UNAMSIL to increase its strength to 13,000 military personnel,¹¹⁴ a number that was later raised to 17,500, making it the largest UN peace-

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109. See Joseph Opala, *What the West Failed to See in Sierra Leone*, WASH. POST, May 14, 2000, at B1 (stating that a second peace deal was made with the rebels and that hundreds of U.N. peacekeepers were kidnapped and disarmed); see also Warren Hoge, *British Free 7 Hostage Soldiers in Raid in Sierra Leone*, N.Y. TIMES, Sept. 11, 2000, at A12 (discussing that after signing the peace accord, war was started again and the rebels seized United Nations Peacekeepers); *Liberian Accuses Britain of Stirring Regional War*, N.Y. TIMES, May 30, 2001, at 6 (recognizing that the 1999 peace accord collapsed and U.N. peacekeepers were taken captive).
110. See S.C. Res. 1289, ¶ 1, U.N. DOC. S/RES/1289 (Feb. 7, 2000) (establishing that the Security Council increase UNAMSIL personnel to 11,100); see also *Background: Key Events in Sierra Leone Since 1991*, XINHUA NEWS AGENCY, May 12, 2002 (noting that the UNAMSIL mandate was revised to increase the soldiers to 11,100); UNITED NATIONS MISSION IN SIERRA LEONE, SIERRA LEONE—UNAMSIL—BACKGROUND, available at <http://www.un.org/Depts/dpko/missions/unamsil/background.html> [hereinafter UNITED NATIONS MISSION IN SIERRA LEONE] (stating that the mandate increased personnel to 11,100).
111. See Dexter Filkins & Richard A. O'Connell Jr., *After the War: Truck Bombing; Huge Suicide Blast Demolishes U.N. Headquarters in Baghdad; Top Aid Officials Among 17 Dead*, N.Y. TIMES, Aug. 20, 2003, at A1 (stating that rebels in Sierra Leone killed seven U.N. peacekeepers and captured more than forty others); see also Blaine Harden, *Sierra Leone Insurgents Kill 7 In U.N. Force and Capture 49*, N.Y. TIMES, May 4, 2000, at A1 (indicating that the rebels killed 7 U.N. peacekeepers and took captive at least 49 others); *Seven U.N. Peacekeepers are Slain in Sierra Leone*, N.Y. TIMES, May 4, 2000, at A2 (holding that the rebels killed 7 peacekeepers and took at least 49 hostage).
112. See CAMPBELL, *supra* note 55, at 93 (totaling the number captured at 500 hostages); see also Barbara Crossette, *U.N. to Establish a War Crimes Panel to Hear Sierra Leone Atrocity Cases*, N.Y. TIMES, Aug. 15, 2000, at A6 (indicating that 500 U.N. peacekeepers were captured and released after some embarrassment to the U.N.); Tyson Trish, *DAILY RECORD* (Morristown, New Jersey), May 13, 2005, at 10 (stating that RUF rebels took 500 U.N. peacekeepers hostage).
113. See CAMPBELL, *supra* note 55, at 94 (proclaiming that the British sent troops, independent of the U.N. mission, to help stabilize the country); see also David B. Kopel et al., *Firearms Possession By "Non-State Actors": The Question of Sovereignty*, 8 TEX. REV. L. & POL. 373, 434 (2004) (mentioning that the U.N. peacekeepers handed over their weapons to RUF forces and that, because of the assistance of Britain's troops, civilian lives were saved and a complete U.N. defeat failed to occur); Douglas Farah, *Sierra Leone Rebels Contemplate Life Without Guns*, WASH. POST, Apr. 14, 2001, at A1 (holding the British forces helped defend the capital and halt the RUF advance, while also working with the government army).
114. See S.C. Res. 1299, ¶ 1, U.N. DOC. S/RES/1299 (May 19, 2000) (indicating that UNAMSIL shall expand to 13,000 military personnel); see also Roberts, *supra* note 108, at 860 (needing additional troops, the Security Council increased the number of military personnel to 13,000). See generally Rainer Lange, *Sierra Leone: Nearly Half a Million Internally Displaced People*, AFR. NEWS, July 7, 2000 (advocating for the international community to help support the 13,000 U.N. troops in Sierra Leone).

keeping operation in the world.¹¹⁵ UN Resolution 1346, approved on March 30, 2001,¹¹⁶ also stretched UNAMSIL's brief presence, already expanded from mere peacekeeping to protection of the government, even further, declaring that: "[t]he main objectives of UNAMSIL in Sierra Leone remain to assist the efforts of the government of Sierra Leone to extend its authority, restore law and order and stabilize the situation progressively throughout the entire country, and to assist in the promotion of a political process which should lead to a renewed disarmament, demobilization and reintegration program and the holding, in due course, of free and fair elections."¹¹⁷

As the country gradually pacified during 2001, UNAMSIL celebrated the success of its disarmament program with an arms destruction ceremony on January 17, 2002, at which the force commander, Kenyan General Daniel Opande, declared the civil war officially over.¹¹⁸ No one really knows the total number of casualties in the decade-long conflict, although it has been conservatively estimated that between 100,000 and 200,000 people lost their lives in the fighting, while hundreds of thousands of others suffered amputations or were otherwise

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115. See S.C. Res. 1346, ¶ 1, U.N. DOC. S/RES/1346 (Mar. 30, 2001) (increasing the military unit of UNAMSIL to 17,500 personnel); see also Somini Sengupta, *Letter From Africa; Liberia Seen as Icon of World's Neglect of Africa*, N.Y. TIMES, May 21, 2003, at A4 (demonstrating that the increase in personnel to 17,000 was the largest U.N. peacekeeping force in the world); *Sierra Leone; Zero Tolerance for U.N. Troops Involved in Sexual Abuse*, AFR. NEWS, Apr. 5, 2005, at 2 (showing that UNAMSIL had reached its full strength of 17,500).
116. See S.C. Res. 1346, *supra* note 115, ¶ 1 (mandating that the adoption of Resolution 1346 by the Security Council was on 30 March 2001); *U.N. Security Council Extends Sierra Leone Mission Until 31 March 2002, Unanimously Adopting Resolution 1370 (2001)*, M2 PRESSWIRE (U.K.), Sept. 19, 2001, at 1 [hereinafter *Resolution 1370*] (showing that a report was issued pursuant to Security Council Resolution 1346, enacted in 2001); see also UNITED NATIONS MISSION IN SIERRA LEONE, *supra* note 110 (indicating that Resolution 1346 was adopted on March 30, 2001).
117. See S.C. Res. 1334, ¶ 1, U.N. DOC. S/RES/1334 (Dec. 22, 2000) ("[T]he main objectives of UNAMSIL in Sierra Leone remain to assist the efforts of the government of Sierra Leone to extend its authority, restore law and order and stabilize the situation progressively throughout the entire country, and to assist in the promotion of a political process which should lead to a renewed disarmament, demobilization and reintegration program."); see also *Resolution 1370*, *supra* note 116, at 1 (establishing that the main objectives of UNAMSIL were to assist the government of Sierra Leone, to restore law and order and further stabilize the situation within the country and assist in the disarmament, demobilization, and reintegration program); *U.N. Security Council Extends U.N. Mission in Sierra Leone Until 30 September; Urges Restoration of Civil Authority, Public Services; Resolution 1400 (2002) Adopted Unanimously*, M2 PRESSWIRE (U.K.), Mar. 29, 2002, at 1 (emphasizing that the main objective of UNAMSIL was to ensure security for the upcoming elections).
118. See Katie Corbridge, *The Power of One*, TORONTO STAR, Dec. 11, 2003, at 1 (stating that the war ended in January 2002); see also Andrew Meldrum, *Sierra Leone Warlord Dies in U.N. Custody*, GUARDIAN (UK), July 31, 2003, at 1 (holding that the war was formally declared over in early 2002). See generally *Sierra Leone's "War Over"*, NEWSDAY, Jan. 19, 2002 (referring to the previous Friday when the decade-long civil war was over).

maimed.¹¹⁹ Some 2.6 million Sierra Leoneans were either internally displaced or became refugees in neighboring countries.¹²⁰

The peace culminated with presidential and parliamentary elections held on May 14, 2002; members of the security forces voted four days earlier.¹²¹ The polling was largely peaceful and, despite some irregularities observed, was largely free and fair.¹²² Over 2.3 million Sierra Leoneans (approximately 85 percent of the eligible population) registered to vote, a significant increase over the 1.5 million citizens who registered to vote in the elections of 1996.¹²³ Of those registered, some 2.2 million actually cast their ballots to give incumbent president Ahmad Tejan Kabbah just over 70 percent of the vote.¹²⁴ Kabbah's SLPP won 83 of the 112 open parliamentary seats—12 other seats are allocated to the country's paramount chiefs, a relic of the colonial system of indirect rule of the interior—compared with the 27 seats carried by the opposition APC, whose standard bearer, Ernest Koroma, received just slightly over 22 per-

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119. See O'Connell, *Interest Meets Humanity*, *supra* note 47, at 213 (indicating that there are no reliable numbers of the death, but it is well over 100,000). See generally TEUN VOETEN, *HOW DE BODY?: ONE MAN'S TERRIFYING JOURNEY THROUGH AN AFRICAN WAR* 216–17 (Roz Vatter-Buck trans. Thomas Dunne Books, 2002) (referring to the rebels torturing, mutilating and raping captives); Foday Sankoh, *Arrested Sierra Leone Rebel, Dies*, ALB. TIMES UNION (NY), July 31, 2003 (mentioning the rebel leader who routinely cut off limbs of men, women and children during the decade-long conflict).
120. See Akinrinade, *supra* note 29, at 426 (stating that nearly half of the 4.5 million population of Sierra Leone was displaced and that approximately 500,000 people were refugees in neighboring countries); see also Evenson, *supra* note 76, at 734 (noting that as a result of the civil war in Sierra Leone, half a million refugees and 2 million people were internally displaced). *But see* HUMAN RIGHTS WATCH, *THE JURY IS STILL OUT: A HUMAN RIGHTS WATCH BRIEFING PAPER ON Sierra Leone I* (2002), available at <http://www.hrw.org/background/africa/sl-bck0711.pdf> (last visited Sept. 23, 2005) (contending that less than 2.5 million were displaced by mentioning that a quarter of the 4.5 million population was displaced).
121. See Jimmy D. Kandeh, *Sierra Leone's Post-Conflict Elections of 2002*, 41 J. MOD. AFR. STUD. 189, 189–92 (2003) [hereinafter Kandeh, *Post-Conflict Elections*] (asserting that the elections came after the disarmament of combatants and expressing the people's expectation that the elections would act to consolidate the peace); see also *Sierra Leone People Cheer Election Trend*, DESERT NEWS, May 15, 2002, at A4 (declaring that the elections comprised a test for the peace in Sierra Leone). See generally *Sierra Leone; U.N. to Clarify UNAMSIL Role in Elections*, AFR. NEWS, Jan. 11, 2002 (characterizing the 2002 elections as a milestone for peace in Sierra Leone).
122. See Stafford, *supra* note 88, at 120 (reporting that the elections of May 12, 2002, were peaceful); see also *Sierra Leone Holds Election*, BULLETIN'S FRONTRUNNER, May 16, 2002 (expressing that the free and fair elections that took place in Sierra Leone were like a miracle); *State Department Issues Background Note on Sierra Leone*, U.S. FED. NEWS, Apr. 1, 2005 (noting that the irregularities during the voting process were not severe).
123. See Danna Harman, *In Once-Brutal War Zone, a Model Arises*, CHRISTIAN SCIENCE MONITOR, May 16, 2002, at 1 (stating that the country's registered voters amounted to 2.3 million and that the voter turnout was over 80 percent); see also Norimitsu Onishi, *For Sierra Leone Ballot, Hope Trumps Despair*, N.Y. TIMES, May 13, 2002, at A3 (asserting that about 2.3 million people registered to vote); Jimmy D. Kandeh, *Transition Without Rupture: Sierra Leone's Transfer Election of 1996*, 41 AFR. STUD. REV. 91, 101 (1998) (noting that 1.6 million people had registered to vote in the 1996 elections of Sierra Leone).
124. See NAT'L ENDOWMENT OF DEMOCRACY, *Election Watch; Election Results (March-June 2002)*, 13 J. OF DEMOCRACY 178, 181 (2002) (showing that Kabbah won 70.6 percent of the vote); see also Foday B. Fofanah, *Elections in Sierra Leone: Kabbah Sweeps Polls*, 49 WORLD PRESS REV. 29, 29 (2002) (emphasizing Kabbah's victory and stating that he accumulated 70 percent of the vote); *War-Torn Nation Re-elects President over Rebel Foes*, CHI. TRIB., May 20, 2002, at 7 (stating that Kabbah received 70.6 percent of the total number of votes).

cent in the presidential poll.¹²⁵ The RUF Party (RUF-P), the new political incarnation of the former insurgents, garnered barely 1.7 percent of the votes cast; RUF leader Sankoh, who was awaiting trial before the SCSL, was not allowed to run due to a technicality that he was not a registered voter.¹²⁶ The former leader of the AFRC, Johnny Paul Koroma, drew just 3 percent of the vote, although his People's Liberation Party did gain two seats in parliament.¹²⁷ All in all, for a country that had endured more than a decade of civil war, preceded by three decades of political upheaval and stagnation, the first peaceful elections since independence represented an act of hope.¹²⁸ Two months later, on July 12, 2002, at the state opening of the new parliamentary assembly, Kabbah concluded: "[a]ll Sierra Leoneans, at home and abroad, suffered considerable loss. Some lost their cherished and loved ones, others their belongings, and still others, their dignity and honor. The bitter experience of armed conflict will linger in our memories for as long as we need to remind ourselves of the mistakes that we should never ever make again."¹²⁹

C. Atrocities During the Conflict

As prolonged and deadly as the Sierra Leonean civil conflict was, it would probably have gone relatively unnoticed by the outside world were it not for the graphic images of child soldiers, drug use, torture, plunder, and diamonds that became associated with it, in large part

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125. See NAT'L ENDOWMENT OF DEMOCRACY, *supra* note 124, at 181 (stating that Kabbah got 83 of the 112 parliamentary seats and that APC, with 22.4 percent of the vote, got 27 seats); *see also* Fofanah, *supra* note 124, at 29 (stating that APC got 23 percent of the vote and 27 seats, while SLPP won 83 of the 112 seats in Parliament); *War-Torn Nation Re-elects President over Rebel Foes*, CHI. TRIB., May 20, 2002, at 7 (noting that APC got 23.5 percent of the vote).
126. See Michael Baffoe, *Africa: Uneasy Calm in Sierra Leone*, MONTREAL CMTY. CONTACT, June 20, 2002, at 20 (discussing the results of elections and stating that the RUF party gathered 1.7 percent of the vote); *see also* Stafford, *supra* note 88, at 120 (revealing that RUF's leader Foday Sankoh was prohibited from running due to the fact that he had failed to register to vote); Norimitsu Onishi, *World Briefing: Africa; Sierra Leone Rebel Leader Barred From Election*, N.Y. TIMES, Mar. 29, 2002, at 13 (asserting that Sankoh, who has been in jail for two years and is now on trial, was not allowed to run because he had not registered to vote).
127. See Kandeh, *Post-Conflict Elections*, *supra* note 121, at 203 (detailing the 2002 election results and mentioning that Johnny Paul Koroma garnered 3 percent of the vote); *see also* Mike Butcher, *A Bit More Like It: After the War, National Reconstruction Is Well Under Way. The Country Has Even Found Oil in Commercial Quantities, and the Smiles Are . . . Almost Back; Around Africa: Sierra Leone*, NEW AFR., Nov. 1, 2002, at 18 (stating that the People's Liberation party gained two seats in parliament); Fofanah, *supra* note 124, at 29 (mentioning that former junta leader Johnny Paul Koroma's PLP got the remaining two seats).
128. See Zoe Hughes, *Blair Praises Sierra Leone Poll 'Signal to World'*, PRESS ASS'N, May 15, 2002 (expressing Prime Minister Blair's view that the democratic elections of Sierra Leone and its return to peace after ten years of war sends a message of hope to other countries that are plagued with strife and discord); *see also* *Hope for Sierra Leone*, TIMES-PICTAYUNE (New Orleans), May 20, 2002, at 6 (alleging that the landslide victory of Kabbah and the discredit of the rebel parties and movements by the people, show that there is hope for long-term peace and democracy); STANDARD TIMES, *Sierra Leone; Kofi Annan Congratulates Freetown*, AFR. NEWS, May 17, 2002 (emphasizing the role of peaceful elections in comprising a big step in consolidating peace in Sierra Leone).
129. See Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone Armed Forces, Inaugural Address on the Occasion of the State Opening of the First Session of the First Parliament of the Third Republic (July 12, 2002), *available at* <http://www.sierra-leone.org/kabbah071202.html> (last visited Oct. 18, 2005). *See generally* *Sierra Leone; Help Me to Fight Corruption—Kabbah Tells MPs*, AFR. NEWS, July 17, 2002 (last visited Sept. 25, 2005) (stating that Kabbah opened the first session of the second parliament on July 12, 2002 and characterizing his inaugural address as ambitious); *Sierra Leone: Plans for Kabbah's Inauguration*, AFR. NEWS, July 4, 2002 (last visited Sept. 25, 2005) (noting that Kabbah was preparing for his inauguration speech which would take place on July 14, 2002).

through the global broadcast by CNN of the lurid images from Sierra Leonean photojournalist Sorious Samura's Emmy-winning documentary film *Cry Freetown*, which depicted the rebel invasion of the capital.¹³⁰ In fact, it was the diabolic "creativity," as well as sheer volume of atrocities committed during the civil war—often by the underage combatants that were deliberately used by all sides in conflict—that motivated the clamor for post-conflict accountability.¹³¹

The RUF defied the conventional typologies for modern African insurgency movements.¹³² It was neither an anti-colonial "liberation movement" of the sort represented by the Zimbabwe African National Union-Patriotic Front (ZANU-PF)¹³³ or the *Movimento Popular de Libertação de Angola* (MPLA), nor a "separatist insurgency" seeking regional secession like the Eritrean People's Liberation Front (EPLF) or the Sudan People's Liberation Army (SPLA).¹³⁴ Nor was it a "reform insurgency" seeking to transform the governing structure of a given state along either political or ethnic lines like the National Resistance Army (NRA), led by now-Ugandan president Yoweri Museveni, or the Rwanda Patriotic Front (RPF), the Tutsi-

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130. See Eric Mink, 'Cry Freetown': A Brutal Look at the Sierra Leone's Civil War, DAILY NEWS (New York), Feb. 16, 2000, at 82 (describing Samura's documentary film and saying that it contains graphic images of the atrocities such as rapes, mutilations, drug use, etc., that were committed during the ten year civil war in Sierra Leone); see also Greg Quill, *Sierra Leone Brutally Exposed*, TORONTO STAR, Feb. 16, 2000, at 24 (stating that Samura recorded the violent scenes from the invasion of his country to show the world what was happening in Sierra Leone and adding that his award-winning documentary was broadcast on several channels); *Sierra Leone: Africa Can Stop - Cry Freetown*, AFR. NEWS, Feb. 5, 2000, at 3 (noting that Samura risked his life to record the most dreadful scenes of the catastrophic war that claimed the lives of 50,000 and the limbs of 10,000 people).
131. See Ismene Zarifis, Note, *Sierra Leone's Search for Justice and Accountability of Child Soldiers*, 9 HUM. RTS. BRIEF 18, 18 (2002) (holding that it was the nature and the extent of the war crimes and violations of human rights committed by both the government and the rebels that called for post-conflict accountability); see also Betsy Bisik, *New Tribunal to Target Sierra Leone Atrocities*, WASH. TIMES, Feb. 21, 2002, at A13 (stating that a tribunal has been set up to address accountability for the severe and appalling war crimes); Tina Susman, *Caught on Film: CNN is Ready to Air a Grim Documentary About the War in Sierra Leone*, NEWSDAY (New York), Feb. 2, 2000, at B3 (emphasizing that Samura tricked the rebels, as he pretended he was with them in order to be able to document their conduct).
132. See CHRISTOPHER CLAPHAM, AFRICAN GUERRILLAS 6-7 (1998) [hereinafter CLAPHAM, AFRICAN GUERRILLAS] (separating African insurgency movements into four distinct categories based on common characteristics); see also CLAPHAM, POLITICS OF STATE SURVIVAL, *supra* note 54, at 208-11 (describing the three major types of modern African insurgencies); Akinrinade, *supra* note 29, at 400 (explaining the uniqueness of the RUF movement from other African insurgency movements).
133. See Nick Dancaescu, *Land Reform in Zimbabwe*, 15 FLA. J. INT'L L. 615, 617 (2003) (describing the creation of the ZANU-PF as an effort to reform government treatment of blacks in Zimbabwe); see also Lorna Davidson & Raj Purohit, *The Zimbabwean Human Rights Crisis: A Collaborative Approach to International Advocacy*, 7 YALE HUM. RTS. & DEV. L.J. 108, 109-10 (2004) (examining the Zimbabwe black majority's fight for liberation from the oppressive white minority government); BUREAU OF AFRICAN AFF., U.S. DEPT. OF STATE, BACKGROUND NOTE: ZIMBABWE, available at <http://www.state.gov/r/pa/ei/bgn/5479.htm> (last visited Sept. 27, 2005) (explaining the origins of the ZANU-PF as a response to an oppressive government composed of whites, when the majority of the population was black).
134. See BUREAU OF AFRICAN AFF., U.S. DEPT. OF STATE, BACKGROUND NOTE: ERITREA, available at <http://www.state.gov/r/pa/ei/bgn/2854.htm> (last visited Sept. 26, 2005) (providing historical information about the formation of the EPLF); see also DeJuan Bouvean, *A Case Study of Sudan and the Organization of African Unity*, 41 HOW. L.J. 413, 417-19 (1998) (discussing the formation of the SPLA as a reaction against unilateral imposition of Islamic Shari'a law on all citizens of Sudan); Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113, 1159 n.202 (1995) (summarizing the major insurgency actions of the EPLF).

dominated group that eventually ousted the government of the Hutu *génocidaires*.¹³⁵ Nor was it really a “warlord insurgency” based on the personal ambitions of its leader in the way that the NPFL under Charles Taylor could be said to have been.¹³⁶

Despite its name and the fact that it exploited the anti-APC sentiments of many Mende peoples in the South and East of Sierra Leone—during the initial invasion of Kailahun, villagers were ordered to wave palm fronds “in support” of the rebels, the palm symbolizing opposition that the Sierra Leone People’s Party (SLPP) banned under the APC’s one-party state¹³⁷—the RUF never presented anything resembling a coherent political program, revolutionary or not.¹³⁸ As Sierra Leonean political scientist Ibrahim Abdullah has noted:

[t]he RUF’s *Footpaths to Democracy: Toward a New Sierra Leone* contains words and phrases lifted from Mao Zedong and Amílcar Cabral. Hurriedly drafted in London and tossed back to the *Zogoda* (the RUF headquarters in the Sierra Leone rain forest) for approval, it was subsequently reformatted complete with the RUF anthem and generous quotes from the head of ideology, Foday Sankoh. “We moved deeper into the comforting bosom of our mother earth—the forest. . . . The forest welcomed us and gave us succor and sustenance.” . . . “Why we continue to fight”—these phrases were taken from Mao and Cabral. If the RUF cadres or leadership had actually read Mao and Cabral, however, they would have related to the peasantry in a different manner. . . . There is, I would argue, no revolutionary theory which guided the practice of the movement. If there is any theory, and certainly

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135. See Juma, *supra* note 28, at 334 (concluding that the Sierra Leone conflict was not based on ethnicity because of the lack of ethnic claims by the combatants); see also Carroll, *supra* note 7, at 167–70 (describing how exiled Tutsis developed the goal of reclaiming their homeland and infiltrated the RUF insurgency movement); BUREAU OF AFRICAN AFF., U.S. DEPT. OF STATE, BACKGROUND NOTE: RWANDA, available at <http://www.state.gov/r/pa/ei/bgn/2861.htm> (last visited Sept. 26, 2005) (providing the basic goals of the RUF and its first major insurgent action).
136. See Kufuor, *O.A.U.*, *supra* note 85, at 386 (discussing the initial major actions of the NPFL and its results); see also Kofi Oteng Kufuor, *Developments in the Resolution of the Liberian Conflict*, 10 AM. U. J. INT’L L. & POL’Y 373, 375 (1994) [hereinafter Kufuor, *Liberian Conflict*] (describing the actions of NFPL and the role of Charles Taylor); Erin L. Borg, Note, *Sharing the Blame for September Eleventh: The Case for a New Law to Regulate the Activities of American Corporations Abroad*, 20 ARIZ. J. INT’L & COMP. L. 607, 611–12 (2003) (examining the history and effect of NFPL and Charles Taylor).
137. See RICHARDS, FIGHTING FOR THE RAIN FOREST, *supra* note 52, at 7–8 (indicating that political leaders interpreted the palm fronds as an ethnic uprising); Paul Richards, *War as Smoke and Mirrors: Sierra Leone 1991-2, 1994-5, 1995-6*, 78 ANTHROPOLOGICAL QUARTERLY 377, 380–82 (2005) [hereinafter Richards, *War as Smoke and Mirrors*] (illustrating the formation of the RUF and its interaction with villagers); Paul Richards, *The Political Economy of Internal Conflict in Sierra Leone* 12 (Neth. Inst. of Int’l. Rel. Clingendael, Working Paper No. 21, 2003), available at http://www.clingendael.nl/publications/2003/20030800_cru_working_paper_21.pdf (last visited Oct. 18, 2005) [hereinafter Richards, *The Political Economy of Internal Conflict*] (illustrating the relationship between the RUF and villagers).
138. See Nicole Fritz & Alison Smith, *Current Apathy for Coming Anarchy: Building the Special Court for Sierra Leone*, 25 FORDHAM INT’L L.J. 391, 393 (2001) (assessing how RUF’s lack of a coherent ideology caused their actions to be viewed as non-mitigating factors); Richards, *War and Peace*, *supra* note 60, at 47 (assessing the radically different aspirations of RUF members); Udombana, *supra* note 25, at 72 (discussing RUF’s lack of a widely acknowledged clear political agenda).

not a revolutionary one, it evolved on an *ad hoc* basis as a result of their experiences in the forest.¹³⁹

The RUF's manifesto acknowledged as much when it admitted that initially it fought a semi-conventional war relying on vehicles for mobility only to find that "this method proved fatal against the combined fire power of Nigeria, Guinea, and Ghana,"¹⁴⁰ whose units, some of which were initially detailed to the ECOMOG intervention in the Liberian conflict, backed the Sierra Leonean government.¹⁴¹ The rebels went on to admit: "[f]rankly, we were beaten and on the run . . . we dispersed into smaller units . . . we now relied on light weapons and on our feet, brains and knowledge of the countryside."¹⁴² During the course of most of the civil war in Sierra Leone, the RUF never represented a formidable military force in the conventional sense.¹⁴³ Even as early as 1991, whenever the Sierra Leonean military and its West African allies managed to seriously defend a strategic position, such as at Daru and Joru, the rebel attack was repulsed.¹⁴⁴ After the counter-offensive operations by government forces in late 1992, the RUF switched tactics to favor guerrilla warfare involving small units making hit-and-run raids, often

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139. See Akinrinade, *supra* note 29, at 400 (asserting that the RUF had no publicly known coherent political agenda until the publication of its 1995 propaganda pamphlet); Ibrahim Abdullah, *Bush Path to Destruction: The Origins and Character of the Revolutionary United Front / Sierra Leone*, 36 J. MOD. AFR. STUD. 203, 223–24 (1998) (depicting the RUF's *Footpaths to Democracy: Toward a New Sierra Leone* as a hastily created ideology with phrases copied from Mao and Cabral); see also Celina Schocken, Notes and Comments, *The Special Court for Sierra Leone: Overview and Recommendations*, 20 BERKELEY J. INT'L L. 436, 439 n.14 (2002) (stating that *Footpaths to Democracy*, the only political pamphlet ever released by the RUF, contained slogans taken from others, such as Mao and Cabral).
140. See Martinez, *supra* note 56, at 233–34 (examining the use of soldiers from Nigeria and Guinea by ECOMOG to settle Sierra Leone's internal conflict); REVOLUTIONARY UNITED FRONT OF SIERRA LEONE, *Footpaths to Democracy: Toward a New Sierra Leone* (1995), available at <http://www.fas.org/irp/world/para/docs/footpaths.htm> (last visited Sept. 15, 2005) (presenting the political ideology of the RUF); see also Richards, *War and Peace*, *supra* note 60, at 42 (explaining how RUF evolved into a forest guerilla movement).
141. See Murphy, *supra* note 11, at 369 (detailing the role of ECOMOG troops in defeating RUF); Nowrot & Schabacker, *supra* note 89, at 327–28 (describing the extent of Nigerian military aid to the government of Sierra Leone against the RUF); see also Vesel, *supra* note 47, at 28–29 (detailing the ECOMOG military role in bringing peace to Sierra Leone).
142. See O'Connell, *Interest Meets Humanity*, *supra* note 47, at 221–22 (analyzing the combination of events that led to the defeat of the RUF); see also Jennifer L. Heil, Comment, *African Private Security Companies and the Alien Tort Claims Act: Could Multinational Oil and Mining Companies Be Liable?*, 22 NW. J. INT'L L. & BUS. 291, 298–99 (2002) (assessing the use of a private security company to defeat the RUF); Martinez, *supra* note 56, at 234 (realizing the role of the private security company in finally defeating the RUF).
143. See Akinrinade, *supra* note 29, at 398–400 (explaining the origins and numbers of the RUF army). See generally Juma, *supra* note 28 (describing the small group from which the RUF developed); Forest, *supra* note 100 (examining the recruitment methods used by the RUF).
144. See Richards, *War and Peace*, *supra* note 60, at 42 (commenting on RUF's failure to take the main provincial towns of Kenema and Bo in 1991); Martinez, *supra* note 56, at 233–34 (noting that the Sierra Leonean Army and the Economic Community of West African States Ceasefire Monitoring Group (ECOMOG) pushed the RUF back to the Sierra Leone-Liberia border by early 1992); see also *New Fighting Reported on Liberia's Border*, N.Y. TIMES, Sept. 7, 1991, at 8 (reporting that a key border bridge was recaptured from rebel fighters by Sierra Leonean, Nigerian, and Guinean forces).

over long distances using “by-pass” bush paths.¹⁴⁵ RUF units showed themselves to be increasingly adept at camping for long periods in the bush while observing their targets before launching surprise attacks or mounting ambushes.¹⁴⁶ The RUF also used violence to terrorize both opponents and ordinary civilians.¹⁴⁷ One journalist wrote:

[c]omposed of mostly uneducated . . . the RUF was quickly revealed as an army of murderous thugs rather than justice-seeking rebels. RUF fighters fueled this impression at every opportunity. Field commanders adopted nicknames that both inspired terror and revealed their ruthlessness. Soldiers were named Rambo, Blood Master, Blood Center, What Trouble, and Wicked to Women. Their “tactics” of warfare were unbelievably brutal. Sometimes, after capturing a village, RUF fighters would gather civilian prisoners in the town square and make them choose small strips of paper from the ground that described different forms of torture and death, such as “chop off hands,” “chop off head,” or simply “be killed.” Soldiers would bet with one another about the sex of pregnant women’s unborn children. Winners were determined after the baby had been removed from the womb with a bayonet. In one instance, a young boy was beaten and roasted nearly to death on a spit in front of his mother for refusing to kill her.¹⁴⁸

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145. See Richards, *The Political Economy of Internal Conflict*, *supra* note 137 (indicating that the RUF advanced further west into Sierra Leone “through a combination of rumours and hit-and-run raids”); Kenneth B. Noble, *Intensified Liberia War Threatens to Engulf Other African Nations*, N.Y. TIMES, Nov. 15, 1992, at A1 (referring to the rebel’s response to the military offensive, which included “punishing air and ground attacks,” and terrorizing civilians); see also TRUTH & RECONCILIATION COMM’N OF SIERRA LEONE, 3A The Final Report of the Truth & Reconciliation Commission of Sierra Leone 413–14 (2004), available at <http://www.trcsierraleone.org/pdf/FINAL%20VOLUME%20THREE/VOLUME%203%20A.pdf> (last visited Oct. 19, 2005) [hereinafter TRUTH & RECONCILIATION COMMISSION OF SIERRA LEONE] (confirming the strategy of the rebel forces to revert to guerrilla warfare, using footpaths and by-passes to surprise and disarm the Sierra Leone Army).
146. See Abdullah, *supra* note 139, at 224 (quoting from the RUF document, *Footpaths to Democracy*, describing how the rebels relied on their feet and knowledge of the countryside); see also Evenson, *supra* note 76, at 735 (affirming that by 1992, the civilians of Sierra Leone frequently found themselves the target of random rebel attacks); TRUTH & RECONCILIATION COMMISSION OF SIERRA LEONE, *supra* note 145 (detailing how rebels would hide and wait for days, observing and assessing potential dangers, to mount a surprise attack when least expected).
147. See O’Connell, *Interest Meets Humanity*, *supra* note 47, at 213–14 (remarking on the wide-spread decapitating and murdering of more than 100,000 Sierra Leoneans); see also Udombana, *supra* note 25, at 73 (asserting that the human rights violations that occurred during Sierra Leone’s civil war were unparalleled in the nation’s history: it was common for the RUF to cut off arms, legs, lips, ears, and various other body parts of innocent men, women, and children); Hansen-Young, *supra* note 4, at 481 (stressing that the civil war was marked with brutal rebel campaigns, such as arson attacks on homes, looting, raping of thousands of women and children, and one of the bloodiest campaigns, “Operation No Living Thing,” during which rebels destroyed or killed anything in their way).
148. See CAMPBELL, *supra* note 55, at 71–72 (citing the methods of terror the rebels would use against local villagers); see Eaton, *supra* note 60, at 880 (revealing the rebel fighters’ torture tactics of decapitating and raping women); see also HUMAN RIGHTS WATCH, “WE’LL KILL YOU IF YOU CRY”: SEXUAL VIOLENCE IN THE SIERRA LEONE CONFLICT 25–26 (2003), available at <http://hrw.org/reports/2003/sierraleone/sierleon0103.pdf> (last visited Sept. 15, 2005) [hereinafter HUMAN RIGHTS WATCH, WE’LL KILL YOU IF YOU CRY] (documenting the crimes of sexual violence upon female Sierra Leoneans, including rape and sexual slavery).

However, contrary to perceptions fed by sensationalist accounts by some journalists—some were rather surprisingly graphic—the RUF units were kept under strict discipline and the seemingly wanton violence they perpetrated had its own logic,¹⁴⁹ as Ibrahim Abdullah and Patrick Muana noted:

[c]ommanders were under orders to control rape, looting and drug abuse, and some ruled their potentially unruly lumpen troops with an iron rod of summary execution. The movement's leadership insists it had a well-disciplined guerrilla force at its command, and that RUF discipline prevented unsanctioned rape, looting and drug abuse. Abuses are laid at the door of government troops and "sobels." But in many cases it is absolutely clear that commanders sanctioned rape and torture of civilians as a means to control local populations.¹⁵⁰

Relying on his extensive ethnographic studies of Sierra Leone, however, Paul Richards cautioned against interpreting the violence as "senseless barbarism," much less imputing some sort of "African primitivism" to it, arguing that:

[w]hereas it is true that the war in Sierra Leone is a terror war, and involves horrifying acts of brutality against defenseless civilians, this sad fact cannot in any way be taken to prove a reversion to some kind of essential African savagery. Terror is *supposed* to unsettle its victims. The confused accounts of terrorized victims of violence do not constitute evidence of the irrationality of violence. Rather they show the opposite—that the tactics have been fully effective in disorientating, traumatizing and demoralizing victims of violence. In short, they are devilishly well-calculated.¹⁵¹

149. See Abdullah, *supra* note 139, at 226–27 (providing evidence that leaders within the RUF did not approve of the random violence committed by the RUF fighters); Akinrinade, *supra* note 29, at 399 (suggesting that the RUF had "some semblance of organization"); see also Binaifer Nowrojee, *Making the Invisible War Crimes Visible: Post-Conflict Justice for Sierra Leone's Rape Victims*, 18 HARV. HUM. RTS. J. 85, 90 (2005) (referring to the "systematic" method of sexual violence).

150. See Ibrahim Abdullah & Patrick Muana, *The Revolutionary United Front of Sierra Leone*, in AFRICAN GUERRILLAS 190 (Christopher Clapham ed., Indiana Univ. Press, 1998) (arguing that rapes, looting, and drug use among the rebels were controlled by those commanders in charge); Richards, *The Political Economy of Internal Conflict*, *supra* note 137, at 17 (referring to RUF cadres who, under the influence of drugs, "hacked and amputated their way" through the capital of Freetown); see also Corriero, *supra* note 39, at 340 (confirming the lack of discipline over the RUF fighters and the use of drugs and violence to persuade and threaten young children and innocent civilians).

151. See RICHARDS, FIGHTING FOR THE RAIN FOREST, *supra* note 52, at xvi, n.7 (warning people not to see the terrorism committed by the rebels as anything less than calculated); Cherner Jalloh & Alhagi Marong, *Ending Impunity: The Case for War Crimes Trials in Liberia*, 1 AFR. J. LEGAL STUD. 53, 56 (2005) (assessing the rebels' use of sexual violence as an "instrument" to show force and intimidate); see also Mark Iacono, Note, *The Child Soldiers of Sierra Leone: Are They Accountable for their Actions in War?*, 26 SUFFOLK TRANSNAT'L L. REV. 445, 448–49 (2003) (attributing the RUF's proclaimed notoriety and power to violence and manipulation of young children).

Substantial evidence also suggests that the RUF leadership—although government commanders are hardly innocent on this count—sanctioned the use of narcotics and other drugs in order to “prepare” their forces for battle:

[i]t is also clear from talking to combatants that both sides in the war tolerated and in some case actually encourage use of drugs like amphetamines and crack cocaine, as ways of preparing terrified young combatants for battle. Combatants on both sides also report having used marijuana extensively. Before major battles RUF fighters were officially “de-sensitized” with a concoction of amphetamines and herbal intoxicant in order to eliminate a sense of fear on the battlefield.¹⁵²

After its setbacks in 1993, while the RUF generally avoided the permanent occupation of towns and other population centers that could prove to be inviting targets for conventional counterattacks, it nonetheless controlled—especially after its resurgence in 1994—large swathes of forests and other isolated territory.¹⁵³ There, the RUF established isolated civilian enclaves, guarded by its separately-run military camps, based on the egalitarian “ideology system” outlined by its “head of ideology,” Foday Sankoh.¹⁵⁴ Based on his interviews with escapees from these enclaves as well as demobilized former RUF combatants, Paul Richards sketched the picture of a rather distinctive social experiment with few links to outside society not unlike the “killing fields” of Pol Pot’s Cambodia:

[t]hese camps were a forcing ground for egalitarianism . . . [with] a rather distinctive approach to social justice typical of an isolated sectarian organization. . . . It was death to leave the movement. As with many closed sects, the defection of one threatened the solidarity of all. But within the confines of the camps, tribalism was eschewed, religious pluralism was cultivated, age hierarchies were abolished, Krio was the *lingua franca*, cases between members were settled by open group arbitration, and basic items—notably whatever few health and educational resources the movement could command—were distributed to members according to need. . . . Severe punishments

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152. See CAMPBELL, *supra* note 55, at 80 (describing how RUF soldiers would don women’s wigs and smoke marijuana to thoroughly terrorize civilians); Abdullah & Muana, *supra* note 150, at 190 (detailing the drug use among the RUF troops); see also Stafford, *supra* note 88, at 121 (discussing the RUF method of cutting the legs of child soldiers and rubbing cocaine on the cuts to promote excessive violence).
153. See Richards, *The Political Economy of Internal Conflict*, *supra* note 137, at 14–15 (assessing the movement of the RUF into the bush for a change of military strategy); HUMAN RIGHTS WATCH, WE’LL KILL YOU IF YOU CRY, *supra* note 148 (establishing that by early 1995, the RUF controlled most of Sierra Leone’s diamond region); see also TRUTH & RECONCILIATION COMMISSION OF SIERRA LEONE, *supra* note 145 (explaining RUF’s switch to guerrilla warfare when, late in 1993, they were forced back into the forest and ultimately claimed control).
154. See Akinrinade, *supra* note 29, at 399–400 (categorizing battalions within the RUF and their explicit duties within each rank); Richards, *The Political Economy of Internal Conflict*, *supra* note 137, at 27 (detailing how the RUF evolved into an “enclaved” organization, “with very few links to society outside the confines of its highly organised [sic] and strongly defended forest camps”); see also Gallagher, *supra* note 28, at 155–56 (explaining that what little ideology Sankoh and the RUF had started fighting with, the RUF had deteriorated into a campaign of violence).

were levied on those who tried to hide items for personal use or accumulate their own sources of wealth.¹⁵⁵

During the lead-up to the 1996 election, the RUF “perfected its special contribution to the chamber of war horrors: the chopping of hands of innocent civilians.”¹⁵⁶ The rebel movement called for the boycott of the poll and embarked on a campaign of indiscriminate mutilations and amputations to discourage participation in the election by sending the message that those who used their hands to mark a ballot risked losing their limbs altogether.¹⁵⁷ William Shawcross, who monitored the situation on behalf of the International Crisis Group,¹⁵⁸ recalled:

[h]undreds of Sierra Leoneans had their fingers, hands, arms, noses or lips chopped off with machetes in the cause of democracy. They were being punished either for voting in, or for the mere fact of, the first round of the country’s first multi-party elections in more than twenty-five years. The assaults were carried out by men in uniform, often very young men at that. They were teenagers or younger, members of the world’s fastest-growing army—children. Among those whom I met in Bo . . . was a man who had had his right ear and his lips slashed off. Someone had carved with a knife the word

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155. See Richards, *The Political Economy of Internal Conflict*, *supra* note 137, at 27–28 (detailing the egalitarian world of the RUF); Richards, *War and Peace*, *supra* note 60, at 42–43 (maintaining the secular build of the group, which grew to lethal levels of punishment if anyone refused to follow the group); see also TRUTH & RECONCILIATION COMMISSION OF SIERRA LEONE, *supra* note 145 (revealing stories of former RUF soldiers who attended the training camps and who were prohibited from leaving).
156. See ROBERTSON, *supra* note 17, at 466 (stating that the RUF was infamous for amputating the arms and hands of potential voters in an attempt to discourage turnout at the polls); see also Evenson, *supra* note 76, at 735 (explaining that indigent civilians were the main targets of the RUF); Juma, *supra* note 28, at 342 (expressing that the deeply engrained brutal and merciless nature of the RUF rebels can be traced back to their childhoods, characterized by poverty, drug abuse, and street gambling).
157. See U.S. Representative Edward Royce (R-CA) Holds Hearing on the Ivory Coast: House Comm. On Int’l Relations: Subcomm. On Africa Holds A Hearing on the Ivory Coast, 108th Cong. 11 (2003) (statement of U.S. Rep. Edward Royce, Chairman, House Int’l Relations Comm.) (describing how rebels attempted to discourage voter turnout by mutilating children); *Keeping the Terror at Bay: British Soldiers Are Trying to Restore Order to the West African Country of Sierra Leone, Which Has Been in Civil War for Nine Years*, NOTTINGHAM EVENING POST, July 20, 2000, at 6 (stating that the RUF boycotted the polls and terrorized potential voters with random amputations); Miles O’Brien & Ben Wedeman, *In Sierra Leone Voting Not Taken for Granted*, CNN Sunday Morning 07:00 (May 11, 1997) (Transcript #051908CN.V46) (reporting that rebels severed voter’s limbs because they did not boycott the 1996 election).
158. See INT’L CRISIS GROUP, *About Crisis Group*, <http://www.crisisgroup.org/home/index.cfm?id=1086&l=1> (last visited on Sept. 28, 2005) (describing the International Crisis Group); INT’L CRISIS GROUP, *Sierra Leone: A Radical New Strategy*, Apr. 11, 2001, available at <http://www.crisisgroup.org/home/index.cfm?id=2028&l=1> (last visited on Sept. 28, 2005) (describing journalist and author William Shawcross’s opinion on the civil war in Sierra Leone). See generally BBC NEWS, *Sierra Leone: The Balance of Forces*, May 10, 2000, available at <http://news.bbc.co.uk> (last visited on Sept. 28, 2005) (asserting William Shawcross’s suggestion that foreign mercenaries may be the solution to the violence in Sierra Leone).

TERROR on his chest and on his back AGAINST THE ELECTION FEBRUARY 26. Some men and women had had their armes hacked off above the elbow; some had lost their hands at the wrist.¹⁵⁹

The rebel terror campaign had a macabre “logic” to it: Voting in Sierra Leone is normally done by dipping one’s thumb in an inkpot and pressing it onto the ballot;¹⁶⁰ so, reasoned the rebel leaders, people without hands cannot vote.¹⁶¹ In addition, as photojournalist Teun Voeten noted, the RUF “drew extra inspiration from the canvassing slogan of the hated presidential candidate Tejan Kabbah—“The future is in your hands.”¹⁶² The RUF killed two birds with one stone. “The well-known rebel remark dates from [this] time: ‘Go to your president. He will give you new hands.’”¹⁶³

The counterinsurgency efforts by the forces arrayed in support of the Sierra Leonean government—the Sierra Leonean army, the *kamajors* in the Civilian Defense Force, and the regional peacekeepers of ECOMOG—resulted in further human rights abuses, although, as New York-based Human Rights Watch noted, the scale and nature of these abuses “differ[ed] significantly from atrocities carried out by [the RUF], but the abuses [were] often no less hor-

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159. See WILLIAM SHAWCROSS, *DELIVER US FROM EVIL: PEACEKEEPERS, WARLORDS, AND A WORLD OF ENDLESS CONFLICT* 193 (2000) (detailing some of the atrocities suffered by voters during Sierra Leone’s first multi-party elections); *Sharing Sovereignty: New Institutions for Collapsed and Failing States International Security*, THE CTR. FOR STRATEGIC INT’L STUDIES MASS. INST. OF TECH., Fall 2004, at 85 (emphasizing that the RUF was notorious for severing the limbs of its victims); Leon Burton Davies, *Weekend: Getting By: In 1999, the Photographer Stuart Freedman Visited Strife-Torn Sierra Leone. His Aim? To Record the Impact of a Civil War that Left Thousands Butchered, their Arms or Feet Cut off with Machetes. This Year, He Went Back to Find the Victims Not Bitter, Just Getting on with Life*, GUARDIAN (LONDON)-FINAL EDITION, Aug. 14, 2004, at 28 (describing how children were often forced to amputate arms and hands).
160. See O’Brien & Wedeman, *supra* note 157 (describing how an ink-dipped toe was sufficient to mark ballots in the wake of hand amputations); *Portraits of the South: Stories of Development*, CAN. WORLD BACKGROUNDER, May 2000, at 3 (establishing that those who voted had their fingers marked with ink); *Sierra Leone Holds First Postwar Elections Turnout High as Voters Test Hard-Won Peace*, SEATTLE TIMES, May 15, 2002, at A10 (indicating that some voters marked their ballots by dipping their toes in ink).
161. See Francis Gibb, *On Trial in Sierra Leone: A New Kind of International Remedy for an Old Bloody Problem*, TIMES (UK), Mar. 30, 2004, at 6 (noting that rebels chopped off the hands of civilians who had cast electoral votes); Lizza, *supra* note 67, at 22 (describing how almost two-thirds of the eligible population cast ballots despite the rampant amputations); Willow Bay & Jim Clancy, *Cry Freetown*, CNN NEWSSTAND 22:00 (Feb. 17, 2000) (Transcript #00021700V01) (discussing how rebels cut off the arms and hands of voters in a symbolic attempt to prevent them from casting ballots).
162. See Lindsay Clydesdale, *Red Nose from Lindsay Clydesdale in Sierra Leone*, DAILY RECORD (Glasgow, Scotland), Feb. 19, 2005, at 35 (observing that rebels cut off the hands of civilians in response to the 1996 campaign slogan, “The future is in your hands.”); Ginger Livingston, *Sierra Leone Refugees Plea for Humanitarian Assistance*, COX NEWS SERVICE (N. Carolina), Sept. 24, 2000 (characterizing the government’s campaign slogan as “give a hand”); Rose Spinelli, *Charles Taylor: Personal Snapshot of Horror*, CHI. TRIB., Aug. 17, 2003, at 1 (explaining that Taylor’s response to the government’s campaign slogan was the amputation of hands, fingers, legs, lips, and noses).
163. See VOETEN, *supra* note 119, at 169 (commenting on rebels’ violent response to the government’s campaign slogan); Dean E. Murphy, *W. African Rebels on Mutilating Rampage: Hundreds Have Lost Limbs and Loved Ones During Conflict in Sierra Leone*, L.A. TIMES, Mar. 14, 1999, at A1 (reporting that rebel soldiers told voters to “Go ask Tejan Kabbah for a hand” after severing their victims’ arms); *Small Miracle in Sierra Leone*, TIMES-PICAYUNE (New Orleans), May 14, 2002, at 6 (discussing how rebels told an amputee to go ask his President for a new arm).

rific.”¹⁶⁴ In addition to decapitating captured rebels and cannibalizing their organs—particularly the heart and liver¹⁶⁵—the *kamajors* were also implicated in the abuse of suspected rebel sympathizers in conjunction with or under the direction of government officials.¹⁶⁶ One prominent Freetown businessman, identified only as “Chief K” by the foreign journalists who interviewed him, was abducted by the rebels and kept prisoner for over a year before he escaped during a government counteroffensive.¹⁶⁷ Accused of being one of Sankoh’s financiers, the man’s agony had only began:

[The pro-government fighters] subjected him to the most brutal interrogations and torture. They bound him naked with ropes to a thorny tree for days on end, leaving him prey to insects and exposed to the elements. They stabbed him in the chest with a bayonet. He kept the wound clean himself with sand and herbs. “I couldn’t believe how mean they were,” says Chief K. There followed five days of continual flogging, without food or water, forced to drink other prisoners’ urine to stay alive. Then he was transferred to Bo. There, they threw him into a cell with a group of other people, tossing in a tear gas grenade after them. Two fellow prisoners choked to death; Chief K survived by lying flat on the ground and breathing through a damp cloth.

Chief K was lucky he had been a rich man and had powerful friends. His wife secured his freedom through the intervention of Western ambassadors and the International Red Cross, but only after he had spent four months in various prison cells in Freetown. “The government troops treated me worse

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164. See Juma, *supra* note 28, at 363–64 (discussing the atrocities committed by ECOMOG and members of the Civilian Defense Force); HUMAN RIGHTS WATCH WORLD REPORT OF 1999—SIERRA LEONE, *supra* note 77 (specifying the human rights atrocities committed by ECOMOG forces and members of the Civilian Defense Forces); HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT OF 1998 – SIERRA LEONE, *available at* http://www.hrw.org/reports98/sierra/Sier988-03.htm#P272_46769 (last visited Oct. 15, 2005) (asserting that the abuses committed by the Kamajors, although different, were no less brutal than those carried out by the RUF).
165. See Juma, *supra* note 28, at 363–64 (suggesting that ECOMOG officials were aware of these random killings); Tracey Michelle Price, *The Kimberley Process: Conflict Diamonds, W.T.O. Obligations, and the University Debate*, 12 MINN. J. GLOBAL TRADE 1, 32 (2003) (acknowledging the existence of cannibalistic gangs in Sierra Leone); *Sierra Leone: Truth And Reconciliation Report*, AFR. NEWS, Oct. 31, 2004 (declaring forced cannibalism as a ritual of the kamajor militia).
166. See Juma, *supra* note 28, at 363 (claiming that ECOMOG was to blame for gross human rights violations); *Sierra Leone: The 90s: A Decade of Decadence (Final Part)*, AFR. NEWS, Jan. 3, 2000 (noting that the kamajor civil militia’s involvement in Sierra Leone violated the agreed-upon cease fire); HUMAN RIGHTS WATCH WORLD REPORT OF 1999—SIERRA LEONE, *supra* note 77 (suggesting that government officials were aware of human rights violations in Sierra Leone).
167. See Juma, *supra* note 28, at 363 (detailing how civilians were brutally attacked and abducted); George Kay Kieh Jr., *Irregular Warfare and Liberia’s First Civil War*, 11 J. INT’L & AREA STUD. 57, 57 (2004) (describing how the Taylor regime harassed, intimidated and imprisoned its enemies); *State Department Issues Background Note on Guinea*, U.S. FED. NEWS (HT Syndication), Aug. 1, 2005, at 1 (finding that thousands were imprisoned in Soviet-style prison gulags, where hundreds perished).

than the RUF. As long as the rebels were not under the influence of drugs, you could get along with them,” says Chief K.¹⁶⁸

The CDF also recruited child soldiers for many of the same reasons that the RUF forces did: Children are more easily indoctrinated, have fewer scruples about committing atrocities themselves, and can be sent into battle almost recklessly.¹⁶⁹

One of the most salient features of the Sierra Leonean conflict was, in fact, the widespread use of child soldiers which, retrospectively, contributed to the recognition by customary international law of their recruitment as a war crime entailing personal responsibility, as enshrined in the Rome Statute.¹⁷⁰ While child combatants have been used in conflicts in various parts of the world, a disproportionate number of these cases have been in African countries.¹⁷¹ While the RUF was the first to use child combatants, the Sierra Leonean government likewise resorted to underaged soldiers during the military regime of Valentine Strasser, when the SLA expanded not only to include children, but also a large number of unemployed urban youths who were drafted into the military.¹⁷² While estimates vary considerably, one reputable study, widely used as a benchmark, estimated that “half of all combatants in the RUF/SL [were] in the age range

168. See VOETEN, *supra* note 119, at 261–62 (reflecting on the various methods of torture used by both the rebels and the government during the Civil War in Sierra Leone); Van Dyke, *Prosecution and Compensation*, *supra* note 97, at 79 (describing the horrific atrocities carried out by government troops in Sierra Leone); see also Thierry Cruvellier, *Truth Report Spares No Parties*, INT’L JUST. TRIB., Oct. 18, 2004, at 3 (reporting on the drug use by RUF soldiers and the torture inflicted by soldiers of the CDF in Sierra Leone).

169. See *U.S. Policy in Sierra Leone, Testimony Before the Subcomm. on African Affairs of the S. Foreign Relations Comm.*, Federal Document Clearing House Transcript, Oct. 11, 2000 (testimony of Adotei Akwei, Africa Advocacy Director, Amnesty International U.S.A.) (detailing the use of child soldiers by CDF); see also Elliot P. Skinner, *Child Soldiers in Africa: A Disaster for Future Families*, INT’L J. PROFESSORS WORLD PEACE ACAD. WORLD PEACE, June 1, 1999, at 7 (pondering the attractiveness of fighting to child soldiers in Sierra Leone); Schocken, *supra* note 139, at 449 (highlighting the method of education that led to the variety of tortures that were committed by child soldiers fighting for the CDF, and the rise to leadership positions within the army).

170. See Rome Statute, *supra* note 11 (codifying a list of crimes of these children that would be prosecuted under international law); see also *Special Court for Sierra Leone: Prosecutor v. Sam Hinga Norman*, 43 I.L.M. 1129, 1136 (2004) (regarding the recruiters of child soldiers as war criminals and their status as a part of customary international law); The Secretary General, *Report of the Secretary General on the establishment of the Special Court for Sierra Leone*, ¶ 17, delivered to the Security Council and the General Assembly, U.N. Doc. S/2000/915 (Oct. 4, 2004) (discussing the Special Court’s capacity regarding the relatively new area of criminals who have recruited child soldiers for war crimes).

171. See Jo de Berry, *Child Soldiers and the Convention on the Rights of the Child*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 92, 93 (2001) (commenting on the propensity of African nations to use child soldiers in their conflicts by providing them with comparable protection); see also Hall & Kazemi, *supra* note 25, at 297 (remarking on the widespread use of child soldiers in Africa); Tunde Zack-Williams, *The Forgotten Realities of Contemporary African Conflict*, 5 NEW POL. ECON. 116, 118 (2000) (comparing the various African conflicts and finding similarities in the compilation of their armies).

172. See Melissa Leach, *New Shapes to Shift: War Parks and the Hunting Person in Modern West Africa*, J. ROYAL ANTHROPOLOGICAL INST., Dec. 1, 2000, at 577 (addressing the government’s implementation of rebellious young civilians in their military); see also Bald, *supra* note 80, at 554 (reviewing the government’s use of the poor and dejected urban population of Sierra Leone as soldiers); Gallagher, *supra* note 28, at 156 (examining the government of Sierra Leone and its use of criminals and disaffected youth in their armies).

of 8-14 years,” while “there [were] also significant numbers of under-18 combatants in army irregular units and the *kamajor* militia.”¹⁷³

Observers noted that “the trend to[wards] more youthful combatants . . . reflect[ed] the discovery that children—their social support disrupted by war—make brave and loyal fighters.”¹⁷⁴ As a result, the conscription of children by the RUF:

constitute[d] a viable fighting force and suggest a credible “popular uprising” against the APC. Conscripts were tattooed for military identification, and, perhaps intentionally, to discourage escape. The tattoos served to identify RUF deserters to the [SLA]. Some [government troops] unwittingly consolidated RUF membership by summary executions of rebel suspects. Conscripts were also snared by enforced participation in RUF Renamo-style atrocities against local leaders; youngsters were deterred from returning to their villages for fear of revenge.¹⁷⁵

As a result, thousands of children were abducted in raids on rural villages by the RUF, while others were conscripted into CDF groups.¹⁷⁶ Once recruited, the child soldiers, given their background, easily fell into the violent designs of their abductors.¹⁷⁷ In fact, they were

173. See Krijn Peters & Paul Richards, “*Why We Fight*”: *Voices of Youth Combatants in Sierra Leone*, 68 AFR. 183, 186 (1998) (describing on the various age groups that participated in Sierra Leone’s civil war); see also *Sierra Leone: Child Soldiers Released; Other Development*, WORLD NEWS DIG., May 25, 2001, at 442C2 (noting that the majority of RUF combatants were between ages of 10 and 15); *U.N. to Send Observers, Soldiers to Sierra Leone*, XINHUA NEWS AGENCY, Jan. 30, 1997 (revealing that the RUF mainly consisted of youths between ages of 8 and 14).

174. See Peters & Richards, *supra* note 173, at 186 (theorizing on the major role that children play in African conflicts); see also Skinner, *supra* note 169, at 7 (suggesting that children were proven to join armies, viewing it as a safe haven against a warzone); CHILDREN IN EXTREME SITUATIONS: PROCEEDINGS FROM THE 1998 ALISTAIR BERKLEY MEMORIAL LECTURE 9, available at <http://www.lse.ac.uk/collections/DESTIN/pdf/WP05.PDF> (last visited Sept. 12, 2005) (concluding that the number of children forced to become soldiers is increasing, as is the violence of their actions).

175. See RICHARDS, FIGHTING FOR THE RAIN FOREST, *supra* note 52, at 5 (analyzing the RUF and its role during the war in Sierra Leone); see also Remy Ourdan, *Africa’s Small Soldiers*, FOREIGN POL’Y, May 1, 2001, at 74 (book review) (rationalizing child soldiers’ fears of returning home due to the request of their army capturers who force them to attack their own villages and families); U.N. INTEGRATED REGIONAL INFORMATION NETWORK, *Sierra Leone; Plastic Surgeons to Remove Children’s Scars*, AFR. NEWS, June 23, 2001 (announcing the use of plastic surgeons to remove the initials of RUF and CDF on children in Sierra Leone).

176. See Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?* 95 AM. J. INT’L L. 7, 28 (2001) [hereinafter Akhavan, *Beyond Impunity*] (outlining RUF strategies of abducting children to fight for them); see also Schocken, *supra* note 139, at 449 (indicating that the tactics of both the RUF and CDF involved abducting children); *Liberia; Nigeria Faces U.N. Sanction Over Charles Taylor*, AFR. NEWS, Mar. 24, 2005 (reiterating that the RUF resorted to abductions in order to fill their armies).

177. See Bald, *supra* note 80, at 554 (analyzing the culture of African children, surrounded by war, that causes them to serve as soldiers voluntarily); see also Schocken, *supra* note 139, at 449 (emphasizing the active role that children took during the conflict in Sierra Leone); Edward Barnes, *The Kalashnikov Kids: The Russians are Coming . . . and Boy Are They Cute. Inside the Children’s Brigade*, LIFE, July, 1999, at 92 (speaking to the ease with which children joined in battle as members of the army).

often the most violent actors in the civil conflict.¹⁷⁸ As David Keen of the London School of Economics noted in his study of civil wars:

[f]ar from being random or meaningless, abuse by both government and RUF forces in Sierra Leone can be explained as reflecting the deep resentment of young men denied a substantial role or status in their communities. Teenage fighters repeatedly humiliated chiefs and local “big men.”¹⁷⁹

As Geoffrey Robinson noted, before he was appointed to the Special Court, the phenomenon of the child soldier is “the most difficult ethical question”¹⁸⁰ facing the legal system in the Sierra Leonean conflict’s aftermath since “many of the worst mutilations were committed by brutal and aggressive 16- and 17-year-olds, and the populace demanded that they be punished”¹⁸¹ even though many regard the youths as victims themselves.¹⁸²

II. Establishing the Special Court

A. From Amnesty to Justice

The Lomé Peace Agreement had stipulated that a Truth and Reconciliation Commission would be established “to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear pic-

178. See Ilene Cohn, *Progress and Hurdles on the Road to Preventing the Use of Children as Soldiers and Ensuring Their Rehabilitation and Reintegration*, 37 CORNELL INT’L L.J. 531, 539 (2004) (citing the Special Court’s grapple with the issue of prosecuting child soldiers, who committed some of the most terrible abuses); see also Peters & Richards, *supra* note 173, at 186 (affirming that it is children who fought with the most skill, who perpetrated some of the most violent crimes); Iacono, *supra* note 151, at 448 (claiming that the world has yet to realize the vicious actions taken by child soldiers).

179. See DAVID KEEN, *THE ECONOMIC FUNCTIONS OF VIOLENCE IN CIVIL WARS* 48 (1998) (hypothesizing that although the civil war and torture of civilians in Sierra Leone initially appeared meaningless, the repression of the rights of the young converted them to rebels); see also Corriero, *supra* note 39, at 340 (asserting that one of the goals of warfare was humiliation); Corinna Schuler, *Helping Children Warriors Regain Their Humanity*, CHRISTIAN SCI. MONITOR, Oct. 20, 1999, at 1 (expressing that children’s frustrations with authority caused them to lash out through violence).

180. See ROBERTSON, *supra* note 17, at 468 (theorizing on the ethical problems of prosecuting child soldiers); see also Iacono, *supra* note 151, at 448 (enumerating on the United Nations problematic quest to charge child soldiers with war crimes); *Around the World*, DALLAS MORNING NEWS, Oct. 6, 2000, at 31A (assessing the United Nations’ struggle with the issue of prosecuting child soldiers and the opposition by various organizations).

181. See ROBERTSON, *supra* note 17, at 469 (comparing the desire to defend child soldiers, who are victims, with the desire to defend the victims of child soldiers); see also Alison Dundes Renteln, *The Child Soldier: The Challenge of Enforcing International Standards*, 21 WHITTIER L. REV. 191, 199 (1999) (commenting on the positive reaction of local civilians to prosecuting child soldiers); Schocken, *supra* note 139, at 449 (discussing the domestic sentiment in support of trying juveniles).

182. See Bald, *supra* note 80, at 578 (focusing on the reluctance by children to testify as victims because of their dual role as soldiers); see also Iacono, *supra* note 151, at 448 (maintaining that the children of Sierra Leone are indeed victims); *Thousands of Sierra Leone Civilians Held Hostage*, XINHUA NEWS AGENCY, Mar. 8, 1998 (referring to UNICEF’s attempt to help the children of Sierra Leone who were soldiers, but also victims).

ture of the past in order to facilitate genuine healing and reconciliation.”¹⁸³ Although the Sierra Leonean parliament ratified the peace accord on July 15, 1999, it was not until February 22, 2000, that it adopted legislation establishing the commission to:

create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.¹⁸⁴

The renewed fighting in early 2000, however, not only stalled the actual establishment of the TRC, but revived the debate over the much-criticized amnesty provisions of the Lomé accord¹⁸⁵ and forced both the Sierra Leonean government and the sponsors of the peace agreement to rethink their options, opening the way to a different approach, albeit one which does not necessarily preclude the work of the TRC.¹⁸⁶

On August 9, 2000, Ambassador Ibrahim M. Kamara, the permanent representative of Sierra Leone to the United Nations, delivered to the President of the Security Council a letter, dated June 12, 2000, from Ahmad Tejan Kabbah in which the Sierra Leonean president requested that the international body “initiate a process whereby the United Nations would resolve on setting up a special court for Sierra Leone” to “try and bring to credible justice those members of the Revolutionary United Front (RUF) and their accomplices responsible for com-

183. See Lomé Agreement, *supra* note 79 (emphasizing the goal of national reconciliation); Fritz & Smith, *supra* note 138, at 421 (quoting Article XXVI of the Lomé Accord, which states how the TRC will facilitate reconciliation); Schabas, *Sierra Leone Truth*, *supra* note 107, at 150 (citing Article XXVI of the Lomé Agreement).

184. See Truth and Reconciliation Commission Act of 2000, Art. 6, para. 1, *available at* <http://www.sierra-leone.org/trcact2000.html> (last visited Oct. 14, 2005) (providing for the establishment of the Truth and Reconciliation Commission in connection with Article XXVI of the Lomé Peace Agreement); *see also* Truth and Reconciliation Commission Act of 2000, Memorandum of Objects and Reasons, *available at* <http://www.sierra-leone.org/trcact2000.html> (last visited Oct. 14, 2005) (illustrating that the function of the Truth and Reconciliation Commission was to heal the wounds from the armed conflict of 1991); Schabas, *Sierra Leone Truth*, *supra* note 107, at 151 (recognizing that the 90-day deadline to establish the Commission proved too ambitious and that the Truth and Reconciliation Commission Act was not enacted until 2000).

185. See Solomon Berewa, *Addressing Impunity Using Divergent Approaches: The Truth and Reconciliation Commission and the Special Court*, in TRUTH AND RECONCILIATION IN SIERRA LEONE 55–56 (2001) (admitting that the amnesty provisions faced strong reservations); *see also* Benjamin Mason Meier, *International Criminal Prosecution of Physicians: A Critique of Professors Annas and Grodin's Proposed International Medical Tribunal*, 30 AM. SOC'Y L. MED. & ETHICS B.U. SCH. L. 419, 447 (2004) (describing the difficulties in setting up an international criminal tribunal for Sierra Leone). *See generally* Corinna Schuler, *A Wrenching Peace: Sierra Leone's "See No Evil" Pact*, CHRISTIAN SCIENCE MONITOR, Sept. 15, 1999 (claiming that the war crimes committed by RUF were more ruthless than those committed by Serbian leaders in the Balkans, and criticizing the developed world for ignoring the war in Sierra Leone).

186. See Evenson, *supra* note 76, at 739 (“[The] U.N.’s reservation to the amnesty provisions opened a door into a future for Sierra Leone where the truth commission and criminal prosecutions could proceed side-by-side.”); William A. Schabas, *The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone*, 25 HUM. RTS. Q. 1035, 1036–37 (2003) [hereinafter Schabas, *The Case of Sierra Leone*] (claiming that renewed fighting in 2000 forced the government of Sierra Leone to reassess its position with regard to the amnesty); Schabas, *Sierra Leone Truth*, *supra* note 107, at 153 (acknowledging that the renewed fighting in early 2000 caused the government to reassess its position on the amnesty).

mitting crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages.”¹⁸⁷ Citing the precedents of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the gaps in Sierra Leonean law that failed to encompass some crimes against humanity and other human rights abuses,¹⁸⁸ as well as the collapse of the judicial system in Sierra Leone wrought by the conflict,¹⁸⁹ Kabbah invited the Security Council to dispatch a fact-finding delegation to assess the situation and enclosed a suggested framework for the eventual tribunal.¹⁹⁰ Solomon Berewa, at that time attorney-general and minister of justice in Kabbah’s cabinet, explained his government’s changed prise de position in terms of force majeure at the time of the Lomé Peace Agreement:

1. After the atrocities of 6 January 1999, what every Sierra Leonean wanted most was peace and reconciliation. If, as we had hoped, we had achieved sustainable peace as a result of the Lomé Agreement, Sierra Leoneans would have grudgingly settled for this and gone about mending their shattered lives.¹⁹¹
2. We needed a Peace Agreement with the RUF, which alone would have enabled the international community to come here as they have now done and to do things they are now doing.¹⁹²

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187. Letter from the Permanent Representative of Sierra Leone to the United Nations to the President of the Sec. Council, U.N. Doc. S/2000/786 (Aug. 9, 2000) (transmitting Kabbah’s June 12, 2000, letter regarding the creation of a special court); *see also* Fritz & Smith, *supra* note 138, at 400 (discussing the nature of the request sent by Kabbah to the U.N. Secretary-General); Juma, *supra* note 28, at 368–69 (emphasizing that it was Kabbah’s June 2000 letter which ignited the U.N. process).
188. *See* Eaton, *supra* note 60, at 880–81 (noting that, under Article 27 of the Sierra Leone Constitution, unequal treatment of women is not illegal with regard to certain issues); Gallagher, *supra* note 28, at 197 (explaining that amnesty is legal under international law); *see also* *The United Nations and Humanitarian Intervention: Building Legitimacy By Confronting Our Past—An Open Letter*, 16 FLA. J. INT’L L. 483, 501–02 (2004) (declaring that the peace agreement was flawed).
189. *See* Fritz & Smith, *supra* note 138, at 406 (commenting that the judicial system in Sierra Leone had collapsed during the prolonged conflict); *see also* Tejan-Cole, *supra* note 70, at 145 (remarking that war has destroyed the Sierra Leonean judicial system); Webster, *supra* note 39, at 773 (claiming that civil war has “decimated” the Sierra Leonean judicial system).
190. *See* James Cockayne, *The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals*, 28 FORDHAM INT’L L.J. 616, 680 n.6 (2005) (reiterating that Kabbah wanted a tribunal established to try those who had committed crimes during Sierra’s period of civil war); *see also* Eric Pape, *Cleaning House: Sierra Leone’s War Crimes Tribunal Defied History by Going After the Victors, Not Just the Losers, in the Country’s Civil War. Rebuilders of Iraq are Taking Notice*, LEGAL AFF., Sept./Oct. 2003, at 69 (revealing that Kabbah requested a court that would prosecute rebel leaders, but that the Security Council ultimately decided the court should try those “most responsible” for atrocities, regardless of their political or military status); Schabas, *Sierra Leone Truth*, *supra* note 107, at 153 (“[T]he purpose of [the tribunal] is to try and bring credible justice . . .”).
191. *See* Berewa, *supra* note 185 (describing the environment within which the terms of the Lomé Peace Agreement were settled); Udombana, *supra* note 25, at 81 (admitting the shortcomings of the Lomé Agreement). *See generally* Akhavan, *Beyond Impunity*, *supra* note 176 (detailing the atrocities committed by the RUF).
192. *See* Berewa, *supra* note 185 (reiterating the precarious circumstances surrounding the formation of the Lomé Peace Agreement); *see also* Forest, *supra* note 100, at 640 (explaining how RUF control over Sierra Leone’s diamond mines gave the group both economic and political clout); Zarifis, *supra* note 131, at 18 (admitting that several U.N.-brokered attempts at peace during the mid-1990s failed to end the fighting between the RUF and the Sierra Leonean government).

3. We needed to have an agreement with the RUF on having a permanent cessation of hostilities. The need for a Peace Agreement at the time became obvious from the panicky reaction of Sierra Leoneans to a threat issued in Lomé by Corporal Foday Sankoh that he would call off the talks. I had to make a radio broadcast from Lomé to assure the Sierra Leone public that there was every probability that the Peace Agreement would be concluded.¹⁹³
4. Most importantly, the RUF would have refused to sign the Agreement if the Government of Sierra Leone had insisted on including in it a provision for judicial action against the RUF and had excluded the amnesty provision from the Agreement.¹⁹⁴

In response to Kabbah's request, the Security Council adopted Resolution 1315 on August 14, 2000, authorizing the Secretary-General to negotiate an agreement with the government of Sierra Leone to create a special tribunal to try "crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law."¹⁹⁵ Consequently, a team led by Assistant Secretary-General for Legal Affairs Ralph Zacklin visited Freetown from September 18 to 20.¹⁹⁶ On October 4, Secretary-General Kofi Annan presented the Security Council with a report containing proposals for setting up the court, including a draft agreement between the UN and the Sierra Leonean government and a draft statute for the Tribunal.¹⁹⁷ Thereafter, although some of those slated for trial by the even-

193. See Berewa, *supra* note 185 (revealing that many Sierra Leoneans doubted the Peace Agreement would be successful); see also Amann, *supra* note 104, at 240 (explaining that the Peace Agreement actually rewarded Sankoh); Macaluso, *supra* note 76, at 356–57 (remarking that the Agreement "transformed the RUF into a political party [and] gave Foday Sankoh . . . expansive privileges . . .").

194. See Berewa, *supra* note 185 (showing that the Agreement itself did not provide a means of accountability); see also Gallagher, *supra* note 28, at 197 ("[F]aced with continued carnage or amnesty and peace," Sierra Leone's choice of amnesty "was understandable."); Macaluso, *supra* note 76, at 359 ("Amnesties are an important tool of negotiations during a post-conflict society . . . the importance of amnesty in helping resolve conflict should not be discounted.").

195. See S.C. Res. ¶ 1315, U.N. SCOR, 4186th mtg. at 2, U.N. Doc. S/RES/1315 (2000) ("[T]he special court should have personal jurisdiction over persons who bear the greatest responsibility for the commission of the crimes referred to . . ."); see also Akhavan, *Beyond Impunity*, *supra* note 176, at 28 (recognizing that Kabbah's request was endorsed on the understanding that the amnesty provisions of the [Lomé] Agreement would not apply to international crimes); John Cerone, *The Special Court for Sierra Leone: Establishing A New Approach to International Criminal Justice*, 8 ILSA J. INT'L & COMP. L. 379, 380–81 (2002) (detailing Resolution 1315's most important features).

196. See Hans Corell, *Seeking Justice Around the World*, 23 NAT'L L.J. 9, B1 (confirming that Ralph Zacklin visited Freetown in September 2000 to complete negotiations with the Sierra Leone government for a special court); Webster, *supra* note 39, at 748 (revealing what was accomplished when the U.N. team visited Sierra Leone from September 18–20, 2000); see also Press Briefing with Hirut Befecadu, UNAMSIL Spokesman, and Lt. Commander Patrick Coker, Military Spokesman (Sept. 18, 2000), available at <http://www.un.org/Depts/dpko/unamsil/DB/DB180900.htm> (last visited Sept. 13, 2005) (emphasizing that the purpose of the trip was for the members to consult with the Sierra Leone government about establishing the court).

197. See U.N. DOC. S/2000/915, *supra* note 170, at ¶ 1 ("A credible system of justice for the serious crimes committed in Sierra Leone would end impunity and contribute to the process of national reconciliation."); see also Macaluso, *supra* note 76, at 352–53 (illustrating that the draft statute is more flexible than that of the Peace Agreement); Webster, *supra* note 39, at 748 (acknowledging that the Secretary-General wanted the Special Court to have "concurrent jurisdiction with and primacy over Sierra Leonean courts").

tual court were already in custody, various events diverted the world's attention and prevented any action on the proposals until the end of 2001 when, in a letter dated December 26, Annan informed the Security Council that he was authorizing the commencement of operations for the Special Court for Sierra Leone (SCSL), beginning with the dispatch of a planning mission to the West African country.¹⁹⁸ During a 12-day tour of the war-torn country in January 2002, the new UN delegation was joined by Under-Secretary-General for Legal Affairs Hans Corell who, on behalf of the United Nations, signed an agreement with the government of Sierra Leone, represented by Solomon Berewa, on January 16, formally establishing the SCSL.¹⁹⁹ The agreement was essentially the one contained in the Secretary-General's October 2000 report, albeit with several notable amendments, including the abandonment of two trial chambers in favor of one.²⁰⁰ Annan communicated the agreement, along with the Statute of the Special Court, to the Security Council on March 6, 2002.²⁰¹ Meanwhile, the implementing legislation for the tribunal was passed by the Sierra Leonean parliament on March 19, and signed into law by President Kabbah on March 29.²⁰²

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198. See Letter, United Nations Security Council, *Letter dated 6 March 2002 from the Secretary-General addressed to the President of the Security Council*, U.N. DOC. S/2002/246 (Mar. 8, 2002) (indicating that upon return of the planning mission, the Secretary-General would report to the Security Council on its recommendations on the organization and operation of the SCSL); see also Letter, United Nations Security Council, *Letter dated 26 December 2001 from the Secretary-General to the President of the Security Council*, U.N. DOC. S/2001/1320 (Dec. 28, 2001) (stressing that the purpose of the planning mission "[would] be to discuss with the Government of Sierra Leone the practical arrangements for the establishment and operation of the Court . . ."); Schabas, *The Case of Sierra Leone*, *supra* note 186, at 1037 (noting that the TRC "took some time to materialize").
199. See Tejan-Cole, *supra* note 70, at 143 (providing that Hans Corell and Solomon Berwa signed an agreement establishing the Special Court for Sierra Leone after a Security Council endorsement); see also JEFFERY L. DUNOFF ET AL., *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS*, 604 (2002) (stating that the United Nations and the Government of Sierra Leone signed an agreement to establish the Special Court for Sierra Leone on January 16); *U.N. and Sierra Leone Agree to Set Up War Crimes Tribunal*, INT'L L. UPDATE (Transnat'l Law Associates, LLC), Jan. 2002 (indicating that the Government of Sierra Leone and the United Nations entered into an agreement on January 16 to create the Special Court for Sierra Leone).
200. See Daphna Shraga, *The Second Generation U.N.-Based Tribunals: A Diversity of Mixed Jurisdictions*, in *INTERNATIONALIZED CRIMINAL COURTS* 15, 29 (2004) (stating that the Special Court for Sierra Leone is composed of one trial chamber). Compare U.N.-Sierra Leone Agreement, *supra* note 22 (establishing that the SCSL will be composed of one trial chamber) with U.N. DOC. S/2000/915, *supra* note 170, at ¶ 39 (defining the Special Court for Sierra Leone as containing two trial chambers).
201. See Evenson, *supra* note 76, at 730, n.66 (citing the Agreement annexed to the letter dated March 6, 2002); see also Marco Simons, *The Emergence of a Norm Against Arbitrary Forced Relocation*, 34 COLUM. HUM. RTS. L. REV. 95, 131 n.173 (2002) (mentioning that the Statute of the Special Court of Sierra Leone was included in the Agreement dated March 6, 2002). See generally U.N. DOC. S/2002/246, *supra* note 198 (presenting the Statute of the Special Court for Sierra Leone to the Security Council).
202. See Geoffrey Robertson, *Powerful Enough to Bring Justice: Setting up the Special Court for Sierra Leone*, U.N. CHRON., Dec. 1, 2003, at 74, available at 2003 WLNR 11017844 [hereinafter Robertson, *Powerful Enough to Bring Justice*] (indicating that the government of Sierra Leone ratified the Special Court Agreement in March 2002); see also Alison Smith, *Sierra Leone: The Intersection of Law, Policy, and Practice*, in *INTERNATIONALIZED CRIMINAL COURTS AND TRIBUNALS* 125, 125 n.1 (Cesare P. R. Romona et al. eds., 2004) (reporting that the Parliament of Sierra Leone passed the Ratification Bill on 19 March 2002 and the President Kabbah assented to the Bill on 29 March 2002); HUM. RTS. WATCH: WORLD REPORT 2003: EVENTS OF 2002 67, 69 (2003) (stating that the Sierra Leonean Parliament passed an act in March 2002 to codify an earlier agreement between the United Nations and the Government of Sierra Leone).

B. The Legal Basis for the SCSL

While copious references were made to the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda during the discussions leading to the establishment of the SCSL, there are notable differences between the bodies.²⁰³ The former two tribunals are subsidiary organs of the United Nations, having been established by resolutions of the Security Council under its Chapter VII powers.²⁰⁴ The SCSL, while endorsed by Security Council Resolution 1315, was, according to Corell, “different from earlier *ad hoc* courts in the sense that it is not being imposed upon a state.²⁰⁵ It is being established on the basis of an agreement between the United Nations and Sierra Leone—at the request of the Government of Sierra Leone.”²⁰⁶ As a result, the SCSL is, like the ICC, a treaty-based court and, most significantly, represents the first time that a court has been established on the basis of an agreement between the U.N. and a member state.²⁰⁷

One effect of this unique status is that, unlike the ICTY and the ICTR which have primacy over national courts, the SCSL will have concurrent jurisdiction with Sierra Leonean

203. See *Jacobson*, *supra* note 2, at 221 (explaining that the Special Court for Sierra Leone was established in a process that differed from the Yugoslav and Rwandan tribunals); see also Schocken, *supra* note 139, at 443–44 (asserting that the Special Court for Sierra Leone differs from the ICTR and ICTY in three primary ways); Stafford, *supra* note 88, at 126, 129 (distinguishing the Special Court for Sierra Leone from the Yugoslav and Rwandan tribunals).
204. See U.N. Doc. S/RES/827, *supra* note 1, at ¶ 10 (stressing that the Security Council is “acting under Chapter VII of the Charter of the United Nations . . .”); see also Allison Marston Danner, *Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court*, 97 AM. J. INT’L L. 510, 529–30 (2003) (explaining that the Yugoslav and Rwandan tribunals were created by the Security Council pursuant to its Chapter VII powers); David S. Koller, *Immunities of Foreign Ministers: Paragraph 61 of the Yerodia Judgment as it Pertains to the Security Council and the International Criminal Court*, 20 AM. U. INT’L L. REV. 7, 32 (2004) (acknowledging that the Yugoslav and Rwandan tribunals were created by the Security Council based on Chapter VII of the United Nations Charter).
205. See SIERRA LEONE NEWS ARCHIVES, *News Archives* (Jan. 16, 2002), <http://www.sierra-leone.org/slnews0102.html> (last visited Oct. 12, 2005) [hereinafter *News Archives*] (asserting that the Special Court for Sierra Leone is different than earlier courts because it was established pursuant to an agreement between the United Nations and the Government of Sierra Leone); see also Eaton, *supra* note 60, at 911 (reporting that the Special Court for Sierra Leone was established on the basis of a request by the Government of Sierra Leone); Schocken, *supra* note 139, at 442–43 (describing the Special Court as unique compared to earlier *ad hoc* courts because the Government of Sierra Leone requested its creation).
206. See U.N. Doc. S/2000/786, *supra* note 187 (requesting the Security Council to set up the Special Court for Sierra Leone); *News Archives*, *supra* note 205 (noting that the Special Court for Sierra Leone was established at the request of the government and is different from earlier *ad hoc* courts); see also Franklyn Bai Kargbo, *International Peacekeeping and Child Soldiers: Problems With Security and Rebuilding*, 37 CORNELL INT’L L.J. 485, 495 (2004) (positing that the Special Court for Sierra Leone is a unique institution that was created by the United Nations at the request of the Government of Sierra Leone).
207. See U.N. Doc S/2000/915, *supra* note 170, at ¶ 9 (emphasizing that the Special Court for Sierra Leone is a “treaty-based *sui generis* court,” which is a markedly different approach than that of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda); see also Micaela Frulli, *The Special Court for Sierra Leone: Some Preliminary Comments*, 11 EUR. J. INT’L L. 857, 857 (2000) [hereinafter Frulli, *The Special Court for Sierra Leone*] (positing that the Special Court is the first *ad hoc* criminal tribunal to be established as a result of an agreement between the U.N. and a government of a member state); Iacono, *supra* note 151, at 453–54 (acknowledging that, unlike the Rwanda and Yugoslav tribunals that were created under Chapter VII of the U.N. Charter, the Special Court for Sierra Leone is a treaty-based agreement).

courts,²⁰⁸ although the SCSL does have the power to request that the national courts defer proceedings and transfer defendants to its jurisdiction.²⁰⁹ Another potentially problematic effect is that the Special Court lacks the powers of Chapter VII of the United Nations Charter to compel member states to comply with the tribunal's requests for extradition or evidence.²¹⁰ While the UN Secretary-General recommended that the Security Council grant the Court those powers, it has not done so.²¹¹ On the other hand, by incorporating national law into its jurisdiction, the SCSL is empowered to address certain categories of sexual crimes and crimes against property that were perhaps the most widespread offenses during the conflict and which the Secretary-General's report acknowledged were either unregulated or regulated inadequately under the international law that is the basis of the previous *ad hoc* international criminal tribunals.²¹² By having a basis in both international law and national legislation, the Court can function as a mechanism of justice for a wider group of victims of atrocities during the civil war, regardless of the crime perpetrated against them, since the prosecution is able to appeal to domestic laws to cover violations that occurred during the conflict.²¹³

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208. See Statute for the Special Court for Sierra Leone, Art. 8 § 2, available at <http://sierra-leone.org/specialcourtstatute.html> (last visited Oct. 12, 2005) [hereinafter Statute for the Special Court] (affirming that the Special Court for Sierra Leone will have concurrent jurisdiction); see also Juma, *supra* note 28, at 369–70 (illustrating that the Special Court for Sierra Leone enjoys concurrent jurisdiction); Daryl A. Mundis, *New Mechanisms for the Enforcement of International Humanitarian Law*, 95 AM. J. INT'L L. 934, 936 (2001) [hereinafter Mundis, *New Mechanisms*] (recognizing that the Special Court for Sierra Leone will have concurrent jurisdiction over Sierra Leone courts).
209. See Statute for the Special Court, *supra* note 208, at Art. 8, § 2 (codifying that the Special Court for Sierra Leone may request a national court to defer proceedings); see also U.N. Doc. S/2000/915, *supra* note 170, at ¶ 10 (noting that the Special Court for Sierra Leone will have the power to defer its jurisdiction at any stage); Stafford, *supra* note 88, at 128 (affirming that the Special Court for Sierra Leone may request to defer proceedings and transfer a defendant for prosecution).
210. See U.N. Doc. S/2000/915, *supra* note 170, at ¶ 10 (admitting that the Special Court for Sierra Leone lacks authority to compel states to abide by requests for extradition or evidence); Norman J. Printer, Jr., *Establishing an International Criminal Tribunal for Iraq: The Time is Now*, 36 UWLA L. REV. 27, 49 (2005) (illustrating that the Special Court for Sierra Leone is unable to seek jurisdiction over those located outside the country because the Court was not created under Chapter VII of the U.N. Charter); Bald, *supra* note 80, at 566 (noting that countries are not obligated to comply with the Special Court's request for evidence because the U.N. did not grant the Court Chapter VII powers).
211. See U.N. Doc. S/2000/915, *supra* note 170, at ¶ 10 (requesting that the Security Council empower the Special Court for Sierra Leone with Chapter VII powers, enabling the Court to request the transfer of defendants to its jurisdiction); see also Udombana, *supra* note 25, at 123 (suggesting that the Secretary General recommended that the Court be given the power to transfer defendants to its jurisdiction); Webster, *supra* note 39, at 758 (emphasizing that the Secretary General recommended that the Special Court for Sierra Leone be established outside the national court system).
212. See Statute for the Special Court, *supra* note 208, at Art. 8, § 2 (containing provisions which grant the Special Court for Sierra Leone jurisdiction over various sexual crimes and crimes against property); Fritz & Smith, *supra* note 138, at 409 (stating that Article 5 of the Statute of the Special Court for Sierra Leone grants prosecution of persons under domestic laws relating to the abuse of girls and destruction of property, and highlighting that both crimes are best regulated under Sierra Leonean law as opposed to international law). See generally Tejan-Cole, *supra* note 70 (noting the Special Court's subject matter jurisdiction over both international and Sierra Leonean law, specifically sexual abuse and destruction of property offenses falling under the Prevention of Cruelty to Children Act of 1960 and the Malicious Damage Act of 1861).
213. See Statute for the Special Court, *supra* note 208, at Arts. 2–5 (noting that the Special Court for Sierra Leone shall have jurisdiction over crimes against both international humanitarian law and Sierra Leonean law); Stafford, *supra* note 88, at 130 (outlining the breadth of crimes over which the Special Court has jurisdiction); see also Fritz & Smith, *supra* note 138, at 409 (stating that the inclusion of jurisdiction over crimes violating domestic law offers greater protection to a larger group of the population).

III. The Structure of the SCSL

As a consequence of the government's participation with its establishment, the Special Court for Sierra Leone differs from the earlier tribunals in several crucial respects. First, the Court sits within the territory of Sierra Leone, its permanent quarters occupying a prominent location in the capital of Freetown.²¹⁴ According to the Court's Statute, the Sierra Leonean government has significant input in the tribunal's operations, particularly through its powers of appointment.²¹⁵ The government appoints one of the three judges in the trial chamber and two of the five judges of the appellate chamber as well as the deputy prosecutor.²¹⁶ The UN Secretary-General appoints the other judges and the prosecutor.²¹⁷

A. Jurisdiction

As noted above, significantly, the SCSL's jurisdiction embraces both international crimes and crimes under Sierra Leonean law.²¹⁸ One consequence of this is the need for the enabling legislation to incorporate the court within Sierra Leone's existing judicial system.²¹⁹ Another is that, unlike the ICTY and the ICTR, the SCSL was empowered to try offenses that were criminalized under Sierra Leonean law, such as the abuse of girls and arson, that are not strictly

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214. See Tejan-Cole, *supra* note 70, at 145 (explaining how the judicial system of Sierra Leone functions in Freetown); see also Bald, *supra* note 80, at 562 (stating that the Special Court will sit in the capital of Sierra Leone, Freetown). See generally Bruce M. MacKay, *A View from the Trenches: The Special Court for Sierra Leone—The First Year*, 35 CASE W. RES. J. INT'L L. 273 (2003) (detailing the construction of the court in Freetown and the complexities surrounding the location of the courthouse).
215. See Statute for the Special Court, *supra* note 208, at Art. 12 (stating that the Trial Chamber will consist of three judges, one of whom is appointed by the Sierra Leonean government, in addition to which the government will also appoint two of the five judges to serve in the Appeals Chamber); see also Udombana, *supra* note 25, at 86 (outlining the organization and composition of the Trial and Appellate Chamber, including the role of the government as the body empowered to appoint judges); Schocken, *supra* note 139, at 443 (stating that the government has significant control over the administration of judicial matters, including the appointment of judges, because the location of the court is within Sierra Leone as opposed to a foreign country).
216. See Statute for the Special Court, *supra* note 208, at Arts. 12, 15 (detailing the "Composition of the Chambers," and the position of "The Prosecutor," including provisions regarding appointment); Macaluso, *supra* note 76, at 353 (noting that the government of Sierra Leone has the power to appoint the remaining judge to the trial chamber, in addition to the two judges appointed by the Secretary General); see also Schocken, *supra* note 139, at 443 (stating that the Deputy Prosecutor is selected by the government of Sierra Leone).
217. See Statute for the Special Court, *supra* note 208, at Arts. 12, 15 (outlining the involvement of the U.N. Secretary-General in appointing the judges and the prosecutor); Macaluso, *supra* note 76, at 353 (2001) ("[T]he Secretary-General will appoint two of the judges to each of the two trial chambers."); see also Schocken, *supra* note 139, at 443 ("[T]he Prosecutor, after consultation with the GOSL, will be selected by the Secretary-General.").
218. See Statute for the Special Court, *supra* note 208, at Arts. 2–5, (stating that the Special Court for Sierra Leone has jurisdiction over both international humanitarian law crimes and offenses under Sierra Leonean law); Fritz & Smith, *supra* note 138, at 407–09 (summarizing the jurisdiction of the Special Court, which covers crimes both under international humanitarian law and under Sierra Leone domestic law); see also Tejan-Cole, *supra* note 70, at 146–47 (noting the Special Court's subject matter jurisdiction over both international and Sierra Leonean law).
219. See Stafford, *supra* note 88, at 133 (explaining the integral role of the Special Court as a mechanism in strengthening the current, albeit weak, judicial system); see also Fritz & Smith, *supra* note 138, at 406 (noting that the Special Court has been created with provisions tailored to achieving improvement in the currently decimated domestic legal system). See generally Webster, *supra* note 39 (stressing the need for the Special Court to be established in a manner that would stabilize and restore the rule of law to and for the citizens of Sierra Leone).

speaking crimes under international humanitarian law, which is covered by the grant of *ratione iuris* jurisdiction to the court for crimes against humanity²²⁰ and violations of the common article 3 of the Geneva Conventions,²²¹ of Additional Protocol II, and other serious violations of international law.²²² This mixed jurisdiction led to a confusing situation based on the interpretation of Article 10, that the international crimes would have a different jurisdiction *ratione temporis* than Sierra Leonean crimes because the Sierra Leone crimes are covered by the Lomé Peace Agreement while the international crimes are not.²²³ In general, international crimes since November 30, 1996, the date of the abortive Abidjan Peace Agreement, are subject to the SCSL, while only those crimes under Sierra Leonean law that would be judged were those committed after the July 1999 Lomé accord.²²⁴ As a result of this provision, stipulations in the Statute calling for the applicability of the ICTR Rules of Evidence and Procedure, *mutatis mutandis*, to the SCSL,²²⁵ will require the amendment of rule 89 barring the ICTR from being

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220. See Macaluso, *supra* note 76, at 352–53 (summarizing the Special Court’s uniqueness, relative to the Yugoslavian and Rwandan international criminal tribunals, in presiding over crimes against Sierra Leonean law); see also Schocken, *supra* note 139, at 443 (stating that the Special Court differs from the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for Yugoslavia because it includes jurisdiction over crimes that violate domestic law, but would not be viewed as violating international human rights laws). See generally Amann, *supra* note 104 (explaining the court’s jurisdiction over domestic and international criminal law, specifying arson and abuse of girls as domestic offenses that are distinguishable from crimes against humanity that offend international law).
221. See Statute for the Special Court, *supra* note 208, at Art. 3 (articulating the Special Court’s power to prosecute people); Udombana, *supra* note 25, at 93 (categorizing the different violations over which the Special Court has jurisdiction, including Article 3 of the Geneva Conventions); see also Macaluso, *supra* note 76, at 353–54 (deducing that the Statute includes international crimes in violation of Article 3 of the Geneva Conventions, as a consequence of the specific tailoring done by the parties to the agreement).
222. See Statute for the Special Court, *supra* note 208, at Arts. 2–4, (providing the subject matter jurisdiction for the Special Court, specifically over crimes committed against humanity, violations against Protocol II, and other violations of international humanitarian law); Udombana, *supra* note 25, at 93 (including the Additional Protocol and “other serious violations of international humanitarian law” as violations against which persons can be prosecuted under the Statute); see also Schocken, *supra* note 139, at 448 (discussing Articles 2 through 5, specifically Article 3 which addresses the subject matter jurisdiction of the Special Court extending to the Additional Protocol II).
223. See Frulli, *The Special Court for Sierra Leone*, *supra* note 207, at 859 (stating that the U.N. and the government of Sierra Leone agreed that the Lomé Agreement was not to apply to those international crimes against humanity covered by the Statute); see also Schabas, *Sierra Leone Truth*, *supra* note 107, at 159 (concluding that the Lomé Agreement “was not an international instrument” but rather served to resolve internal conflicts). See generally William Schabas, *Truth Commission and Courts Working in Parallel: The Sierra Leone Experience*, 98 AM. SOC’Y INT’L L. PROC. 189 (2004) [hereinafter Schabas, *Truth Commission and Courts*] (noting that the Lomé Peace Agreement was not intended to apply to crimes against international human rights law).
224. See Statute for the Special Court, *supra* note 208, at Art. 1 (stating that the court will have the power to prosecute violations of international humanitarian law starting on November 30, 1996); see also Schocken, *supra* note 139, at 443 (noting that the Special Court will have jurisdiction over crimes against humanity from November 30, 1996 forward, and over domestic crimes from July 1999 on). See generally Banat, *supra* note 35 (asserting that the jurisdiction of the court extends only to those crimes which took place on or after November 30, 1996, the date of the peace agreement between the Government of Sierra Leone and rebels).
225. See Statute for the Special Court, *supra* note 208, at Art. 14 (stating that the Rules of Procedure and Evidence of the ICTR shall apply to the proceedings of the Special Court *mutatis mutandis*); see also Frulli, *The Special Court for Sierra Leone*, *supra* note 207, at 859–60 (noting that Article 14 of the Statute establishes that the rules of procedure and evidence from the ICTR will apply, *mutatis mutandis*, to the Court); Udombana, *supra* note 25, at 116 (“[T]he Rules of Procedure and Evidence of the ICTR obtaining at the time of the establishment of the Special Court shall be applicable, *mutatis mutandis*, to the conduct of the legal proceedings before the Special Court.”).

bound by national evidentiary rules in order to use Sierra Leonean rules in cases of Sierra Leonean offenses.²²⁶

That the SCSL is, in the words of Sierra Leonean scholar Lansana Gberie, “less concerned about foot soldiers than about those in leadership or command positions,”²²⁷ is evidenced by the Statute’s *ratione personae* provision, which empowers it “to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law.”²²⁸ The Statute—reflecting, according to some observers, the influence of the United States government on the establishment of the SCSL—specifically stipulated that

any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending state.²²⁹

In the event that the sending state is unable or unwilling to investigate or prosecute, the SCSL will have jurisdiction only if authorized by the UN Security Council. Observers could not fail to detect the influence of outside considerations in this provision, as Lansana Gberie noted:

[t]his rules out prosecution of Nigerian and other West African troops, some of them no doubt implicated in gross violations, including atrocities such as

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226. See Int’l Criminal Tribunal for Rwanda, Rules of Procedure and Evidence, U.N. Doc. ITR/3/REV.1 (May 31, 2000), available at <http://www.umn.edu/humanrts/africa/RWANDA1.htm> (last visited Oct. 12, 2005) (setting forth the procedural guidelines for the ICTR); see also Emily Ann Berman, Note, *In Pursuit of Accountability: The Red Cross, War Correspondents, and Evidentiary Privileges in International Criminal Tribunals*, 80 N.Y.U. L. REV. 241, 251 (2005) (describing the flexibility accounted for in the inception of rule 89 by noting the “considerable discretion” granted to the international criminal tribunals); Schocken, *supra* note 139, at 444 (noting the necessary changes to rule 89 in certain instances of unique procedure).
227. Lansana Gberie, *Briefing: The Special Court of Sierra Leone*, 102 AFR. AFF. 637, 641 (2003) [hereinafter Gberie, *Briefing*]; see also Akinrinade, *supra* note 29, at 434 (acknowledging that individual responsibility must go beyond the average “foot soldier” to encompass leadership positions); O’Connell, *Interest Meets Humanity*, *supra* note 47, at 224 (explaining how the Special Court for Sierra Leone is concerned with the foot soldier type of criminal, yet also seeks out the leaders who perpetrated the crimes).
228. See U.N.-Sierra Leone Agreement, *supra* note 22, at Art. 1 (setting forth the parameters of the courts’ jurisdiction); see also Dickinson, *supra* note 106, at 299 (confirming the purpose of the statute as a measure against those who “bear the greatest responsibility” for the wartime crimes committed in violation of international law and relevant Sierra Leonean law); Zarifis, *supra* note 131, at 20 (recounting a report by the U.N. Secretary-General Kofi Annan on the establishment of the Special Court, the “authority position of the accused,” and the “gravity or massive scale of the crime” as indicators of “greatest responsibility” for purposes of prosecution under the statute).
229. See U.N.-Sierra Leone Agreement, *supra* note 22, at Art. 1 (specifying the procedural process by which the Sierra Leonean courts function); David J. Scheffer, *The Future of Atrocity Law*, 25 SUFFOLK TRANSNAT’L L. REV. 389, 417 (2002) (noting that it is possible to “look beyond the statutes of the tribunals to case law” in order to get a well-rounded understanding of atrocity crimes and law); Udombana, *supra* note 25, at 107 (demonstrating when the special court will apply the jurisdiction of the sending state over their own).

summary executions, rape and looting. The U.S. government only fueled these corrosive suspicions when in April 2002 it reached an agreement with the Sierra Leone government committing Sierra Leone to an agreement not to surrender U.S. soldiers to the International Criminal Court.²³⁰

Another concern about the hybrid structure of the SCSL has to do with its assertion of a mixed jurisdiction and the implications for double jeopardy. Under the Statute, a defendant could conceivably be retried by the SCSL for crimes covered by Articles 2 through 4, even if he had already been tried by a Sierra Leonean national court.²³¹ All that is required is the prosecutor's belief that there was a sham trial or weak investigation, or the classification during the first trial of the crime as an ordinary crime rather than a war crime.²³² In short, someone convicted of, say, murder, by a national court could be brought before the Special Court on a "murder-plus" indictment. The SCSL would only be obliged to give him or her credit for the penalty already paid or time already served.²³³ Or, if the defendant was acquitted by the national court, he or she could still be indicted by the SCSL on the grounds of partiality or incompetence on the part of the prosecutors or judges in the domestic proceeding.²³⁴

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230. See Gberie, *Briefing*, *supra* note 227, at 643 (stating that the American Servicemembers Protection Act of 2001 allows the President of the United States to use "all means necessary and appropriate" to free American soldiers arrested by the International Criminal Court); see also Diane Marie Amann & M.N.S. Sellers, *American Law in a Time of Global Interdependence: U.S. National Reports to the XVIth International Congress of Comparative Law: Section IV The United States of America and the International Criminal Court*, 50 AM. J. COMP. L. 381, 384 (2003) (describing the American Service Members Protection Act of 2001 in which the President of the United States is granted full power to free U.S. soldiers arrested by the International Criminal Courts); Peter Slevin, *U.S. May Cut Aid Over Court Immunity; About 35 Nations Could Lose Funds*, WASH. POST, July 1, 2003, at A7 (detailing the United States' position on asserting immunity from International Criminal Courts).
231. See U.N.-Sierra Leone Agreement, *supra* note 22, at Art. 9 (laying out the procedural steps for Sierra Leonean courts); Dickinson, *supra* note 106, at 300 (commenting on the complexities and problems that arise out of a hybrid system); Schocken, *supra* note 139, at 448 (discussing the double jeopardy impact that results from the hybrid structure of the SCSL).
232. See Statute for the Special Court, *supra* note 208, at Art. 9(2) (setting forth the conditions by which an individual may be tried twice for the same crime); Rome Statute, *supra* note 11, at Art. 7 (describing the parameters of crimes against humanity); Schocken, *supra* note 139, at 448 (discussing the possibilities of a person being tried more than once when it is believed there is a weak investigation or a sham trial).
233. See Statute for the Special Court, *supra* note 208, at Art. 9(3) (addressing the issue of overlapping sentences for the accused); see also Udombana, *supra* note 25, at 113 (confirming that the punishment handed down by the national court, if any, shall be considered by the Special Court in any subsequent trials). See generally Statute of the International Criminal Tribunal for the Former Yugoslavia, Art. 10, available at <http://www.un.org/icty/basic/statut/statute-april04-e.pdf> (last visited Oct. 18, 2005) ("In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.").
234. See Schocken, *supra* note 139, at 448 (commenting on the situation under which the accused might be retried due to bias or some other external influence); see also Danielle Tarin, Note, *Prosecuting Saddam and Bungling Transitional Justice in Iraq*, 45 VA. J. INT'L L. 467, 531 (2005) (discussing a similar situation of judicial partiality in Iraq and hopes of new procedural protections to safeguard against the injustice that results from it). See generally Michael P. Scharf, *Is it International Enough? A Critique of the Iraqi Special Tribunal in Light of the Goals of International Justice*, 2 J. INT'L CRIM. JUST. 330 (2004) (describing the various circumstances under which judicial competence has failed and succeeded).

All in all, with the exception of the instances outlined above, the structure of the SCSL and its rules of procedure are similar to the ICTY and the ICTR. In fact, the appellate chamber of the SCSL will be guided by the jurisprudence of the appellate chambers of the ICTY and the ICTR, as well as by that of the Supreme Court of Sierra Leone, insofar as the application of the laws of Sierra Leone are concerned.²³⁵ Those eventually convicted and sentenced to imprisonment will be imprisoned in Sierra Leone, provided its prisons meet UN requirements.²³⁶ Otherwise, they will be incarcerated in some third country that has signed agreements with the ICTY or the ICTR.²³⁷ Ironically, this provision might result, from one point of view, in a certain lack of moral equity as more than one commentator has observed:

[e]nforcement of sentences is a difficult problem because any prison that meets UN requirements will likely have better health care, food, and accommodations than most Sierra Leoneans currently experience. It will be difficult to make arrangements for a prison that is actually seen as punishment. The only true punishment inflicted by such a prison may be holding a convict far from his family and tribal lands. Many Sierra Leoneans are disappointed that the accused will face life imprisonment, rather than hanging, which is imposed in Sierra Leone for murder.²³⁸

B. Court Administration

The day to day operations are managed by the Court Registry,²³⁹ which includes the offices of Court Management, Defense, Detention, Library, Outreach, Public Affairs, Security,

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235. See Statute for the Special Court, *supra* note 208, at Art. 20 (describing alternative dispute resolution methods); see also Nina H. B. Jorgensen, *The Right of the Accused to Self-Representation Before International Criminal Tribunals*, 98 AM. J. INT'L L. 711, 718–19 (2004) (commenting on the jurisprudence of the ICTR and ICTY). See generally Schocken, *supra* note 139 (describing similarities and differences between the SCSL and the ICTY/ICTR).
236. See Udombana, *supra* note 25, at 114–15 (detailing the conditions of serving imprisonment terms upon conviction); see also Joshua A. Romero, Note and Comment, *The Special Court for Sierra Leone and the Juvenile Soldier Dilemma*, 2 NW. U. J. INT'L HUM. RTS. 8, 17 (2004) (outlining the conditions of imprisonment in Sierra Leone under the U.N.); Schocken, *supra* note 139, at 452 (setting forth the dilemmas and the conditions of imprisonment in Sierra Leone).
237. See Statute for the Special Court, *supra* note 208, at Art. 22 (commenting on the ability of the countries to form alternative agreements in accordance with the statute); see also Romero, *supra* note 236, at 17 (detailing the option to use a third country prison that has signed the agreement); Udombana, *supra* note 25, at 114 (explaining the safety reasons for granting permission to incarcerate prisoners at a third country facility).
238. See Diane Marie Amann, *Capital Punishment: Corporate Criminal Liability for Gross Violations of Human Rights*, 24 HASTINGS INT'L & COMP. L. REV. 327, 336 (2001) (detailing how a prison sentence can be more effective than capital punishment when reforming a nation); see also Schocken, *supra* note 139, at 452 (recognizing the unforeseen problems with imprisonment in a country like Sierra Leone); Webster, *supra* note 39, at 760 (illustrating the rationale behind the imposed punishment methods of imprisonment over capital punishment).
239. See Statute for the Special Court, *supra* note 208, at Art. 16 (setting forth the necessary security measurements for the government to implement); see also Cockayne, *supra* note 190, at 652–53 (commenting on the impact of the registry upon the detainees); Michael P. Scharf, *The Role of Justice in Building Peace*, 35 CASE W. RES. J. INT'L L. 153, 157 (2003) (speaking on the role of the registry in relation to the Special Court and the prosecution).

Procurement, Witness and Victim Support, and various administrative offices.²⁴⁰ The Rules of Evidence and Procedure vest considerable responsibility in the Office of the Registrar: “[t]he Registrar shall assist the Chambers, the Plenary Meetings of the Special Court, the Council of Judges, the Judges and the Prosecutor, the Principal Defender and the Defense in the performance of their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Special Court and shall serve as its channel of communication.”²⁴¹

The working language of the Special Court is English,²⁴² the official language of Sierra Leone, although some of the defendants, like many Sierra Leoneans, speak only Krio or one of the other local languages.²⁴³ Non-English-speaking defendants are guaranteed the right to an interpreter “if he or she cannot understand or speak the language used in the Special Court.”²⁴⁴ While apparently small on the relative scale of things, access to adequate translation services has been an issue in other international criminal proceedings, most notably those of the ICTR.²⁴⁵

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240. See MacKay, *supra* note 214, at 275 (commenting on the benefits of a legal system which incorporates full access to the registry); see also Varda Hussain, *Sustaining Judicial Rescues: The Role of Outreach and Capacity-Building Efforts in War Crimes Tribunals*, 45 VA. J. INT'L L. 547, 573 (2005) (discussing the transition of the “outreach activities” from the prosecutor’s office to the court registry); Webster, *supra* note 39, at 757–58 (explaining the reason for the unique makeup of the special court).
241. See Special Court for Sierra Leone, Rules of Procedure and Evidence 33(A), (Mar. 7, 2003), available at <http://www.sc-sl.org/scsl-procedure.html> (last visited Oct. 14, 2005) (specifying the role of the Registrar as a channel for communication); see also Theodor Meron, *Judicial Independence and Impartiality in International Criminal Tribunals*, 99 AM. J. INT'L L. 359, 365 (2005) (showing the direct nature and effectiveness that the Registrar plays in Special Court proceedings); Mundis, *Completion Strategies*, *supra* note 6, at 146 (detailing the role of the Registrar upon receipt of an indictment).
242. Statute for the Special Court, *supra* note 208, at Art. 24 (declaring English to be the official language of the court); see also Mundis, *New Mechanisms*, *supra* note 208, at 938 (stating that the SCSL will use English as its official language); Schocken, *supra* note 139, at 452 (explaining that the SCSL will be conducted in English, the official language of Sierra Leone).
243. See 21 COLLIER’S ENCYCLOPEDIA 13 (P.F. Collier, 1996) (showing that the Creoles still speak their own languages); see also 10 THE NEW ENCYCLOPEDIA BRITANNICA 790 (15th ed., 1992 Encyclopedia Britannica Inc.) (discussing how although English is the official language of Sierra Leone, many other languages are spoken); THE WORLD ALMANAC AND BOOK OF FACTS 2005 828 (2005, World Almanac Education Group) (noting that Sierra Leone has three official languages).
244. See Statute for the Special Court, *supra* note 208, at Art. 17(4)(f) (citing the statute which provides an interpreter to all non-English speaking defendants); see also Schocken, *supra* note 139, at 453 (explaining that the SCSL, like the ICTY and ICTR, provides interpreters to defendants). See generally Andrew J. Walker, *When a Good Idea is Poorly Implemented: How the International Criminal Court Fails to be Insulated from International Politics and to Protect Basic Due Process Guarantees*, 106 W. VA. L. REV. 245 (2004) (discussing how the ICC provides a defendant with an interpreter if needed).
245. See Antonio Cassese, *The ICTY: A Living and Vital Reality*, 2 J. INT'L CRIM. JUST. 585, 595 (2004) (discussing the problems that occur in international courts due to language barriers). See generally DINA TEMPLE-RASTON, JUSTICE ON THE GRASS: THREE RWANDAN JOURNALISTS, THEIR TRIAL FOR WAR CRIMES, AND A NATION’S QUEST FOR REDEMPTION 257 (Free Press 2005) (discussing John Floyd’s inability to get translations of all documents relating to his client).

The SCSL is endowed with a legal defense unit, currently headed by New York attorney Simone Monasebian, formerly a prosecutor with the ICTR.²⁴⁶ The Sierra Leonean tribunal's defense unit is unique in the annals of international criminal justice in that it represents the first time an international criminal tribunal has defense counsel supported in the same manner as the prosecution.²⁴⁷ Defense counsel are assigned according to a directive issued by the Office of the Registrar.²⁴⁸ After the assignment of counsel, members of the Office of the Principal Defender engage in oversight of defense teams.²⁴⁹ The office also monitors trials, provides advice and substantive assistance to all teams in the preparation of their cases from research on legal issues, to arguments on matters of common interest, to vetting the provision of expert witnesses, consultants and investigators, and to liaising with various governments and other entities on matters of judicial cooperation.²⁵⁰ Reflecting the perhaps uneven record of earlier tribunals, the Principal Defender's Office is currently developing a Code of Conduct for Counsel and other practical directives.²⁵¹

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246. See SIERRA LEONE COURT MONITORING PROGRAMME, *Sierra Leone Court Monitoring Programme Trains New Court Monitors and Other Civil Society Advocates*, June 16, 2005, available at <http://www.slcmp.org/news.htm> (last visited Oct. 18, 2005) (announcing that the SCSL has a new defense unit head); see also OFFICE OF PRESS AND SPECIAL AFFAIRS, *Special Court for Sierra Leone Basic Facts Pamphlet*, available at <http://www.sc-sl.org/basic-facts-pamphlet.pdf> (last visited Sept. 27, 2005) (describing the court and each of its offices); WAR CRIMES RESEARCH OFFICE, WASHINGTON COLLEGE OF LAW, *Special Court for Sierra Leone Status Reports*, June 6, 2005, available at http://www.wcl.american.edu/warcrimes/sierraleone_status.cfm (last visited Oct. 18, 2005) (discussing news from the Special Court of Sierra Leone).
247. See DEFENCE OFFICE, OFFICE OF THE PRINCIPAL DEFENDER, available at <http://www.sc-sl.org/defence.html> (last visited Sept. 27, 2005) [hereinafter OFFICE OF THE PRINCIPAL DEFENDER] (describing how the SCSL has defense counsel similar to that of the prosecution). See generally Mackay, *supra* note 214 (describing the first year of the tribunal's operations from the perspective of the author, who served as Chief of Legal Operations in the Office of the Prosecutor); Michael P. Scharf & Christopher M. Rassi, *Do Former Leaders Have An International Right To Self-Representation In War Crimes Trials?*, 20 OHIO ST. J. DISP. RESOL. 3 (2005) (discussing how the SCSL provided stand-by counsel to the accused).
248. See SPECIAL COURT FOR SIERRA LEONE, DIRECTIVE ON THE ASSIGNMENT OF COUNSEL, available at <http://www.sc-sl.org/assignmentofcounsel.html> (last visited Sept. 27, 2005) (detailing the assignment of counsel procedure). See generally Jorgensen, *supra* note 235 (discussing how the court provides defendants with stand-by counsel to ensure a fair trial); Göran Sluiter, *'Fairness and the Interests of Justice' Illusive Concepts in the Milosevic Case*, 3 J. INT'L CRIM. JUST. 9 (2005) (discussing how a competent defense team is required for justice to be served).
249. See John R.W.D. Jones et al., *The Special Court for Sierra Leone: A Defence Perspective*, 2 J. INT'L CRIM. JUST. 211, 213–14 (2004) (describing the reasons for a supervisory role instead of a direct role for the Office of the Principal Defender); see also OFFICE OF THE PRINCIPAL DEFENDER, *supra* note 247 (explaining that the Office of the Principal Defender continues to help the defense team even after assigning counsel); David M. Crane, *Dancing With the Devil: Prosecuting West Africa's Warlords: Building Initial Prosecutorial Strategy for an International Tribunal After Third World Armed Conflicts*, 37 CASE W. RES. J. INT'L L. 1, 3 (2005) (stating that the Office of the Prosecutor is charged with the duty of logistically supporting various defense teams).
250. See Jones et al., *supra* note 249, at 214–15 (noting how the Office of the Principal Defender helps counsel with all aspects of the trial); see also OFFICE OF THE PRINCIPAL DEFENDER, *supra* note 247 (explaining the duties of the principal defender). See generally Crane, *supra* note 249 (describing the type of supervision and guidance which the Office of the Prosecutor affords to the defense teams it oversees).
251. See Luc Côté, *Reflections on the Exercise of Prosecutorial Discretion in International Criminal Law*, 3 J. INT'L CRIM. JUST. 162, 183–85 (2005) (discussing how the SLSC limited its jurisdiction in response to mistakes of earlier tribunals); see also Jones et al., *supra* note 249, at 217 (noting how the SCSL has set up a Code of Counsel); Nice & Vallières-Roland, *supra* note 5, at 354–55 (indicating that international courts have had many difficulties in the past).

Unlike the ICTY and ICTR, which are generally autonomous in their internal administration except for reliance upon the United Nations system for funding,²⁵² the general administration of the SCSL is overseen by a Management Committee consisting of the countries that contribute to its expenses.²⁵³ The Agreement establishing the court stipulates that the Management Committee (whose members currently include the U.S., Britain, Canada, the Netherlands, Lesotho, and Nigeria, as well as Sierra Leone) was “to assist the Secretary-General in obtaining adequate funding, and provide advice and policy direction in all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested states.”²⁵⁴ The Committee meets monthly and approves its budget, presently \$58 million, one-third of which is contributed by the United States.²⁵⁵

IV. Progress to Date

From the start, there was concern that the Special Court would, like the *ad hoc* international tribunals that preceded it, prove to be a large and cumbersome affair that clumsily ran an open-ended investigation.²⁵⁶ Consequently, observers noted that SCSL’s mandate to handle only a limited number of cases was directly tied to the desire of the states that supported its creation to keep it much smaller and less costly, as well as to make it, presumably, more effi-

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252. See Dominic Raab, *Evaluating the ICTY and its Completion Strategy—Efforts to Achieve Accountability for War Crimes and Their Tribunals*, 3 J. INT’L CRIM. JUST. 82, 98–99 (2005) (explaining that the U.N. thought the ICTY should have independence); *Developments in the Law—International Criminal Law: III. Fair Trials and the Role of International Criminal Defense*, 114 HARV. L. REV. 1982, 1985 (2001) (noting how the U.N. did not give strict guidelines to the ICTY and ICTR); Schocken, *supra* note 139, at 444 (discussing how the U.N. makes payments to the ICTY and ICTR mandatory, but payment to the SCSL voluntary).
253. See Cockayne, *supra* note 190, at 626 n.47 (stating that the SCSL should consult with its donor countries for advice on all matters); Schocken, *supra* note 139, at 453–54 (discussing how the SCSL is responsible to its donors); Eaton, *supra* note 60, at 914 (indicating that the SCSL is funded by donations).
254. U.N.-Sierra Leone Agreement, *supra* note 22, at Art. 7 (detailing the duties of the management committee).
255. See Cockayne, *supra* note 190, at 630 (discussing the Special Court’s budget and expressing concerns that the Special Court has not received adequate funding to continue its future operations); see also Eaton, *supra* note 60, at 916 (commenting that, as a result of “donor fatigue” from those countries who contribute to the mandatory international funding of the ICTR and ICTY, the SCSL is voluntarily funded, foreshadowing budgetary problems in the future, which could affect other areas of international law enforcement, especially witness protection); Schocken, *supra* note 139, at 453 (noting that the SCLS operates on a “shoestring budget,” compared to that of the ICTR and the ICTY).
256. See Tony Baldry, *Iraq Needs a Special Court for Prosecution of War Crimes*, THE INDEP. (LONDON), Apr. 17, 2003, at 21 (agreeing that the international criminal tribunals for Yugoslavia and Rwanda have progressed slowly); see also Cockayne, *supra* note 190, at 619 (asserting that, because they have been so expensive and difficult to run, international support for *ad hoc* tribunals is “dwindling”); Thierry Cruvellier, *Too Narrow a Mandate*, INT’L JUST. TRIB., Sept. 20, 2004 (contending that, as a result of donor countries’ concern that avoiding too many indictments was necessary in order to fulfill the mandate of the SCSL, the mandate was instead being construed too narrowly and not doing as much work as it might).

cient.²⁵⁷ In fact, the UN representative to the tribunal's Management Committee told journalists that:

[n]o one ever said that the Special Court for Sierra Leone would try a large number of people. That it can be done in three years remains to be seen. Statutes do not limit the mandate in time. What limits it is the funding. On a strictly legal point of view, there is no reason why these trials could not be completed within three years. We are expecting them to be completed within this deadline. Donors do not want it to become another ICTR or ICTY. I think that three years is a reasonable time-frame.²⁵⁸

In a similar vein, the SCSL's registrar, Robin Vincent, told a press conference in early 2003: "[w]hat is also at stake with this Court is to prove that we have an efficient court with a much smaller budget than the other two international tribunals."²⁵⁹

Despite the commitment to efficiency and timeliness, the SCSL was slow in getting started. As indicated previously, while its creation was authorized by the Security Council during the summer of 2000, it was not until the beginning of 2002 that the establishing Agreement was signed between the U.N. and the government of Sierra Leone.²⁶⁰ On April 17, 2002, the UN Secretary-General appointed David M. Crane, a veteran lawyer with the U.S. Depart-

257. See Michael Dynes, *War Crimes Court Waits for Sierra Leone Poll*, THE TIMES (LONDON), May 14, 2002, Overseas News Section (observing that the tribunal would issue "up to" twenty indictments to concentrate on only those "who bear 'the greatest responsibility'" for the atrocities in Sierra Leone, and had granted immunity to thousands of rebel youth fighters who were under age eighteen); see also Baldry, *supra* note 256, at 21 (commending the SCSL as such a good model for trying war criminals that its structure should be adopted in Iraq); *Sierra Leone War Court Set to Try Rebels*, CHANNEL NEWS ASIA, July 3, 2004, World Section (acknowledging skepticism of the tribunal in Sierra Leone in light of the fact that only nine defendants were in custody and some of the worst offenders had died before being brought to justice).

258. See THE SPECIAL COURT FOR SIERRA LEONE: PROMISES AND PITFALLS OF A "NEW MODEL" 3 (Int'l Crisis Group ed., 2003) [hereinafter PROMISES AND PITFALLS] (expressing that the objective behind the creation of the Special Court for Sierra Leone was to have a smaller, less costly tribunal which would decide only a few cases within a short timeframe); see also Evenson, *supra* note 76, at 764 (affirming Crane's position that legally, the trials could be carried out expeditiously, as evinced by the speed with which Mr. Crane issued indictments); Bruce Zagaris, *Special Court for Sierra Leone Grapples with Challenges*, INT'L LAW ENFORCEMENT REP., Oct. 2004, Law of War Section (commenting that the delay in receiving the pledged funding for the SCSL delayed proceedings, and, in turn, had forced further consideration of how to secure more funding if proceedings had to continue beyond 2005).

259. See Cockayne, *supra* note 190, at 618 (observing that, as a result of the excessive costs and problems associated with other *ad hoc* tribunals, the SCSL and others like it "are in many ways being asked to do more than their *ad hoc* cousins, but with fewer resources"); see also PROMISES AND PITFALLS, *supra* note 258, at 3 n.14 (iterating the pressures the Special Court faces in trying to improve on the ways in which other existing war crimes tribunals operate and decide cases); Beth Dougherty, *Victim's Justice, Victor's Justice: Iraq's Flawed Tribunal*, MIDDLE E. POL'Y COUNCIL, June 22, 2004, at 61 (commenting that because of the short duration of the SCSL's mandate, it will only be able to hold four trials at most if it is to finish by its three-year deadline).

260. See S.C. Res. 1351, U.N. SCOR, 55th Sess., 4186th mtg., at 14, U.N. Doc. S/RES/1351 (Aug. 14, 2000) (requesting "the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court" to prosecute war criminals in that country); see also Cockayne, *supra* note 190, at 624-25, 680, n.6 (specifying that on August 14, 2000, the U.N. Security Council passed Resolution 1315, requesting the establishment of the SCSL, and that the Agreement between the United Nations and Sierra Leone establishing the SCSL was signed on January 16, 2002); U.N.-Sierra Leone Agreement, *supra* note 22, at 1 (stating the date of the agreement).

ment of Defense who had most recently served as the Pentagon's senior Inspector General, to a three-year term as the chief prosecutor for the Court.²⁶¹ Crane is a jurist who is well-thought-of among international legal experts, having served for many years as a professor of international law at the U.S. Army Judge Advocate General's School in Charlottesville, Virginia.²⁶² At the same time, Annan also appointed British civil servant Robin Vincent as the SCSL's provisional registrar.²⁶³ Vincent, who was subsequently confirmed as the tribunal's permanent registrar, had nearly 40 years' experience as a court administrator in England and had served briefly in 2000 as an advisor on the reorganization of the then-troubled ICTR.²⁶⁴

The appointment of judges for the three-member trial chamber and the five-member appellate chamber was delayed until July 29, 2002, as the UN Secretariat's bureaucracy struggled to create a slate that reconciled the competing interests, just as the choice of an American for the role of chief prosecutor had been carefully crafted to allay the doubts of the Bush Administration regarding international criminal assizes, especially as the U.S. was expected to bear the major burden of paying the SCSL's bills.²⁶⁵ Ultimately the judges appointed to the trial chamber by UN Secretary-General Annan were Brigadier General Pierre Boutet, former Judge Advocate General of the Canadian Forces, and Benjamin Mutanga Itoe, Deputy Chief

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261. See, e.g., *Attack on Monrovia: Anatomy of an Open Conflict*, THE GUARDIAN (LONDON), Aug. 9, 2003, at 15 (contextualizing Crane's June 2003 announcement of the indictment of former Liberian President Charles Taylor for crimes against humanity in Sierra Leone based on his alleged trade with Sierra Leonean rebels exchanging arms for diamonds, amid increasing tensions in Liberia and attacks on the capital Monrovia by the LURD, a rebel faction made up of former Taylor adversaries); see U.N.-Sierra Leone Agreement, *supra* note 22, at Art. 3 (mandating the U.N. Secretary-General to appoint a prosecutor to a three year term); see also LIBERIAN OBSERVER, *Special Prosecutor David Crane: Taylor Indictment Will Never Expire*, AFR. NEWS, May 16, 2005 [hereinafter *Special Prosecutor David Crane*] (noting Mr. Crane's appointment, background, and past work experience).
262. See, e.g., *Special Prosecutor David Crane*, *supra* note 261 (noting Mr. Crane's past work experience); see also PROMISES AND PITFALLS, *supra* note 258, at 13 n.76 (detailing Mr. Crane's background of government and private employment); *Special Court Prosecutor Resigns*, STANDARD TIMES, Mar. 2, 2005 (referring to the views of some staff who believe Crane "would be remembered for his racist postures" as special prosecutor for the tribunal).
263. See, e.g., THE INDEPENDENT, *Annan Gives Hassan Jallow New Appointment*, AFR. NEWS, Aug. 9, 2002 (noting Vincent's appointment as registrar and commenting that he was expected to begin his work for the SCSL in August of 2002); see also U.N.-Sierra Leone Agreement, *supra* note 22, at Art. 4 (mandating the U.N. Secretary-General to appoint a registrar to the SCSL); Udombana, *supra* note 25, at 92 (noting Mr. Vincent's appointment as "Acting Registrar" in 2002).
264. See Hans Nichols, *Truth Challenges Justice in Freetown*, WASH. TIMES, Jan. 6, 2005, at A15 (referring to Vincent's experience with the ICTR); see also Zagaris, *supra* note 258 (mentioning that the U.N. appointed Vincent, a "British court administrator," to the post in 2002); *Robin Honoured for Work in Rwanda*, STOCKPORT EXPRESS, June 6, 2001, available at http://www.stockportexpress.co.uk/news/s/7/7148_robin_honoured_for_work_in_rwanda.html (last visited Oct. 18, 2005) (discussing Mr. Vincent's 39 years of experience as a British court administrator).
265. See, e.g., 149 CONG. REC. H12378 (daily ed. Nov. 25, 2003) (Conference Report on H.R. 2673, Consolidated Appropriations Act of 2004) (authorizing no less than \$5 million for fiscal year 2004 in funding for the SCSL); see Dina Temple, *Watching Africa's Saddam Hussein From the Bleachers*, N.Y. SUN, June 27, 2003, at 4 (suggesting that the Bush administration has doubts its actions reflect a reluctance to get involved in African conflicts after the debacle in Mogadishu, Somalia, when American soldiers were mutilated and dragged through the streets). But see *Sierra Leone War Court Set to Try Rebels*, *supra* note 257 (discussing criticism of the SCSL as being a way for the U.S. to legitimize its opposition to the ICC by endorsing this type of intra-nationally regulated tribunal as a viable alternative to those under exclusively U.N. jurisdiction).

Justice of the Supreme Court of Cameroon.²⁶⁶ Sierra Leonean President Kabbah designated as his appointee to the trial chamber Rosulu John Bankole Thompson, a Sierra Leonean jurist who held prominent positions in the Stevens regime before emigrating to the United States after the dictator's retirement.²⁶⁷ Since that time, Thompson has taught at Eastern Kentucky State University, where he was most recently Dean of its Graduate School in Richmond, Kentucky.²⁶⁸ Annan's nominees for the appellate chamber of the SCSL were Emmanuel O. Ayoola, a justice of the Nigerian Supreme Court; Alhaji Hassan B. Jallow, a justice of the Supreme Court of The Gambia who had had some experience with the ICTY; and the SCSL's only sitting female member, Renate Winter, an Austrian lawyer who had served as an international judge on the Supreme Court for Kosovo.²⁶⁹ For the appellate chamber Kabbah nominated Geoffrey Robinson, an Australian-born British lawyer who had prosecuted the case against former Chilean President Augusto Pinochet, and George Gelaga King, a Sierra Leonean politician who had previously served as the country's permanent representative to the UN.²⁷⁰ The secretary-general and the Sierran Leonean president also agreed on two alternate judges, Isaac Aboagye, a judge on the High Court of Ghana, and Elizabeth Muyovwe, a judge on the High

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266. See Cristin Schmitz, *Openness Urged in Selection of Canadian Nominee for ICC*, LAW. WKLY., Apr. 26, 2002, at ¶ 28 (reviewing Brigadier General Bouter's nearly five-year stint as chief advisor on military law to the Canadian government, and his near miss at being elected as Canada's representative to the ICTY); see also Kelvin Lewis, *All Defendants Boycott Trials at Special Court*, INT'L JUST. TRIB., Jan. 24, 2005, at ¶ 1 (discussing how Judge Mutanga Itoe was presiding over the proceedings at the beginning of this year when one of the defendants had to be led out of the courtroom in the midst of a political diatribe). See generally Udombana, *supra* note 25 (detailing the names and home countries of the members of the Court).
267. See Udombana, *supra* note 25, at 88 (citing that Rosulu John Bankole Thompson was appointed by the government of Sierra Leone); see also Miraldi, *supra* note 91, at 855 (noting that Rosulu John Bankole Thompson of Sierra Leone was appointed to the Special Court of Sierra Leone); CONCORD TIMES, *Sierra Leone; Special Court to Sit Soon*, AFR. NEWS, July 29, 2002, at ¶ 1 (reporting that Bankole Thompson is one of the Sierra Leonean justices appointed by the Sierra Leonean government to sit on the court).
268. See THE INDEPENDENT, *supra* note 263 (asserting that Judge Bankole Thompson is currently a Professor at Eastern Kentucky University in the United States); see also U.N. *Appointments to Sierra Leone Special Court*, M2 PRESSWIRE, July 29, 2002 (indicating that Judge Bankole Thompson is currently the Dean of the Graduate School at Eastern Kentucky University); Nduka Uzuapundu, *We are Trying to Redress the Injustices of War Year—Minister of Justice*, VANGUARD (NIGERIA) AAGM, June 6, 2003 (defining Judge Bankole Thompson as a foreigner on the Special Court).
269. See Kelly D. Askin, *The Quest for Post-Conflict Gender Justice*, 41 COLUM. J. TRANSNAT'L L. 509, 514 n.30 (2003) (stating that female judges, including Justice Renate Winter, have been appointed to high level positions in war crime trials); see also *Sierra Leone; Special Court Settling In*, AFR. NEWS, Jan. 24, 2003 (outlining the list of judges selected and sworn in for the Special Court); U.N. *Appointments to Sierra Leone Special Court*, *supra* note 268 (describing Justice Ayoola's present experience as a Justice of the Supreme Court of Nigeria since 1998 and past experience as a former Justice of the High Court and Court of Appeal, Chief Justice of The Gambia in 1983, and President of the Seychelles Court of Appeal in 1999).
270. See Miraldi, *supra* note 91, at 855 (outlining Robertson of England and King of Sierra Leone as appointees to the Special Court for Sierra Leone); see also *Sierra Leone Special Court Judge Barred from Trying RUF Rebels*, PANAFR. NEWS AGENCY (PANA) DAILY NEWSWIRE, Mar. 16, 2004, at D3 (revealing that Judge Robertson could only be removed from presiding over trials of RUF defendants); *Sierra Leone; War Crimes Tribunal Opens; Other Developments*, FACTS ON FILE WORLD NEWS DIG., July 15, 2004, at 533, D3 (indicating that Robertson was replaced on March 13, 2004, as acting president of the Special Court for Sierra Leone over claims that he was biased against RUF defendants).

Court of Zambia.²⁷¹ Following the SCSL's formal inauguration—which was not held until December 2, 2002—Judges Robertson and Thompson were elected by their colleagues to be, respectively, President of the Special Court's Appellate Chamber (and *ex officio* President of the Court) and Presiding Judge of the Trial Chamber.²⁷² Subsequently, A. Raja N. Fernando, a judge of the Sri Lankan Court of Appeal, was sworn in as a judge of the appellate chamber in March 2004 to replace Judge Jallow who was unanimously elected chief prosecutor of the ICTR by the Security Council when it decided to sever that office from that of chief prosecutor of the ICTY in August 2003.²⁷³

Even with the appointment of judges, the Special Court was slow to begin operations. On November 13, 2002, the Sierra Leonean government appointed Desmond de Silva, a Sri Lankan-born British lawyer, to a three-year term as deputy prosecutor of the SCSL.²⁷⁴ The international judges themselves did not begin arriving in Freetown until November 28, 2002, just days before the December 2, 2002, inauguration of the tribunal; most of them left the country shortly thereafter.²⁷⁵ In fact, the approval of the tribunal's rules of procedure and evidence, copied for the most part from the analogous rules of the ICTY and ICTR, occurred at a meeting of

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271. See Askin, *supra* note 269, at 514 n.30 (noting that Judge Muyovwe of Zambia is an alternative judge for the Special Court); see also AAGM: *Special Court to Sit Soon*, CONCORD TIMES (SIERRA LEONE), July 29, 2002 (confirming that both the U.N. Secretary General and the Sierra Leonean government agreed to the two alternate judges, Issac Aboagye and Elizabeth Muyovwe); U.N. *Appointments to Sierra Leone Special Court*, *supra* note 268 (providing the current and past legal career experiences of alternate Judge Aboagye, presently a Justice of the High Court of Botswana, and alternate judge Muyovwe, presently a Judge in the High Court of Zambia).
272. See *Judges From Around Globe Gather at Stanford to Weigh Impact of International Courts*, ASCRIBE NEWSWIRE, Mar. 24, 2005 (referring to Judge Robertson's view that international war crime trials must be crime-specific and not take too many years to complete); *Sierra Leone: Special Court Taking Shape*, AFR. NEWS, Dec. 17, 2002 (remarking that Judge Robertson will head the Appeal Chamber and that Judge Thompson will head the Trial Chamber); Dave Tacon, *Law and Disorder*, SUNDAY TELEGRAPH, Mar. 6, 2005, at 86 (maintaining that the Special Court has been marred by controversy including the removal of Judge Robertson from hearing any cases of RUF defendants following his 2002 book about human rights abuses in Sierra Leone).
273. See S.C. Res. 1505, ¶ 6 U.N. Doc. S/RES/1505 (Sept. 4, 2003) (articulating that Hassan Bubacar Jallow was appointed as the Prosecutor of the International Tribunal for Rwanda, effective September 5, 2003, for a term of four years); see also Thierry Cruvellier & Kelvin Lewis, *Trial Opens in Dramatic Style*, INT'L JUST. TRIB., June 7, 2004 (indicating that on May 26, 2004, judges elected May Emmanuel Ayoola and Raja Fernando to the posts of President and Vice-President, respectively, of the Special Court for Sierra Leone); Bruce Zagaris, *Rwanda Prosecutor Calls on Surrounding Countries to Cooperate with ICTR*, INT'L ENFORCEMENT LAW REP., Jan. 2005, Law of War Section (commenting on a remark by Judge Jallow that countries harboring genocide suspects should cooperate with the ICTR).
274. See Nigel Dempster, *Defender de Silva is So Alone in Leone*, MAIL ON SUNDAY, Sept. 15, 2002, at 47 (citing that de Silva took the position as deputy prosecutor because it was 'a challenge'); see also Gabi Menezes, *Former Liberian President Still Not Brought To Justice*, VOICE OF AM. NEWS, July 21, 2005, at ¶ 2 (relaying a statement from deputy prosecutor Desmond de Silva that Nigeria should extradite former Liberian President Charles Taylor for trial at an international tribunal on war crimes charges because he has broken the terms of his exile); *Special Court Gets New Deputy Prosecutor*, CONCORD TIMES (SIERRA LEONE), July 12, 2005 (informing that Dr. Christopher Staker will succeed Desmond de Silva as deputy prosecutor and that as provided by the Special Court Statute, the Government of Sierra Leone nominated Dr. Staker).
275. See *Sierra Leone: Court Investigations May Be Completed in June*, AFR. NEWS, Feb. 7, 2003 (reiterating that the eight judges were sworn in in December 2002); see also *Sierra Leone Swears in Judges for War Crimes Tribunal*, VOICE OF AM. NEWS, Dec. 3, 2002 (proclaiming that the eight judges for the Special Court of Sierra Leone have been sworn in); *War Court Judges For Sierra Leone Take Their Oaths*, N.Y. TIMES, Dec. 3, 2002, at A8 (announcing the swearing in of judges of the tribunal to hear war crimes committed during the civil war in Sierra Leone).

the judges convened in the congenial setting of the Middle Temple in London on March 7, 2003.²⁷⁶

In addition to the delays, the creation of the SCSL caused concerns about the effect that its proceedings would have on the country's fragile peace process.²⁷⁷ First, the difficulties of communicating the truth about the scope and mandate of the tribunal among a scattered, mainly illiterate population were compounded by rumors that, as the International Crisis Group noted, prove to be "almost more dangerous than the truth."²⁷⁸ For many ex-combatants as well as civilian critics of the Kabbah regime, the SCSL, with its limited mandate and selective approach to prosecution, seemed to be a political instrument.²⁷⁹ Secondly, the unclear relationship between the Special Court and the Truth and Reconciliation Commission led to fears that the former would undermine the latter.²⁸⁰ Finally, there was the worry that fear of prosecution would lead warlords and other strongmen who might be charged with war crimes to reopen

276. See Drumbl, *Collective Violence*, *supra* note 7, at 554 (explaining that the law of the Special Court for Sierra Leone resembles that of the ICTR and that the Special Court is required to consult ICTR sentencing practices); *see also* Hansen-Young, *supra* note 4, at 483 (reiterating that the Special Court's Rules of Procedure and Evidence were adopted from rules of the ICTR); Kingsley Chiedu Moghalu, *International Humanitarian Law from Nuremberg to Rome: The Weighty Precedents of the International Criminal Tribunal for Rwanda*, 14 PACE INT'L L. REV. 273, 304 (2002) (indicating that the ICTR will apply *mutatis mutandis* to the Sierra Leone Court and that the ICTR will provide expertise and advice to the Special Court on a continual basis).

277. See Juma, *supra* note 28, at 375 (positing that the consequences of the Special Court may be that holdouts may not want to comply with the Lomé Accord, that everyone will fear arrest and prosecution, that it may legitimize the Kabbah government despite the government's ineffectiveness, and that it may create political uncertainty); *see also* Webster, *supra* note 39, at 776–77 (concluding that a successful court will activate reconstruction of Sierra Leone); *U.N. Speakers in Security Council Stress Importance of Regional Approach to Resolving Interrelated West Africa Conflicts*, M2 PRESSWIRE, Jan. 26, 2004 (emphasizing that the Special Court is promoting national reconciliation and re-establishing the rule of law in Sierra Leone).

278. See *Sierra Leone: Managing Uncertainty*, AFR. REP., Oct. 24, 2001, at 15 (describing the task of communicating with Sierra Leoneans as being incredibly formidable); *see also* Jason Motlagh, *Analysis: Ivory Coast's Missing Peace*, UPI, Apr. 7, 2005 (explaining that the director for the Africa Program of the International Crisis Group believes the peace process in Sierra Leone to be on shaky ground); *cf. Sierra Leone: Wanted: An Independent Anti-Corruption Commission*, AFR. NEWS, July 30, 2004 (describing the reports of the International Crisis Group that there is rampant political corruption in Sierra Leone).

279. See Neil Boister, *Failing to Get to the Heart of the Matter in Sierra Leone? The Truth Commission is Denied Unrestricted Access to Chief Hinga Norman*, 2 J. INT'L CRIM. JUST. 1100, 1114–15 (2004) (noting that President Kabbah will be using the SCSL to eliminate his personal enemies and competitors); *see also* Jacobson, *supra* note 2, at 221 (indicating that the Special Court was created for political reasons and not because it was the best or most effective method to deal with the circumstances of Sierra Leone); Declan Walsh, *The Struggle for Forgiveness*, SCOT. ON SUNDAY, Feb. 3, 2002, at 24 (stating that some people believe that the Special Court will satisfy foreign donors, but it will not be successful in delivering justice).

280. See Cockayne, *supra* note 190, at 650–51 (remarking that a person's fear of being prosecuted by the Special Court undermines the work of the Truth and Reconciliation Commission); *see also* Tejan-Cole, *supra* note 70, at 150 (emphasizing that in spite of overlapping purposes, the Special Court and the Truth and Reconciliation Commission do not have a clearly defined relationship); Evenson, *supra* note 76, at 745–46 (mentioning that the Special Court uses its coercive power to force the Truth and Reconciliation Commission to disclose its confidential information).

hostilities.²⁸¹ In a commentary published in the *Sunday Observer*, former British high commissioner in Sierra Leone, Peter Penfold, asked:

[i]s it right to pursue the prosecutions in Sierra Leone at this time, when the wounds of the conflict are still so raw and the peace so fragile? Those supporting the Court cry “justice delayed is justice denied,” but is this another example of the international community telling poor Sierra Leoneans what is right for them? Do those involved realize that this is not just the exercise of justice, but something which has profound political and security implications?²⁸²

Finally, on March 10, 2003, in what his office called “Operation Justice,” Chief Prosecutor David Crane announced indictments against seven defendants: RUF leader Foday Sankoh; AFRC leader Johnny Paul Koroma; RUF military commanders Sam “Mosquito” Bockarie, Issa Hassan Sesay, and Morris Kallon; AFRC member Alex Tamba Brima; and the Sierra Leonean interior minister, Chief Sam Hinga Norman, who, as deputy defense minister in the first Kabbah administration transformed the *kamajors* into the highly effective Civilian Defense Force (CDF).²⁸³ All of the defendants except Koroma, who took flight, and Bockarie, who was in Liberia at the time of the indictment and apparently died a violent death not long afterward, were held in an undisclosed location until their initial court appearances on March 15 and 17, 2003, in Bonthe on Sherbro Island, off the southern coast of Sierra Leone.²⁸⁴ Four of the defendants pleaded not guilty to all counts, while Foday Sankoh was ordered to undergo medi-

281. See Charles Cobb, Jr., *Sierra Leone's Special Court: Will it Hinder or Help?*, ALLAFRICA.COM—AAGM, Nov. 21, 2002 (maintaining that several Sierra Leoneans fear that the Special Court's work would disrupt their recent peace); see also INTER PRESS SERVICE, *Sierra Leone; War Crimes Court Opening Up Old Wounds*, AFR. NEWS, Jan. 17, 2005 [hereinafter *War Crimes Court Opening Up Old Wounds*] (commenting that subtle threats to the court may be signs of renewed hostilities); Lansana Fofana, *Politics—Sierra Leone: A Top Official Indicted For War Crimes*, INTER PRESS SERVICE, Mar. 11, 2003 [hereinafter Fofana, *A Top Official Indicted*] (expressing Sierra Leoneans' fear that the Special Court's actions may lead war leaders to rebel).

282. See Bruce Baker & Roy May, *Reconstructing Sierra Leone*, COMMONWEALTH & COMP. POL., Mar. 1, 2004, at 35, 54–55 (showing that it is not justice that will help peace but an individual's willpower that will help bring about reconciliation in Sierra Leone); see also Peter Penfold, *Will Justice Help Peace in Sierra Leone?*, OBSERVER, Oct. 20, 2002, available at <http://observer.guardian.co.uk/comment/story/0,,814949,00.html> (last visited Oct. 18, 2005) (questioning whether justice at this time will help peace in Sierra Leone); White, *supra* note 26, at 5 (asserting that one of the major security concerns surrounding the Special Court is the disruption of trials by groups that are involved).

283. See Van Dyke, *Prosecution and Compensation*, *supra* note 97, at 79 (detailing the crimes committed by the members of the Civilian Defense Forces); see also Fofana, *A Top Official Indicted*, *supra* note 281, (listing the various crimes for which the seven defendants are being indicted); *State Department Issues Background Note on Sierra Leone*, U.S. FED. NEWS, Apr. 1, 2005, (affirming the first indictment of seven defendants who were involved in war crimes during the civil war).

284. See Cockayne, *supra* note 190, at 663 (noting that the defendants were held in Bonthe after their arrest); see also MacKay, *supra* note 214, at 277 (discussing the nature of the prison facility in Bonthe where the arrested defendants were held until their first court appearances); *Sierra Leone; Now that David Crane is Going (II)*, AFR. NEWS, Mar. 7, 2005, (expressing that Chief Prosecutor David Crane finally put his words into action by arresting certain Sierra Leoneans and detaining them in Bonthe).

cal and psychiatric evaluation.²⁸⁵ Crane hailed the first indictments in a press release: “[t]oday the people of Sierra Leone took back control of their lives and of their future. They have spoken as one voice, a voice that shouts ‘no more,’ a voice that declares to the world ‘never again.’ The dark days of the rule of the gun are over. The bright shining light of the law burns back the shadows of impunity in this ravaged country.”²⁸⁶ Subsequently, the Court also arrested and indicted five other Sierra Leoneans: Augustine Gbao of the RUF; Ibrahim “Bazzy” Kamara and Santigie Barbor Kanu of the AFRC; and Moninina Fofana and Allieu Kondawa of the CDF.²⁸⁷ In addition to specific personal charges, all of the defendants were charged with 17 counts of crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and other serious violations of international humanitarian law, except for Fofana and Allieu, who were charged with eight counts each.²⁸⁸

Although the indictments of the AFRC and RUF leaders were expected, Sierra Leoneans were surprised to learn of the indictment of Minister of Internal Affairs Sam Hinga Norman, who, as Deputy Defense Minister and national coordinator of the CDF, had loyally served as a member of Kabbah’s cabinet since 1996 and had been, arguably, the government’s most effec-

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285. See *Sierra Leone Rebel Faces War Crimes Court*, WASH. POST, Mar. 16, 2003, at A22 (citing the judge’s order to have Sankoh undergo medical and psychological examination); see also *Sierra Leone; Further Psychiatric Evaluation for Sankoh*, AFR. NEWS, Mar. 20, 2003, at ¶ 1 (showing that the judge ordered Sankoh to have psychiatric evaluations, and stated that a plea of not guilty would be determined by the three judges of the trial chambers); *Sierra Leone; Suspects Plead Not Guilty Before War-Crimes Court*, AFR. NEWS, Mar. 20, 2003, at ¶ 1 (stating that Kallon, Brima, and Sesay pleaded not guilty to all counts, Sankoh was ordered medical attention, Norman still had to appear in court, and Bockarie and Koroma were still at large).
286. See Statement by David M. Crane, Prosecutor, Special Court for Sierra Leone, Mar. 10, 2003, available at <http://www.sc-sl.org/Press/prosecutor-031003.html> (last visited Oct. 18, 2005) (expressing the feelings of unity and triumph that existed among Sierra Leoneans after their country’s leaders were indicted for committing several crimes). See generally James E. Baker, *The Role of the Lawyer in War: LBJ’s Ghost: A Contextual Approach to Targeting Decisions and the Commander in Chief*, 4 CHI. J. INT’L L. 407, 411 (2003) (remarking that Crane believed the quick indictments could help in the exercise of jurisdiction by improving time, cost effectiveness, and precision); Geoffrey Robertson, *Powerful Enough to Bring Justice*, *supra* note 202, at 74 (opining that the presence and the work of the Special Court in Sierra Leone represent the end of the atrocities of the war, and help to bring about closure for the victims).
287. See *War Crimes Court Opening Up Old Wounds*, *supra* note 281 (observing that since the first indictment, the Special Court has indicted four more war criminals, bringing the total number to eleven defendants); see also T. Michael Johnny, *War Crimes Court Essential Says Un-Backed Court Registrar*, NEWS NIGHT, July 15, 2004 (listing the names of the eleven defendants indicted, including Augustine Gbao, Samuel Hinga Norma, Brima Bazzy Kamara, and Santigie Borbor Kanu); Bruce Zagaris, *Sierra Leone Prepares Trials of Three High-Profile War Crime Indictees*, INT’L ENFORCEMENT L. REP., Apr. 2005 (commenting on the crimes that resulted from the work of AFRC defendants, including Santigie Kanu and Ibrahim Kamara).
288. See *Sierra Leone: Former Rebel Security Chief Appears Before Special Court*, BBC MONITORING INT’L REP., June 20, 2003 (explaining that Augustine Gbao was charged with 17 counts of war crimes, violations of humanitarian law, and crimes against humanity, including attacks against United Nations peacekeepers); see also *Sierra Leone; Two Plead Not Guilty at Special Court*, AFR. NEWS, July 2, 2003 (noting that Moninina Fofana and Allieu Kondawa pleaded not guilty to eight counts of war crimes and crimes against humanity, which included murder, terrorizing individuals, looting, and employing child soldiers); *Sierra Leone; War Crimes Suspect Protests at Trial By White Men*, AFR. NEWS, Sept. 24, 2003 (confirming that Santigie Kanu was charged with 17 crimes to all of which he pled not guilty).

tive opponent against the RUF and the AFRC *putschists*.²⁸⁹ In fact, the Court, fearing the negative reaction of the *kamajors* and other former CDF members, undertook special security measures with regard to Norman's arrest and arraignment.²⁹⁰ Unlike the other defendants, his location was kept secret and attempts were made, albeit ultimately unsuccessfully, to transfer him abroad.²⁹¹ Likewise, the former CDF chief's initial court appearance was a closed session.²⁹² Subsequently, Norman's communications and visits were restricted to those with his defense counsel.²⁹³

Even more surprising, albeit not so much for the fact as the manner in which it was unveiled, was the unsealing of the SCSL's indictment, dated March 3, 2003, against Liberian President Charles Ghankay Taylor on June 4, 2003.²⁹⁴ Taylor was indicted on 17 counts for crimes against humanity, violations of Article 3 common to the Geneva Conventions and of

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289. See Cockayne, *supra* note 190, at 642 (explaining that many Sierra Leonans did not agree with the indictment of Sam Hinga Norman because they believed that CDF saved the country); Danner & Martinez, *supra* note 21, at 156 (highlighting Sam Hinga Norman's role in the crimes with which he is charged); Evenson, *supra* note 76, at 742–43 (revealing that Sam Hinga Norman's indictment exemplified conflict, as CDF was initially a group that protected and defended the people).
290. See Evenson, *supra* note 76, at 743 (pointing out that the Special Court took special measures in the arrest and detention of Norman due to a perceived threat of retaliation); see also *Sierra Leone; Ex-Minister on Trial*, AFR. NEWS, Mar. 20, 2003 (stating that Norman's trial was being conducted in secret due to fear that the Kamajors might disrupt the trial); *Sierra Leone; Hinga Norman Appeals to the Nation*, AFR. NEWS, Apr. 2, 2003 (acknowledging that there was fear about the negative reaction of the Kamajors with regard to Norman's arrest and detention).
291. See *Ex-Minister on Trial*, DAILY OBSERVER (The Gambia), Mar. 20, 2003 (describing Hinga Norman's detainment and trial at a secret location); see also *STANDARD TIMES, Sierra Leone; Hinga Norman's Arrest: Peter Penfold Reacts*, AFR. NEWS, May 7, 2003 (reviewing Hinga Norman's arrest and reports of his treatment); *War Crimes Suspect Denies Guilt at Trial*, CHI. TRIB., Mar. 19, 2003, at C17 (detailing the war crimes of and denial of guilt at trial by Sierra Leone's former interior minister).
292. See Thierry Cruvellier, *The Special Court for Sierra Leone: The First Eighteen Months*, INT'L CTR. FOR TRANSITIONAL JUST., Mar. 2004, at 3 (examining the civil war in Sierra Leone and showcasing the procedure of Sierra Leone's Special Court); see also *Sierra Leone; First Indictments of the Special Court*, AFR. NEWS, Mar. 20, 2003 (outlining the charges against the indictees of the Special Court); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Suspect Detained*, Mar. 21, 2003, available at <http://www.sc-sl.org/Press/pressrelease-032103b.html> (last visited Oct. 18, 2005) (presenting the facts of the war crime suspects' detainment).
293. See *Prosecutor v. Norman*, Case No. SCSL-03-08-PT-128, Decision Prohibiting Communications and Visits, (Jan. 20, 2004), available at <http://www.sc-sl.org/Documents/SCSL-03-08-PT-128.pdf> (last visited Oct. 18, 2005) (describing the restriction of Hinga Norman's communications while in detention); see also Dougherty, *supra* note 259, at 61 (recounting the SCSL's need to revoke Hinga Norman's communication privileges); *Free-town U.N. Court Restricts Communication By Indicted Ex-Minister*, PANAFR. NEWS AGENCY, Jan. 21, 2004 (recounting that Hinga Norman's communications were limited to his defense counsel).
294. See *PROMISES AND PITFALLS*, *supra* note 258, at 1 (critiquing the procedure and effects of the Special Court for Sierra Leone); see also *Liberia; Law & Human Rights—the Indictment of Charles Taylor*, AFR. NEWS, July 4, 2003 (examining the facts of Charles Taylor's indictment and assessing the impact of Taylor's flight from Ghana); *International Organizations and Africa; War Crimes Prosecutors Meet in Sierra Leone*, AFR. NEWS, July 1, 2005 (commenting on the prosecutor colloquium and discussing the challenges before the prosecutors of the world's major criminal tribunals).

Additional Protocol II, and other serious violations of international humanitarian law.²⁹⁵ The announcement of the indictment against the Liberian leader came as he arrived in Accra, Ghana, for the opening ceremony of peace talks with his Liberian opponents.²⁹⁶ The timing evoked that of the ICTY's indictment of Bosnian Serb leaders President Radovan Karadzic and General Ratko Mladic just as the Dayton negotiations got underway in November 1995.²⁹⁷ At the time, that indictment received considerable media attention speculating that its timing was no coincidence and that it was used to pressure the negotiators to take into account the tribunal, a charge that the ICTY's chief prosecutor, South African Justice Richard Goldstone, has strenuously denied, terming it a "coincidence."²⁹⁸

In contrast, SCSL Chief Prosecutor Crane stated that the indictment and the order for Taylor's detention, the latter dated March 7, 2003, both signed by the Presiding Judge of the Trial Chamber, Bankole Thompson, were unsealed when they were precisely because Taylor was in a third country where there was the prospect of arresting him.²⁹⁹ Of course, this explanation does not account for the fact that Taylor had been in Togo in late April to attend talks with President Laurent Gbagbo of Côte d'Ivoire over the conflict in the western part of

295. See Special Court for Sierra Leone, Indictment, SCSL-03-01 (Mar. 7, 2003), available at <http://www.sc-sl.org/Documents/SCSC-03-01-I-001.html> (last visited Oct. 18, 2005) (stating the war crimes against Charles Taylor); see also Liberia; *Rule of Law Better Than Rule of Guns*, AFR. NEWS, Aug. 31, 2004 (outlining Chief Prosecutor David Crane's views on justice regarding war crimes and illustrating the need for world leaders to cooperate in bringing Charles Taylor before the court); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Red Notice Issued for Charles Taylor*, Dec. 4, 2003, available at <http://www.sc-sl.org/Press/press-release-120403.html> (last visited Oct. 18, 2005) (presenting the events surrounding Taylor's indictment).

296. See Felicity Barringer & Somini Sengupta, *War Crimes Indictment of Liberian President Is Disclosed*, N.Y. TIMES, June 5, 2003, at A12 (expressing the frustration of the prosecution in arresting Taylor and reiterating the charges against Taylor); see also Ken Kou, *Politics-Liberia: Panic, as Rebels Advance Near the Capital*, INTER PRESS SERV., June 7, 2003 (assessing the impact of Taylor's indictment while in Ghana on the Liberian people); Michael Peel & Mark Turner, *Taylor Indictment Puts Africa Talks in Doubt*, FIN. TIMES, June 5, 2003, at 10 (analyzing the future of peace talks in West Africa after Taylor's indictment).

297. See Paul Adams, *War Crimes Panel Names Karadzic*, FIN. TIMES, Apr. 25, 1995, at 3 (announcing the investigation of Karadzic and Mladic by the war crimes tribunal); see also Sierra Leone: *Special Tribunals: Limits to Transitional Justice*, AFR. NEWS, Mar. 15, 2005 (remarking on Taylor's indictment and detention in Nigeria); *War and Peace*, MACLEAN'S, Nov. 27, 1995, at 35 (addressing the charges against Karadzic and Mladic and citing the impact on the Dayton peace talks).

298. See RICHARD J. GOLDSTONE, FOR HUMANITY: REFLECTIONS OF A WAR CRIMES INVESTIGATOR 107-09 (2000) (commenting on Goldstone's experiences as ICTY chief prosecutor and his efforts at making human rights violators accountable); see also William Drozdiak, *Two Serb Chiefs Are Indicted in Massacre; War Crimes Tribunal Cites Karadzic, Mladic*, WASH. POST, Nov. 17, 1995, at A01 (addressing the complication of the Dayton peace talks by Karadzic and Mladic's indictment); Randolph Ryan, *Prosecutor: Leaders Not Immune*, BOSTON GLOBE, Nov. 19, 1995, at 16 (acknowledging Karadzic and Mladic's use of the Dayton peace talks to escape prosecution).

299. See Ryan Lizza, *Ace of Diamonds*, NEW REPUBLIC, July 21, 2003, at 14 (recognizing Crane's strategy behind unsealing Taylor's indictment when he had arrived in Ghana); see also David White, *Trials Off to Mixed Start*, FIN. TIMES, Feb. 14, 2005, at 5 (describing the scope of authority of the Sierra Leone Special Court with regard to the Taylor indictment); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Statement of David M. Crane, Chief Prosecutor, Special Court for Sierra Leone*, June 5, 2003, available at <http://www.sc-sl.org/Press/prosecutor-060503.html> (last visited Oct. 18, 2005) [hereinafter June 5, 2003 Press Release] (reporting on the progress of the prosecution and the unsealing of Taylor's indictment).

that country.³⁰⁰ In any event, the indictment was criticized by West African and other international political leaders for effectively scuttling the peace talks that had finally brought Liberia's warring factions together.³⁰¹ In his defense, Crane quoted the comments made by Justice Goldstone's successor at the ICTY, Justice Louise Arbour, at the time of Serbian President Slobodan Milošević's indictment:

I don't think it's appropriate for politicians—before and after the fact—to reflect on whether they think the indictment came at a good or bad time; whether it's helpful to a peace process. This is a legal, judicial process. The appropriate course of action is for politicians to take this indictment into account. It was not for me to take their efforts into account in deciding whether to bring an indictment, and at what particular time.³⁰²

However, the histrionic reference to the Yugoslav prosecution only heightened the sense among some observers that the whole indictment was an elaborate publicity stunt whose only real effect was to damage the prospects for the peace negotiations—Taylor, upon learning of the indictment, quit the talks³⁰³—and contributed to the two-month-long siege of Taylor's final redoubt in Monrovia by the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) before the Liberian leader was persuaded to resign and go into exile in Nigeria on August 11, 2003.³⁰⁴ The indictment was certainly criticized by Western diplomats who had labored strenuously to convince Taylor to sit down with

300. See *Cote d'Ivoire Seeks Truce with Liberia*, DEF. & FOREIGN AFF. DAILY, Apr. 28, 2003 (detailing the potential alliance of French and West African troops); see also *Gbagbo, Taylor Agree to Restore Security on Common Border*, PANAFR. NEWS AGENCY, Apr. 28, 2003 (commenting on the Togo talks and efforts to secure borders); Somini Sengupta, *Ivoirian Fighters Kill Leader Who Told Them to Lay Down Arms*, N.Y. TIMES, Apr. 29, 2003, at A9 (noting the meeting between Taylor and Gbagbo in Togo).

301. See Pham, *Politics and International Justice*, *supra* note 5, at 126–27 (analyzing the effects of international military tribunals); see also Kou, *supra* note 296 (commenting on the timing of Taylor's indictment in conjunction with the West African peace process); Barringer & Sengupta, *supra* note 296, at A12 (reporting on Taylor's abrupt exit from Ghana).

302. See Edward S. Herman & David Peters, *The New York Times on Yugoslavia Tribunal: A Study in Total Propaganda Service*, COLDTYPE (2004), at 18, available at <http://www.coldtype.net/Assets.04/Essays.04/YugoTrib.pdf> (reviewing the Yugoslavia Tribunal and noting Arbour's view of the timing of indictments); see also Christopher Black & Edward S. Herman, *Louise Arbour: Role as Chief Prosecutor at International Criminal Tribunal Criticised*, 34 CAN. DIMENSION 2, Mar. 1, 2000, at 31 (outlining the effects of Arbour's prosecution); June 5, 2003 Press Release, *supra* note 299 (applying Arbour's comments as chief prosecutor to Crane's efforts in Sierra Leone).

303. See Kathy Ward, *Might v. Right: Charles Taylor and the Sierra Leone Special Court*, 11 HUM. RTS. BR. 8, 8 (2003) (noting that after news of the indictment broke and Taylor rushed back to Liberia, accusations flew that the Court had ruined the best chance for quick peace in Liberia); see also *Charles Taylor, Indicted*, WASH. POST, June 5, 2003, at A32 (stating that Taylor reportedly fled on a Ghana-supplied plane); Morton Abramowitz and Paul Williams, *Peace Before Prosecution*, WASH. POST, Aug. 5, 2003, at A17 (discussing the effect of the timing of Taylor's indictment on the peace process).

304. See Gareth Evans and Comfort Ero, *How to Secure Peace in Liberia*, GUARDIAN UNLIMITED, Observer World-view Extra: Unseen Wars, June 29, 2003, at 1 (discussing how the indictment of Taylor perhaps inspired the LURD and MODEL to launch a drive on Monrovia, leading to hundreds of deaths); see also Declan Walsh, *Rebels Agree to End Three-Week Siege of Monrovia*, THE INDEP., Aug. 13, 2003, at 10 (discussing the rebel's agreement to withdraw the day after Taylor went into exile); Ward, *supra* note 303, at 10 (stating that while the terms of the exile agreement were not publicized, there was speculation that it included a ban on Taylor participating in governing Liberia and an agreement not to press the Nigerian government to turn over Taylor to the Special Court).

his opponents and who had pressed Ghana to guarantee the immunity of the participants at the parley.³⁰⁵ When the arrest order was publicized, Ghanaian President John Kufuor, who had personally invited Taylor to come to Accra, suffered considerable loss of face in a region where links between heads of state are highly personalized.³⁰⁶

Even with the eleven indictments (the indictments against Sankoh, who died on July 29, while in custody, and Bockarie, who died in Liberia in early May, purportedly at the hands of factions loyal to his erstwhile patron Taylor who allegedly feared what he might reveal if interrogated, were withdrawn following their deaths) and ten defendants in custody (the whereabouts of Koroma are unknown) the Special Court was slow to get started.³⁰⁷ At the time the indictments were announced, the SCSL did not even have permanent quarters; most of the tribunal's personnel was housed in prefabricated container-sized structures shipped to Sierra Leone from Slovenia on a twelve acre site on Jomo Kenyatta Road in Freetown's New England neighborhood.³⁰⁸ Finally on July 21, 2003, a design for the courthouse, drawn up by the British architectural firm of Norman and Dawburn, was approved by the Management Committee.³⁰⁹ The construction contract, worth an estimated \$5 million and awarded to a local firm,

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305. See Pham, *Politics and International Justice*, *supra* note 5, at 131–32 (noting that both African and American diplomats were quick to criticize the timing of the indictment for complicating the peace process after working hard to set up the peace conference); see also Ward, *supra* note 303, at 9–10 (discussing the competing demands between the Special Court and the diplomats who helped arrange the peace talks); PROMISES AND PITFALLS, *supra* note 258, at 7–8 (explaining how the issue of trust was critical in discussing why Ghana was not given earlier notice of President Taylor's indictment).
306. See Pham, *Politics and International Justice*, *supra* note 5, at 131–32 (stating that President Kufuor, clearly embarrassed, ignored the arrest request because he had stood personal surety for Taylor's safe passage to the parley); see also GHANA CTR. FOR DEMOCRATIC DEV., *In the Annals of Governance*, DEMOCRACY WATCH, Vol. 4 No. 2, June 2003, at 8, available at http://www.cddghana.org/documents/jun_03_vol4_No.2.pdf (last visited Oct. 19, 2005) (discussing whether Ghana's decision not to arrest President Taylor was the politically wiser course to take); PROMISES AND PITFALLS, *supra* note 258, at 9 (stating that the strength of solidarity and brotherhood links among the heads of state in the region made it unlikely that one president would hand over another to the Court).
307. See Douglas Farah, *Guerilla Boss Reported Killed in Liberia*, WASH. POST, May 7, 2003, at A28 (discussing the death of Bockarie); see also PROMISES AND PITFALLS, *supra* note 258, at 21–22 (summarizing the list of people indicted by the Special Court); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Registrar Announces the Death of Foday Sankoh*, July 30, 2003, available at <http://www.sc-sl.org/Press/pressrelease-073003.html> (last visited Oct. 18, 2005) (announcing Sankoh's death while in custody).
308. See Rupert Skilbeck, *Building the Fourth Pillar: Defence Rights at the Special Court for Sierra Leone*, 1 ESSEX HUM. RTS. REV. 66, 70 n.1 (discussing the temporary headquarters set up for the Court in Freetown while the courthouse was being built); see also *Special Court Occupies New Site*, AFR. NEWS, Jan. 22, 2003 (reporting on the Special Court's move to a permanent site); Press Briefing from Yousef Hamdan, Chief of Public Information, United Nations Mission in Sierra Leone, Jan. 17, 2003, available at <http://www.un.org/Depts/dpko/unamsil/DB/DB170103.pdf> (last visited Oct. 18, 2005) [hereinafter January 17, 2003, Press Briefing] (describing the progress of setting up the Court's headquarters and stating that 188 pre-fabricated container site structures to be used as offices arrived from Slovenia in December 2002).
309. See *Red Tape Delays Sierra Leone Court*, BUILDING DESIGN, Nov. 14, 2003, at 4 (discussing the bureaucratic delays in building the new courthouse); see also Robertson, *Powerful Enough to Bring Justice*, *supra* note 202, at 74, 75 (stating that the Management Committee announced in February of 2003 that Norman and Dawburn won the contract to design the courthouse). See generally Skilbeck (discussing the need for a new courthouse to be built from scratch).

Sierra Construction Systems, was not let until two months later on September 20.³¹⁰ The new facility was not inaugurated until March 10, 2004.³¹¹ The first trial—that of the three CDF defendants, Norman, Fofana, and Kondewa—began on June 3, 2004, while the second—that of RUF defendants Kallon, Gbao, and Sesay—opened on July 5, 2004.³¹²

Arguably, to date, the SCSL's most legally significant accomplishment was the unanimous ruling, handed down on May 31, 2004, by its Appeals Chamber that former Liberian president Charles Taylor would not enjoy immunity from prosecution before the Court despite the contention by his counsel that he was the incumbent head of a sovereign state at the time the criminal proceedings against him were initiated.³¹³ The Court ruled expansively that “the principle of state immunity derives from the equality of sovereign states and therefore has no relevance to international criminal tribunals which are not organs of a state but which derive their mandate from the international community”³¹⁴ and concluded that “the principle seems now established that the sovereign equality of states does not prevent a Head of State from being prosecuted

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310. See Skilbeck, *supra* note 308, at 70 n.1 (stating that construction on the courthouse began in October 2003 at a cost of \$3.4 million); see also January 17, 2003, Press Briefing, *supra* note 308 (stating that the courthouse was originally scheduled to be completed by mid 2003); Public Announcement from the Press and Public Affairs Office, Special Court for Sierra Leone, *Sierra Construction Systems Wins Bid to Build Courthouse*, Sept. 20, 2003, available at http://www.pict-pcti.org/news_archive/03/03Sep/Sierra_Leone_092003.pdf (last visited Oct. 18, 2005) (announcing and discussing Sierra Construction's winning bid to build the new courthouse).
311. See Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Special Court for Sierra Leone Officially Opens New Courthouse*, Mar. 10, 2004, available at <http://www.sc-sl.org/Press/pressrelease-031004.html> (last visited Oct. 18, 2005) (announcing the official opening of the courthouse); see also *Sierra Leone War Crimes Court Inaugurated*, CHANNEL NEWSASIA, Mar. 10, 2004, World Section (stating that the courthouse was inaugurated on March 10, despite construction work being unfinished). See generally Letter from Kofi A. Annan, Secretary-General of the United Nations, to the President of the General Assembly and the President of the Security Council, 8 (May 26, 2005), available at <http://www.sc-sl.org/Documents/completionstrategy.pdf> (last visited Oct. 18, 2005) (noting the opening of the new courthouse).
312. See INT'L CRISIS GRP., *The Special Court for Sierra Leone: Promises and Pitfalls of a New Model*, AFR. BRIEFING, Aug. 4, 2003, at 21–22, available at http://www.essex.ac.uk/armedcon/story_id/000109.pdf (last visited Oct. 18, 2005) (summarizing the list of people indicted by the Special Court); see also Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *First Trial to Begin on June 3*, May 11, 2004, available at <http://www.sc-sl.org/Press/pressrelease-051104.html> (last visited Oct. 18, 2005) (announcing the trial dates for the CDF and RUF leaders accused); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Trial Chamber Joinder Decision: Accused to be Tried in Three Groups*, Jan. 27, 2004, available at <http://www.sc-sl.org/Press/pressrelease-012704.pdf> (last visited Oct. 18, 2005) (announcing that nine people indicted by the Special Court will be tried jointly in three groups).
313. See *Prosecutor v. Taylor*, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction (May 31, 2004), available at <http://www.sc-sl.org/Documents/SCSL-03-01-I-059.pdf> (last visited Oct. 18, 2005) (holding that Charles Ghankay Taylor is not immune from the Special Court for Sierra Leone's jurisdiction); see also Dapo Akande, *International Law Immunities and the International Criminal Court*, 98 AM. J. INT. L. 407, 416 (2004) (discussing state and diplomatic immunities and the decision by the Special Court to reject President Taylor's claim of immunity). See generally Micaela Frulli, *The Question of Charles Taylor's Immunity: Still in Search of a Balanced Application of Personal Immunities?*, 2 J. INT'L CRIM. JUST. 1118 (discussing head of state immunity and the rejection of President Taylor's immunity).
314. See *Prosecutor v. Taylor*, Case No. SCSL-2003-01-I, *supra* note 313, at ¶ 51 (holding that state immunity is not relevant in international tribunals because they are under the mandate of the international community rather than the state); see also Frulli, *The Special Court for Sierra Leone*, *supra* note 207, at 1122 (indicating that the reason heads of state have immunity in state courts and not in international courts is because the international court's mandate is from the international community and is above state immunity); *Human Rights Groups Launch Fresh Initiatives to Compel FG to Extradite Charles Taylor*, AFR. NEWS, May 25, 2005 (citing an Amnesty International Report that concurs with the SCSL vis-à-vis Charles Taylor's lack of immunity).

before an international criminal tribunal.”³¹⁵ While Taylor remains free in exile, “the decision reaffirms the idea that the long arm of international criminal law would extend to reach the most powerful state official, so long as that person commits crimes that shock the conscience of the international community.”³¹⁶

V. Evaluating the Model

The UN Security Council, in entering into negotiations leading to the establishment of the SCSL, stipulated that the Court should be funded by voluntary contributions rather than by mandatory assessments like the ICTY and the ICTR.³¹⁷ Although the UN Secretary-General later recommended moving to assessed contributions as a more stable funding mechanism,³¹⁸ this suggestion was not followed.³¹⁹ Consequently, the SCSL has periodically suffered

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315. See *Prosecutor v. Taylor*, Case No. SCSL-2003-01-I, *supra* note 313, at ¶ 52 (concluding that equality among sovereign states does not preclude a president from being tried before an international criminal court); see also Akande, *supra* note 313, at 416 (listing the Nuremberg, Tokyo, the ICC, and other international judicial proceedings as sources of statutes that the SCSL relied on in concluding that Taylor, as a head of state, could be prosecuted before an international criminal tribunal). See generally Thierry Cruvellier, *Hinga Norman, Former-Chief of the Civil Defence Forces: “Is It Because You Are at the Top That You Are a Criminal?”*, INT’L JUST. TRIB., Nov. 27, 2003 (International Justice Tribune, Paris, France) (detailing Taylor’s rejection of SCSL’s jurisdiction over him and his claim of state immunity).
316. See Anthony D’Amato, *Defending a Person Charged with Genocide*, 1 CHI. J. INT’L L. 459, 469 (2000) (describing that bringing justice to state officials for international crimes is a goal of international criminal tribunals); see also Johan D. van der Vyver, *Torture as a Crime Under International Law*, 67 ALB. L. REV. 427, 433 (2003) (recognizing that the prohibition against torture under international criminal law applies to state officials); Cherner Jalloh, *Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone*, ASIL INSIGHTS, Oct. 2004, available at <http://www.asil.org/insights/insigh145.htm> (last visited Sept. 14, 2005) (declaring that at the will of the international community, even the most powerful state officials are subject to international criminal law).
317. See U.N. Doc. S/RES/1315, *supra* note 195, at ¶ 8 (requesting that the Secretary-General recommend the amount of voluntary contributions for the Special Court of Sierra Leone); see also S.C. Res. 1508, ¶ 6, U.N. Doc. S/RES/1508 (Sept. 19, 2003) (appealing to states for generous voluntary contributions to the Special Court for Sierra Leone in light of the court’s unfortunate fiscal position); Miraldi, *supra* note 91, at 856 (commenting that the United Nations’ three-year mandate over the Special Court is funded by voluntary contributions).
318. See The Secretary-General, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 43, U.N. Doc. S/2004/616 (Aug. 23, 2004) (suggesting that assessed contributions replace voluntary contributions for the tribunals in Cambodia and Sierra Leone because judiciaries should not be left susceptible to voluntarism); see also *Annan Proposes Assessed Dues to Close Sierra Leone Court’s Budget Gap*, AFR. NEWS, Mar. 11, 2004 (reporting that Secretary-General Annan suggested to the Security Council that the contributions for the SCSL be switched from voluntary to assessed); *U.N. Seeks Re-financing For S. Leone Court*, UNITED PRESS INT’L., Mar. 11, 2004 (noting that Secretary-General Annan believed that a decision switching from voluntary to assessed contributions for the SCSL could be made before the court runs out of money).
319. See *Financing for Sierra Leone Court, Somalia Political Office Among Issues Taken Up in Budget Committee*, M2 PRESSWIRE, May 17, 2005 (declaring that the states will continue voluntary contributions following the date of the Secretary-General’s suggestion); see also U.N.: *Fifth Committee Takes Up 2006-2007 Budget Outline: Women’s Institute, Sierra Leone Court Financing*, M2 PRESSWIRE, Dec. 14, 2004 (describing Japan’s decision, amongst others pertaining to voluntary contributions following Kofi Annan’s proposal). See generally *United Nations Vital to US Interests, Negroponte Says*, AFR. NEWS, Apr. 5, 2004 (recounting the circumstances behind the Secretary-General’s decision to suggest assessed contributions as funding for the SCSL).

from fiscal difficulties necessitating both revisions of its budget and a scaling back of its activities.³²⁰

Against this challenge, which has admittedly contributed to the slow start-up of the Court, one must weigh the benefits derived from its status as a mixed international-national tribunal located in the country where the crimes that it is charged with adjudicating took place. Contrast this with the ICTY and the ICTR, located in the Hague, Netherlands, and Arusha, Tanzania, respectively, which would be a two-day, four-country bus trip from Rwanda that would set the average Rwandan back nearly a month's pay.³²¹ According to Ambassador Pierre-Richard Prosper, head of the U.S. State Department Office for War Crimes Issues and the former ICTR prosecutor who prosecuted the *Akeyasu* case, the tribunals should, insofar as possible, be located in the country where the abuses occurred.³²² In the case of the SCSL, this location has been especially fortuitous, not just for the investigative aspects, but also the larger dividends for the war-torn country.³²³

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320. See Beth Dougherty, *Victims' Justice, Victors' Justice: Iraq's Flawed Tribunal*, 11 MIDDLE EAST POL'Y 61, 68 (2004) (stating that the SCSL's annual \$30 million budget will not allow it to achieve the goals it has been assigned); Andrea O'Shea, *Ad Hoc Tribunals in Africa: A Wealth of Experience But a Scarcity of Funds*, 12 AFR. SECURITY REV. 17, 19 (2003) (proposing that the fiscal uncertainty surrounding the court is unfortunate because justice should not be dependant on politics); Cockayne, *supra* note 190, at 630 (stressing the Special Court's duties may not be completed as a result of the financial uncertainty stemming from a policy of voluntary contributions).
321. See TEMPLE-RASTON, *supra* note 245, at 125 (illustrating the hardship Rwandans faced if they wanted to travel to the tribunal); see also Schocken, *supra* note 139, at 436-37 (opining that establishment of the SCSL will provide closure to Sierra Leonean citizens who want to see justice brought to their abusers). See generally Bald, *supra* note 80 (explaining that the Security Council established a mixed international-national tribunal in Sierra Leone because there was no desire to fund another costly tribunal).
322. See U.N. Doc. S/2004/616, *supra* note 318, at ¶ 44 (enumerating the various benefits of housing an international tribunal in the country where the crime was committed); see, e.g., Norman Kempster, *U.S. May Back Creation of Special Atrocity Tribunals*, L.A. TIMES, Aug. 2, 2001, at A4 (arguing that it is in the best interest of the injured people to have the tribunal in their country); see also Schocken, *supra* note 139, at 456 (citing Prosper's thought that because each conflict is different, the court should be located in the place that the crimes occurred).
323. See Ivana Nizich, *International Law Weekend Proceedings: International Tribunals and Their Ability to Provide Adequate Justice: Lessons from the Yugoslav Tribunal*, 7 ILSA J. INT'L & COMP. L. 353, 363 (2001) (suggesting that establishing war crimes tribunals in a country where the atrocities occurred, such as Sierra Leone, will help usher the aggrieved population to the rule of law that had previously been commandeered); see also Bald, *supra* note 80, at 562 (acknowledging that the SCSL's presence in Sierra Leone will send an important message to the people of that country about the nature of justice and a fair judicial system); *Special Court: Promises and Pitfalls*, AFR. NEWS, Aug. 4, 2003 (expressing the desire that the Court can educate the Sierra Leonean population about its work).

In fact, although it is too soon to make definitive judgments—the first trials are still underway—indications are that the SCSL will provide a model for other post-conflict justice mechanisms, standing in contrast to the experience of the International Criminal Court for Rwanda, which has often been at odds with the Rwandan government and been apathetically received by the populace.³²⁴ In fact, it could be said that its activity has made the SCSL itself something of a *de facto* civil society institution within Sierra Leone.³²⁵

Shortly after their appointments, prosecutor David Crane and registrar Robin Vincent undertook extensive efforts to reach out to Sierra Leonean civil society groups and the population in general.³²⁶ On September 27, 2002, Crane traveled to the Kono region, one of the centers of the conflict, to hold the first in a series of “town hall” meetings to explain the SCSL’s mandate and receive input from citizens who participated in the encounters.³²⁷ In December, shortly after the tribunal was formally inaugurated, Crane, together with Vincent, met with students at Fourah Bay College to encourage their involvement with the university’s Human Rights Clinic.³²⁸ Subsequently, the SCSL has become perhaps the first international tribunal to

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324. See Carroll, *supra* note 7, at 175–78 (outlining the Rwandan government’s grievances and disagreements with the establishment of the International Criminal Tribunal for Rwanda); see also Hans Nichols, *Search for Justice Stalls in Rwanda: Government at Odds with U.N. Court*, WASH. TIMES, Jan. 3, 2003, at A08 (chronicling the poor relations between Rwanda and the Tribunal for Rwanda, as evidenced by a disagreement over witness traveling); Betsy Pisik, *War-crimes Judge Fears Rwandan Noncompliance*, WASH. TIMES, Nov. 10, 1999, at A13 (detailing the Rwandan government’s threat to suspend cooperation with the United Nations Tribunal for Rwanda over a ruling that a genocide suspect had to be released because he had yet to receive a trial).
325. See Pham, *Lazarus Rising*, *supra* note 28, at 66 (postulating that the SCSL can become a very important institution within Sierra Leone). See generally Stephen Macedo, *Public Reason and Reasons for Action by Public Authority: An Exchange of Views: In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?*, 42 AM. J. JURIS. 1 (1997) (defining a civil society institution as an “institution intermediate between the individual and the state nurture the ‘in-between’ motivations of cooperativeness and reciprocity, on which a healthy liberal democratic social order depends”); BLACK’S LAW DICTIONARY (8th ed. 2004) (defining “de facto” as an entity that exists even if not formally recognized).
326. See Hussain, *supra* note 240, at 572–73 (asserting that Crane and Vincent took hands-on approaches to outreach efforts in Sierra Leone); see also *Special Prosecutor David Crane*, *supra* note 261 (commenting that as David Crane canvassed Sierra Leone listening to the citizens’ stories, he was most commonly asked how he was going to get Charles Taylor); Linda Slonksnes, *A Meeting with Chief Prosecutor David Crane*, FRIENDS OF SIERRA LEONE, Sept. 2003, at 1, available at <http://www.fosalone.org/FOSL2003SeptNews.pdf> (last visited Oct. 18, 2005) (acknowledging that Crane discussed his town hall meetings throughout Sierra Leone).
327. See Hussain, *supra* note 240, at 573 (explaining how outreach efforts became the province of the Registrar’s Office, but Special Prosecutor David Crane continued holding townhall meetings with Sierra Leoneans); see also Judith Crosbie, *Trying to Bring Justice to the Victims of a Broken Land*, IRISH TIMES, July 14, 2004, at 11 (stating how Crane uncovered “horrors” during the town hall meetings he organized); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Prosecutor for the Special Court Begins Holding “Town Hall” Meetings*, Sept. 27, 2002, available at <http://www.sc-sl.org/Press/pressrelease-092702.html> (last visited Oct. 19, 2005) (explaining how Chief Prosecutor David Crane pledged to hundreds in the Kono district at a two-hour meeting that he would work for their interests and that this meeting would be the first of a series of meetings).
328. See Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Special Court Call for Students to Take a Lead in Human Rights*, Dec. 11, 2002, available at <http://www.sc-sl.org/Press/pressrelease-121102.pdf> (last visited Oct. 19, 2005) (relating Crane and Vincent’s visit to Fourah Bay College on International Human Rights Day, which was sponsored by the school’s Human Rights Clinic, and where both officials commended the students’ efforts and compelled them to support SCSL); see also Eve Holwell, *Students Visit From Sierra Leone*, YALE DAILY NEWS, Oct. 22, 2001, available at <http://www.yaledailynews.com/article.asp?AID=16734> (last visited Oct. 7, 2005) (reporting on students’ visit from Fourah Bay College, where Yale law students helped develop Sierra Leone’s first human rights clinic).

create its own non-governmental organization, the “Accountability Now Clubs,” a student-based program supported by the Special Court’s outreach budget.³²⁹ The main objective of the clubs is to promote understanding among students and their communities of the tribunal as well as to study broader justice-related issues, including the rule of law, human rights, good governance, and accountability.³³⁰ The clubs will exist after the SCSL has concluded its work, and they represent an important part of the Court’s legacy.³³¹

Together with the Sierra Leonean branch of No Peace Without Justice, the international NGO made up of parliamentarians, mayors, and other local leaders promoting accountability for violations of international humanitarian law,³³² the SCSL held “Train the Trainers” seminars to prepare 1,500 Sierra Leonean community leaders and activists to inform their constitu-

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329. See Hussain, *supra* note 240, at 573 (noting how the Outreach section’s campaign for awareness in Sierra Leone led to the outgrowth of Accountability Now Clubs, which are comprised of law students); see also Theophilus S. Gbenda, *David Crane Launches Accountability Now Club at FBC*, STANDARD TIMES (SIERRA LEONE), July 5, 2004 (describing Crane’s formal launch of the student group during a ceremony at Fourah Bay College, soon to be repeated at other tertiary institutions around the country); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *The Prosecutor Launches “Accountability Now Clubs” at Fourah Bay College*, July 1, 2004, available at <http://www.sc-sl.org/prosecutor-070104.html> (last visited Oct. 19, 2005) [hereinafter “Accountability Now Clubs”] (reporting Crane’s formal launch of the student group as part of the Special Court’s Outreach section).
330. See “Accountability Now Clubs” *supra* note 329 (describing ANC’s goal of promoting “understanding among students and their communities of the Special Court and to examine broader justice-related issues, including the rule of law, human rights, good governance, and accountability.”); see also Alison Smith, *No Peace Without Justice’s Country Director for Sierra Leone*, NPWJ Testimony before the Sierra Leone Truth and Reconciliation Commission (Jul. 29, 2003), available at <http://www.specialcourt.org/SLMission/NPWJTestimonySLTRC.html> (last visited Oct. 19, 2005) (addressing the need for victims and witnesses to be able to recount their stories so they can be part of the accountability process); U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (OCHA), *Sierra Leone: Humanitarian Situation Report May/June 2004*, at ¶ 4, available at: <http://www.reliefweb.int/rw/RWB.NSF/db900SID/SZIE-62VPX7?OpenDocument> (last visited Oct. 19, 2005) (referring to the goals of ANCs established by Special Court as part of its outreach strategy).
331. See *Sierra Leone; Crane Launches Accountability Now Club at FBC*, AFR. NEWS, Jul. 2, 2004 (“The clubs will exist after the Special Court is gone, and they represent an important part of the Court’s legacy programme.”); see also *Sierra Leone; Now That David Crane is Going (II)*, AFR. NEWS, Mar. 7, 2005 (criticizing Special Court’s efficacy, but noting that the “outreach section . . . has been appraised as one of the few successful components when it comes to mandate implementation”); “Accountability Now Clubs,” *supra* note 329 (“[T]he clubs will exist after the Special Court is gone, and they represent an important part of the Court’s legacy programme.”).
332. See NPWJ Sierra Leone Mission, NPWJ Status Report December 2002, at § 2, available at: <http://www.specialcourt.org/SLMission/NPWJStatusReport2002.html> (last visited Sept. 14, 2005) [hereinafter NPWJ Status Report 2002] (outlining its projects, listing governmental and legal advisors that make up its program directors, and noting the local staff members who they train and work with); see also Press Release from No Peace Without Justice, *NPWJ calls for Charles Taylor Indictment Over Sierra Leone Atrocities*, Apr. 11, 2003, available at: <http://www.specialcourt.org/documents/NewsArticles/NPWJCallsTaylorIndictment.html> (last visited Sept. 14, 2005) (explaining the mission of supporting accountability mechanisms for war crimes, and the seconding of government leaders in Sierra Leone who negotiated for the establishment of the Special Court). See generally Elaina I. Kalivretakis, Comment, *Are Nuclear Weapons Above The Law? A Look at the International Criminal Court and the Prohibited Weapons Category*, 15 EMORY INT’L L. REV. 683 (2001) (mentioning No Peace Without Justice as one of the important nongovernmental organizations that participated in negotiating process which led to the Rome Statute Establishing an International Criminal Court).

encies about the work of the tribunal.³³³ The office of the Registrar has also organized regular meetings with representatives of civil society organizations and other stakeholders in the process to formally brief them on the progress of the SCSL's work and to receive feedback.³³⁴

In response to criticism it has received about access to the proceedings, the SCSL's Press and Public Affairs Office has produced weekly summaries of the proceedings that have been aired on local radio stations as well as the government-owned Sierra Leone Broadcasting System.³³⁵ When the trials started earlier this year, the press office also began producing weekly video summaries that it has been sending on tour around with mobile video units.³³⁶ These screenings have become something of a routine in many localities, giving rise, in turn, to a further strengthening of civil society through a sense of participation and ownership in a judicial system after years marred by lawlessness or fatalism.³³⁷

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333. See *Bringing Justice: the Special Court for Sierra Leone: Accomplishments, Shortcomings, and Needed Support*, 16 HUM. RTS. WATCH 8A, at 35 (2004), available at <http://hrw.org/reports/2004/sierraleone0904/sierraleone0904.pdf> (last visited Sept. 15, 2005) [hereinafter Human Rights Watch, *Bringing Justice*] (applauding the Special Court's efforts at outreach programming, including its training of 1,500 Sierra Leoneans in "train-the-trainer" seminars); see also NPWJ Status Report 2002, *supra* note 332, at § 2.2, (detailing its collaboration with Special Court Working Group, where previously-trained Sierra Leoneans led participants to put on 10-minute plays about the Special Court, which would be used to educate the community).
334. See Human Rights Watch, *Bringing Justice*, *supra* note 333, at 35 n.146 (stating how Registrar Vincent has held regular interactions with civil society since 2002, including monthly meetings with Sierra Leonean organizations); see also Hall & Kazemi, *supra* note 25, at 295–96 (speculating that the Special Court does not have broad extra-territorial power, but may nevertheless be successful, especially if the Court's president increases visibility of the Court in the international community); Press Release from the Press and Public Affairs Office, Special Court for Sierra Leone, *Joint Statement on Implementation of Inter-Tribunal Co-operation Projects*, Mar. 12, 2004, available at <http://www.sc-sl.org/Press/pressrelease-031204.html> (last visited Oct. 19, 2005) (detailing how Registrars of different international criminal tribunals are working together to provide coherent and consistent practice within international criminal justice).
335. See Hussain, *supra* note 240, at 575 (indicating that Outreach section has implemented radio skits to broadcast on local stations in order to inform the public about the Special Court); see also Human Rights Watch, *Bringing Justice*, *supra* note 333, at 37 (acknowledging that Special Court has implemented its plan to reach out to the local population through audio summaries broadcasted on radio and suggesting that these summaries be produced on a more regular basis); Special Court for Sierra Leone, Public Service Audio Announcements, <http://www.sc-sl.org/audio.html> (last visited Sept. 15, 2005) (providing access to dozens of audio public service announcements in MP3 format).
336. See Human Rights Watch, *Bringing Justice*, *supra* note 333, at 37 (explaining how SCSL's Press and Public Affairs Office is preparing to show weekly video summaries of the trials through mobile video units); see also Special Court for Sierra Leone, Video Productions, available at <http://www.sc-sl.org/video.html> (last visited Sept. 15, 2005) (providing access to over ten video summaries of the trials of the CDF, RUF, and others accused); Special Court for Sierra Leone, Press and Public Affairs Office, Pressroom, available at <http://www.sc-sl.org/pressroom.html> (last visited Sept. 15, 2005) (organizing its different resources, including press releases, video summaries, and public radio announcements).
337. See, e.g., Hussain, *supra* note 240, at 574 (describing how outreach activities, such as town-hall meetings and ongoing public discussions, give Sierra Leoneans a sense of "domestic ownership over the prosecutorial process"); see also Stafford, *supra* note 88, at 134 (reporting that if the Special Court for Sierra Leone is to assist in the healing of the nation, then the people of Sierra Leone need to be "present to 'judge' the proceedings"). See generally Amy Powell, *Three Angry Men: Juries in International Criminal Adjudication*, 79 N.Y.U. L. Rev. 2341 (2004) (noting that the use of a local jury in international trials gives the appearance of legitimacy and an opportunity for the citizenry to participate and share the power of the judiciary, which in turn will help the society gain experience in self-governance).

While the SCSL will, in the end, probably prosecute less than one dozen individuals, its real impact on Sierra Leone, especially the civil society sector, will reach well beyond the tribunal's statutory mandate in its contribution to the country, as well as its revitalization of the war-torn populace's sense of the rule of law.³³⁸ From the Appeals Chamber to the custodial staff of the courthouse, Sierra Leoneans are involved in every aspect of the tribunal's work.³³⁹ The Sierra Leonean personnel, who, overall, account for half of the SCSL's staff, have acquired significant skills that they will undoubtedly carry over, not only to eventual local prosecutions of lesser offenders, but to civic life in general.³⁴⁰ For example, unlike other international tribunals, members of the local bar have worked on all defense teams before the Special Court due to a requirement that at least one member of each team have experience in Sierra Leonean law.³⁴¹

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338. See Fritz & Smith, *supra* note 138, at 406 (asserting that the cooperative endeavor between the U.N. and Sierra Leone will benefit and inject new life into the country's domestic legal system, and at the same time help safeguard the rule of law that will outlive the existence of the Special Court); cf. Tejan-Cole, *supra* note 70, at 158 (stressing that the Special Court needs to work in conjunction with the civil society of Sierra Leone in order to secure a strong, effective, and self-sufficient judicial system and rule of law in the long term). See generally Wendy S. Betts & Gregory Givold, *Conflict Mapping: Innovation in International Responses in Post-Conflict Societies*, 10 HUM. RTS. BR. 24 (2003) (stating that a "conflict mapping," or accountability mechanism, is crucial and serves as the starting point for a society to overcome the human rights violations it experienced, which will then encourage the public to "call for a new way forward").
339. See, e.g., Chante Lasco, Article, *News from the International Criminal Tribunal*, 10 HUM. RTS. BR. 26, 27 (2002) (highlighting the domestic and international character of the Special Court as reflected in its personnel, with local judges in its Trial and Appeals Chambers); see also Hussain, *supra* note 240, at 569 (reporting that according to the SCSL Statute, the government of Sierra Leone shares control over the administration by exercising its right to appoint judges to the court); cf. Chandra L. Sriram, *Revolutions in Accountability: New Approaches to Past Abuses*, 19 AM U. INT'L L. REV. 301, 398 (2003) (noting that the frustrated goals of the international tribunal in Rwanda to bring reconciliation and deterrence to its people, and to impart knowledge and skills, are caused by its failure to involve Rwandans and make them participants in the daily court procedures).
340. See Corriero, *supra* note 39, at 356 (noting that the quasi-international characteristic of the Special Court will help rebuild the country's societal and cultural institutions, which in turn will aid in the social services needed to rehabilitate and reintegrate children soldiers into society); see also Fritz & Smith, *supra* note 138, at 404 (proclaiming that the Special Court's promise is not limited to putting an end to the widespread impunity, but to provide a more tangible rebuild of the society by "generating institutional skills and resources crucial to any functioning democracy"); cf. Brady Hall, *Using Hybrid Tribunals as Trivias: Furthering the Goals of Post-Conflict Justice While Transferring Cases from the ICTY to Serbia's Domestic War Crimes Tribunal*, 13 MICH. ST. DCL J. INT'L L. 39, 55 (2005) (arguing that the international court tribunal of Yugoslavia will do little to "improve the capacity of the local population to establish its own justice system" because it is a "pure" international court, employing only non-local judges, prosecutors, and staff).
341. See Dickinson, *supra* note 106, at 295 (announcing that the nature of hybrid courts, which incorporate local as well as international law, necessitates that cases be prosecuted and defended by teams of local and international lawyers); see also Tarin, *supra* note 234, at 506 (describing the characteristics of hybrid courts, where cases are tried, prosecuted, and defended by teams of local lawyers, as well as lawyers from foreign countries). See generally Cockayne, *supra* note 190 (proclaiming that the incorporation of local lawyers in the prosecution, defense, and on the bench works to legitimize the trial process).

These attorneys have, in turn, acquired considerable experience in international and criminal law.³⁴² By its presence, visibility, and accessibility in Sierra Leone, the Court not only makes an important contribution to the rebuilding of the ravaged nation's judicial system, but it also signals that "international and domestic trials are complementary parts of an integrated, holistic, and multifaceted approach to justice."³⁴³

Conclusion

Sierra Leone is in the historically unique position of having both a post-conflict Truth and Reconciliation Commission charged with promoting societal reconciliation through the documentation and recognition of past abuses and an internationally-sanctioned tribunal, the Special Court for Sierra Leone, and a mandate to adjudicate those "most responsible" for crimes against humanity, war crimes, and other serious violations of humanitarian law during its civil war.³⁴⁴ The mixed nature of the Court, by addressing some of the shortcomings of the *ad hoc* international criminal tribunals, represents a workable model that might be profitably copied in other instances where similar concerns, such as weakened or collapsed national judicial systems, nationalist sentiment, lack of political support, jurisdiction *ratione temporis* limitations, preclude recourse to an international tribunal, even as purely national instances remain unsatis-

342. See Cockayne, *supra* note 190, at 648–49 (finding that while inclusion of local lawyers in the judicial process of the Special Court is essential to the efficacy of the hybrid model, similarly, the international community makes its contribution by providing legal training to the local professionals); see also Dickinson, *supra* note 106, at 307 (recognizing that legal professionals who are involved in the proceedings of the Special Court are likely to learn and improve their knowledge of international jurisprudence and apply it to future domestic cases); Eaton, *supra* note 60, at 913 (asserting that the presence of the Special Court in Sierra Leone will facilitate the diffusion of legal knowledge to its judicial officials, which will help its people and government to "internalize international human rights norms").

343. See Neil J. Kritz, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights*, 59 LAW & CONTEMP. PROBS. 127, 132 (1996) (noting that when international tribunals cannot be held in the country where the alleged crimes took place, it is essential that the people of that country have access to the hearings in order to convey the concept of an integrated international and domestic approach to justice); see also Bald, *supra* note 80, at 562 (commenting that the Court's presence in Sierra Leone is critical to sending the message that international and domestic trials are complementary to each other); cf. Udombana, *supra* note 25, at 128 (suggesting that international tribunals in Rwanda and Bosnia have had little impact on the wars' victims because they were not located within their respective countries, and diffusion of the proceedings from the international location to local communities was not easily facilitated).

344. See Eaton, *supra* note 60, at 915 (asserting that the operation of a Truth and Reconciliation Commission in concurrence with the Special Court is a unique feature, which will provide Sierra Leone with a forum for victims and perpetrators to tell their stories while at the same time fulfill its prosecutorial goals); see also Webster, *supra* note 39, at 774–75 (explaining that in order for Sierra Leone to effectively restore the country from the atrocities of the civil war, it needs to address two factors: 1) the criminal accountability of the offenders, and 2) the reconciliation within its community); cf. Macaluso, *supra* note 76, at 371 (arguing that in light of the Lomé Peace Agreement, which granted amnesty to some offenders with respect to violations of domestic law, the government of Sierra Leone is in a difficult position as it strives to balance two conflicting interests: 1) its effort to reach a level of reconciliation between the rebels and their victims, and 2) the need to vindicate the victims by punishing the offenders).

factory.³⁴⁵ Iraq is but one example that comes to mind.³⁴⁶ In these cases, the mixed international-national model provided by the SCSL—as well as the lessons learned from the difficulties it has encountered—can be a standard for empowering a post-conflict nation to participate in reestablishing the rule of law while insuring that the demands of international criminal justice are satisfied.³⁴⁷

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345. See Peggy Kuo, *Prosecuting Crimes of Sexual Violence in an International Tribunal*, 34 CASE W. RES. J. INT'L L. 305, 320 (2002) (explaining that the hybrid nature of the Special Court can facilitate and assist in the building of a lasting judicial system for Sierra Leone, unlike the *ad hoc* tribunals of Rwanda and Yugoslavia); see also Stafford, *supra* note 88, at 142 (proclaiming that the hybrid court in Sierra Leone serves as a standard model for future war crime tribunals because it encompasses every key attribute necessary for its success in the international and domestic arenas); Webster, *supra* note 39, at 774 (noting that the Special Court of Sierra Leone, as well as any future international court tribunal, can work more effectively if it is “combined with and utilized as a part of a comprehensive domestic and international process of accountability, reconstruction, and reconciliation”).
346. See Jeffrey L. Spears, *Sitting in the Dock of the Day: Applying Lessons Learned from the Prosecution of War Crimes and Other Bad Actors in Post-Conflict Iraq and Beyond*, 176 MIL. L. REV. 96, 164 (2003) (asserting that the Special Court for Sierra Leone is a “great modern model to consider when formulating a plan for a system of post-conflict justice” and one with the greatest likelihood of success when compared to other *ad hoc* tribunals; as such, it can be applied to post-conflict Iraq); see also Margaret Sewell, *Freedom from Fear: Prosecuting the Iraqi Regime for the Use of Chemical Weapons*, 16 ST. THOMAS L. REV. 365, 388 (2004) (outlining the advantages of creating a court in Iraq modeled after the Special Court of Sierra Leone); cf. Dickinson, *supra* note 106, at 295–96 (noting that although hybrid courts have been developed to assist in post-conflict situations and are likely to be the type of court to be established in postwar Iraq, little study has been made among scholars and policymakers in this matter of transitional justice).
347. See Betts & Gisvold, *supra* note 338, at 25 (noting that goals of an international tribunal assume that a society that benefits from the international assistance will develop and strengthen its own domestic rule of law); see also William W. Burke-White, *Diversity or Cacophony?: New Sources of Norms in International Law Symposium: Article: International Legal Pluralism*, 25 MICH. J. INT'L L. 963, 975–77 (2004) (commenting on the special characteristics of hybrid tribunals, which can accommodate “legitimate difference of national choices within a unitary legal order” and its powerful development into the system of choice in future international courts); Spears, *supra* note 346, at 160–61 (recognizing the vital need to uphold international standards of justice in the local process of reconciliation and restoration of peace).

