

Mohamed Suma
September 2009

Fighting Impunity
in Peacebuilding Contexts
The Hague

The Charles Taylor Trial and Legacy of the Special Court for Sierra Leone

Introduction

When the Special Court for Sierra Leone (SCSL) was established in 2002, it represented hope for the millions of Sierra Leoneans who had endured 11 years of fear, brutality, and constant warfare. The SCSL offered the chance for the country to heal by prosecuting those most responsible for the atrocities that had occurred.

The SCSL built upon the efforts of previous international tribunals to form a new, hybrid model of international criminal justice and provided great potential for future trials. The SCSL is the first international tribunal in recent history to be located in the country where the crimes were committed. The SCSL's innovative outreach program, focusing on improving domestic understanding of the court's activities, served as a model for future tribunals. With the court rested the hope that the flaws of past international tribunals could be corrected, thus advancing the state of international criminal justice while strengthening the country's domestic legal system and encouraging Sierra Leoneans to have faith in the justice system.

Unlike domestic courts, transitional justice institutions are expected to assist in the transformation of post-conflict societies, or at least leave a legacy that will engender some transformation. For that reason—though long-term legacy goals were not expressly stated in the mandate of the SCSL—the hopes for a lasting legacy were high among Sierra Leoneans.

TABLE OF CONTENTS

| | |
|---|---|
| Introduction | 1 |
| Successes of the SCSL | 1 |
| The Limitations of Outreach | 2 |
| SCSL's Legacy on Sierra Leone's Legal Sector | 2 |
| Recommendations | 3 |

Successes of the SCSL

The special court has certainly experienced some impressive successes:

- Eight of those most responsible for the suffering of the Sierra Leonean people are now behind bars, with sentences ranging from 15 to 52 years.
- Liberian President Charles Taylor was indicted and now stands trial before the court on 11 counts of war crimes, crimes against humanity, and violations of international law.
- The court established the legal precedent that the reasons for fighting are immaterial in determining where crimes against humanity have been committed; it ruled that members of the Civil Defense Forces—considered heroes by many—could not use a “just cause” defense as a mitigating sentencing factor.
- The court was the first international tribunal to convict people for crimes relating to the conscription and recruitment of children younger than 15 into hostile forces.

The Charles Taylor Trial and Legacy of the Special Court for Sierra Leone

About the Author

Mohammed Suma is the Director of the Sierra Leone Court Monitoring Programme (SLCMP). Since its 2004 inception, the SLMP has evolved into a powerful voice for civil society in its pursuit of justice after Sierra Leone's eleven year civil war. After the war the country's judiciary was rife with corruption and political manipulation. In response to the judiciary's dilapidated state, the SLCMP monitors the court system, engendering a healthy civil society and protecting domestic human rights. Suma is working with the Special Court for Sierra Leone in trying former Liberian President Charles Taylor at a specialized chamber in The Hague, a case he knows will feed the Sierra Leonean public's hunger for truthful information.

Suma has a B.A. in History and Sociology from the University of Sierra Leone and a Masters in Human Rights from the Central European University/Open Society Justice Initiative.

- Sexual conscriptions, or forced marriages, were also deemed a separate crime against humanity.
- With Taylor's indictment, the court reaffirmed an important norm of dismissing head-of-state immunity for those who commit crimes against humanity.

However, the special court, which began with the hope that it would be accessible to millions of Sierra Leoneans, has fallen far short of its domestic goals. The decision to try Taylor in The Hague, rather than in Freetown, and the lack of adequate outreach activities made the court's proceedings difficult to access for many in Sierra Leone and thus greatly lessened its impact upon the populace. Finally, the court has experienced limited success in strengthening the domestic judiciary because of insufficient involvement of Sierra Leonean legal personnel and the court's failure to incorporate national laws into its operations.

The Limitations of Outreach

The decision to conduct the proceedings in The Hague met considerable criticism, both within and outside Sierra Leone. Critics claimed the move was political and damaged the ability of the SCSL to bring the proceedings closer to the people of Sierra Leone. This concern appears to have been borne out in the inability of the special court to meet its obligations under UN Resolution 1688 of 2006, directing the special court to make trial proceedings "accessible to the people of the sub-region, including video-link." The court has tried to broadcast proceedings in a small number of locations and has facilitated the travel of some members of civil society. However, it has encountered fairly frequent obstacles in these endeavors. For example, the video stream failed during the prosecutor's opening statement, the day of Taylor's plea, and on other key occasions. While laudable, the court's attempts are too limited to have substantial public impact.

An outreach program perhaps can never fulfill all expectations. However, the trial of Taylor, given his political stature and level of involvement, had a unique potential to bring the special court's proceedings into the daily lives of ordinary Sierra Leoneans. Evidence of this potential is the incredibly large turnout of citizens when Taylor was brought to Freetown in 2006. The SCSL paid too little attention to the wishes of the Sierra Leonean people in this matter. For example, in 2007, civil society activists in Sierra Leone filed an amicus curiae brief in favor of changing the location of Taylor's trial to Freetown, arguing that having the trial in The Hague would weaken the court's hybrid nature and its legacy across West Africa. Though the trial had not yet started, the court refused to review the request for more than a year.

SCSL's Legacy on Sierra Leone's Legal Sector

The court has fallen far short of expectations in contributing to national legal development. Until recently, the special court had insufficient institutional involvement with domestic courts. In the face of the country's depleted national treasury and the dearth of experienced personnel, deeper institutional involvement could have had significant impact on the domestic legal system.

Through its legacy project, the court recently has attempted to provide capacity building for various institutions that promote accountability. But these initiatives came too late and seemed an afterthought, rather than a carefully planned policy priority.

In addition, the court reneged on its responsibility to build a mixture of national and international staff. Until a few years ago, Sierra Leoneans only served in senior capacity on the defense team and no Sierra Leonean served in judicial management positions in the prosecution and

registry, thus squandering the opportunity of local staff to develop and transfer valuable experience to the domestic justice sector. Similarly, the court's statute was carefully drafted to incorporate both national and international laws, but most of the charges proffered are pursuant to international law only, thus limiting the potential for domestic law reform.

Acknowledgements

ICTJ gratefully acknowledges the Ministry of Foreign Affairs of the Kingdom of the Netherlands for its support, which made this publication and the related research and conference possible.

Recommendations

- Policy priorities should be formulated early, stressing not only trials and convictions, but also the creation of a strong legacy program.
- The legacy program should focus immediately upon deepening its engagement with domestic institutions, including the bar association, and appointing domestic staff to the court's senior management positions.
- The court should focus on training domestic justice sector personnel, particularly prosecutors, attorneys, judges, and magistrates.
- It should draft an outreach strategy plan before the court commences, outlining community needs and SCSL goals, and troubleshooting potential problems in advance.
- To avert the court's funding problems, the framers should ensure that a percentage of the court's operations are assured of funding by the UN. Funding of outreach should also be mainstreamed into the core funding of the court.