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## OVERCOMING OBSTACLES OF JUSTICE: THE SPECIAL COURT OF SIERRA LEONE

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## OVERCOMING OBSTACLES OF JUSTICE: THE SPECIAL COURT OF SIERRA LEONE

A land of beautiful beaches and mines full of diamonds would lead an ordinary person to imagine a romantic adventure. Unfortunately, this is no longer a possibility in a once extraordinary place: Sierra Leone. Sierra Leone has been ravaged by civil war for nine years. Although the war has technically ended after a long awaited peace accord, the brutality continues.

Sierra Leone was one of the first West African British Colonies. In 1787, foreign settlement of Sierra Leone began with the return of African slaves by the British. Thousands of slaves were brought to Sierra Leone as freed men. Although the freed men were from different areas of Africa, many chose to remain in Sierra Leone, which quickly grew with trade. After once being under British rule, with many other forms of government enacted and dismissed, Sierra Leone finally adopted a multi-party system of government in 1991.<sup>1</sup> The years following 1991 have been years of hardship and turmoil. Sierra Leone suffered from brutal civil war and is at long last on the path to recovery. An important component of Sierra Leone's return to normalcy is the Special Court for Sierra Leone ("the Special Court"), a judicial institution established by the United Nations Security Council to aid in the punishment of war criminals and provide justice to the victims of Sierra Leone.<sup>2</sup>

### I. CIVIL WAR IN SIERRA LEONE

The Civil War of Sierra Leone began in March 1991. The war began when the Revolutionary United Front ("RUF") instigated war to overthrow the government. The government attempted to hold back the rebellion with the aid of the Economic Community of West African States' ("ECOWAS") armed monitoring group, ECOMOG. However, at this time, Sierra Leone's army utilized the opportunity to overthrow the government.<sup>3</sup>

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<sup>1</sup> U.S. Dept. of State, Bureau of African Affairs, *Background Note: Sierra Leone* (Jan. 2002), available at <http://www.state.gov/r/pa/ei/bgn/5475pf.htm>.

<sup>2</sup> S.C. Res. 1315, U.N. SCOR, 54th Sess., 4186th mtg., U.N. Doc. S/RES/1315 (2000).

<sup>3</sup> UNAMSIL: United Nations Mission in Sierra Leone, *Sierra Leone - UNAMSIL - Background*, available at <http://www.un.org/Depts/dpko/missions/>

The RUF continued its rebellious attacks and in February 1995, the United Nations (“U.N.”) became involved. The U.N. appointed a Special Envoy, Mr. Berhanu Dinka. Mr. Dinka’s duty was to work with the Organization of African Unity (“OAU”) and ECOWAS to return the country to civil rule.<sup>4</sup> This task was completed and the army relinquished control to the elected government headed by Al-haji Dr. Ahmed Tejan Kabbah in February 1996. Unfortunately, the RUF did not participate in the election or acknowledge the newly elected government and the conflict continued.<sup>5</sup>

Through peace talks, the government and the RUF reached an agreement known as the Abidjan Accord in November 1996.<sup>6</sup> This agreement stipulated that the RUF and the government would cease hostilities immediately, a commission for the consolidation of peace would be established to supervise and monitor both parties, and both parties would work to ensure the socio-economic needs of the people.<sup>7</sup> The Abidjan Accord failed in May 1997, due to another military overthrow. The army joined forces with the RUF to form a ruling Junta, and the government, including President Kabbah, was exiled into Guinea.<sup>8</sup>

In order to return the country to civil rule, the U.N. appointed Francis G. Okelo as the new Special Envoy to persuade the ruling Junta to relinquish its power. The refusal of the Junta to do so resulted in Resolution 1132 (1997).<sup>9</sup> The use of sanction under chapter VII of the U.N. Charter<sup>10</sup> created an oil and arms embargo to the military Junta of Sierra Leone, restricted the travel of the members of the military Junta, and issued the approval of petroleum into Sierra Leone strictly on a case-by-case basis for humanitarian needs.<sup>11</sup> As a result, representatives of the Junta and the ECOWAS Committee signed the Conakry Peace Agreements in October

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unamsil/background.html (last visited Mar. 25, 2003) [hereinafter UNAMSIL *Background*].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> PEACE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE AND THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE (RUF/SL), (Nov. 30, 1996), available at <http://www.sierra-leone.org/abidjanaccord.html> [hereinafter ABIDJAN ACCORD].

<sup>7</sup> *Id.*

<sup>8</sup> UNAMASIL *Background*, *supra* note 3.

<sup>9</sup> S.C. Res. 1132, U.N. SCOR, 51st Sess., U.N. Doc. S/RES/1132 (1997).

<sup>10</sup> U.N. CHARTER art. 41.

<sup>11</sup> *Id.*

1997.<sup>12</sup> The agreement was to be monitored by the ECOMOG and assisted by U.N. military observers. Exiled President Kabbah accepted the peace agreement and was willing to cooperate with the ECOWAS, the ECOMOG, the U.N., and the Office of the United Nations High Commissioner for Refugees. The key elements of the Conakry Peace Agreement were: (1) the cessation of all hostilities; (2) re-installment of ousted President Alhaji Tejan Kabbah by April 22, 1998; (3) the receipt of humanitarian assistance; (4) disarmament, demobilization, and re-integration of demobilized personnel; (5) the release of Corporal Foday Saybannah Sankoh, the Deputy Chairman of the Junta and the RUF, thus enabling him to join the peace process; and (6) the formation of a broad-based government.<sup>13</sup> The problem with this attempt at peace was that the Junta disagreed with certain key provisions, and as a result, the agreements failed.<sup>14</sup> The Junta was primarily concerned with the immediate release of Corporal Foday Sankoh, the non-disarmament of the Sierra Leone army, and the dominant role of the Nigerian contingent: the ECOMOG.<sup>15</sup>

In February 1998, ECOMOG responded to an attack by the Junta army forces by leading an attack, which led to the collapse of the Junta and the regaining of Freetown. By the next month, President Kabbah was returned to his office and the U.N. Security Council lifted the oil and arms embargo. Following the cessation of the Junta forces, the Security Council established the United Nations Observer Mission in Sierra Leone (“UNOMSIL”). UNOMSIL’s purpose was to monitor and advise efforts to disarm combatants, restructure the nation’s security forces, and report the continuance of atrocities against Sierra Leone’s civilians.<sup>16</sup>

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<sup>12</sup> Economic Community of West African States Six-Month Peace Plan for Sierra Leone 23 October 1997 - 22 April 1998 (Schedule of Implementation) (Oct. 23, 1997), available at <http://www.sierra-leone.org/conakryaccord.html> [hereinafter CONAKRY PEACE AGREEMENT].

<sup>13</sup> H.E. Lt. Col. John Paul Koroma, Chairman of the Armed Forces Revolutionary Council and Head of State of the Republican Sierra Leone, An Overview of the Conakry Peace Plan Presented to the United Nations Technical Survey Team to Sierra Leone at State House (Jan. 14, 1998), available at <http://www.sierra-leone.org/koroma011498.html>.

<sup>14</sup> *Id.* The Junta was in disagreement with the sanctions imposed on Sierra Leone by the ECOMOG without the proper approval from the United Nations. *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> UNAMASIL *Background*, *supra* note 3.

The Junta and the ECOMOG troops continued to fight, however, and the ECOMOG briefly lost its occupation of Freetown to the Junta. Although the civilian government was eventually restored, there were many rebels hiding out in the countryside.<sup>17</sup> Negotiations for peace continued and eventually the parties agreed to end hostilities in Lome. The Lome Agreement was a lengthy compromise addressing the immediate cease-fire, the regulations of the cease-fire agreement, the establishment of the Junta organization into a political party, and the humanitarian issues.<sup>18</sup> The agreeing parties also requested an expansion of the UNOMSIL in Sierra Leone.<sup>19</sup>

The U.N. Security Council terminated the UNOMSIL, and created the United Nations Mission in Sierra Leone ("UNAMSIL"), which shared the same objectives of its predecessor, but provided a larger mission of military personnel including military observers, to assist the implementation of the Lome Agreement.<sup>20</sup> In December 1999, the Secretary General appointed Oluyemi Adeniji as the Secretary General's Special Representative in Sierra Leone.<sup>21</sup> Throughout 2000 and 2001, the Security Council granted expansions of the UNAMSIL, increasing the military personnel to 17,500 including 260 military observers.<sup>22</sup>

## II. CRIMES AGAINST HUMANITY

Sierra Leone's long civil war may have been declared over by the Lome Peace Agreement,<sup>23</sup> but the effects of the war continue with every passing day. Thousands of men, women and children are reminded of the war every day of their lives because of the inhumane, barbaric treatment they endured. The rebel soldiers have be-

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<sup>17</sup> *Id.*

<sup>18</sup> PEACE AGREEMENT BETWEEN THE GOVERNMENT OF SIERRA LEONE AND THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE (July 7, 1999), available at <http://www.sierra-leone.org/lomeaccord.html> [hereinafter LOME ACCORD].

<sup>19</sup> UNAMASIL *Background*, *supra* note 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> LOME ACCORD, *supra* note 18. The Lome Peace Agreement included a cease-fire provision as well as provisions requiring an establishment of a new government and other compromises between the parties. *Id.*

come infamous for their systematic raping of women and girls, and the forced amputation of civilians' limbs.<sup>24</sup>

Studies have found that 94% of Sierra Leone female-headed households have experienced some form of inhumane crime over the past ten years.<sup>25</sup> Of those who have reported war-related sexual violence, 89% reported rape, 37% reported being forced to undress/stripped of clothing, 33% reported gang rape, 14% reported molestation, 15% reported sexual slavery, 9% reported being forced into marriage, and 4% reported having foreign objects forced into the genital opening or anus.<sup>26</sup> Of the women who reported these violent acts, 23% were pregnant at the time of the attack.<sup>27</sup>

As with the crimes of sexual violence, torture in the form of forced amputation was also systematic and widespread. Although the forced amputation of limbs was not an uncommon occurrence in Africa, there has never been as drastic a use of this form of torture as in Sierra Leone.<sup>28</sup> The rebels used forced amputation as a form of punishment for civilians who dared to vote, resulting in a marked increase in amputations after the 1996 election. Rebels who frequently amputated civilians often carried back the amputated limbs to their commanders. It is believed certain rebel groups specialized in amputation and rebel soldiers were promoted if they returned to camp with a large amount of limbs.<sup>29</sup>

The rebel forces were also known for kidnapping children and forcing the children to fight as soldiers. Often children were kidnapped from their families, and told that if they became soldiers, they would be reunited with their family. The RUF used "false threats, false promises and rumors" to convince the children to re-

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<sup>24</sup> See generally Human Rights Watch, African Division, *Sierra Leone, "We'll Kill You if You Cry: Sexual Violence in the Sierra Leone Conflict,"* (Jan. 2003), available at <http://hrw.org/reports/2003/sierraleone/>.

<sup>25</sup> *Id.*

<sup>26</sup> Press Release, Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone, A Population Based Assessment (Jan. 23, 2002), available at [http://www.phrusa.org/research/sierra\\_leone/report\\_pr.html](http://www.phrusa.org/research/sierra_leone/report_pr.html).

<sup>27</sup> *Id.*

<sup>28</sup> Radio Netherlands, *Amputees*, Mar. 6, 2000, available at <http://www.rnw.nl/humanrights/html/amputees.html>.

<sup>29</sup> *Id.*

join the rebel forces.<sup>30</sup> Drugs also factored into the RUF's ability to keep the child soldiers and manipulate their ability to fight.<sup>31</sup> Another recruitment tactic used by RUF soldiers was telling children in demobilization camps that everyone in the camp would be executed if the children refused to rejoin the rebel army.<sup>32</sup>

Although the Lome Peace Agreement was thought to quash the war in Sierra Leone the fighting continued. U.N. Peacekeepers were held hostage by the RUF when the U.N. attempted to take control of the diamond-rich areas of the country, as stipulated by the Lome Peace Agreement. It soon became evident that a solution was necessary to punish those responsible for the barbaric war crimes committed against civilians as well as prevent the fighting that continues to haunt Sierra Leone. The solution proposed was a Special Court for Sierra Leone ("Special Court").

### III. THE SPECIAL COURT

The U.N. Security Council voted to establish the Special Court in August 2000. By October, the Secretary General presented a working model of the Special Court. This model was quite different than the International Criminal Tribunals established for the former Yugoslavia and Rwanda.<sup>33</sup> Unlike the International Criminal Tribunals, which were located far from the location of the war crimes, the Special Court is situated in Sierra Leone, among those who were affected by the war. Additionally, the government of Sierra Leone and the U.N. jointly administer the Special Court.

The Resolution of the Special Court calls for the prosecution of those who "bear the greatest responsibility for crimes against humanity, war crimes, and other serious violations of international humanitarian law."<sup>34</sup> The precise wording of the Resolution prevents the use of resources for prosecuting lesser criminals, a problem en-

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<sup>30</sup> Human Rights Watch, *Sierra Leone Rebels Forcibly Recruit Child Soldiers* (May 31, 2000), available at <http://www.hrw.org/press/2000/05/sl0531.htm> [hereinafter *Child Soldiers*].

<sup>31</sup> B.B.C. News, *Brutal Child Army Grows Up* (May 10, 2000), available at <http://news.bbc.co.uk/1/hi/world/africa/743684.stm>.

<sup>32</sup> *Child Soldiers*, *supra* note 30.

<sup>33</sup> Marguerite Feilowitz, UN War Crimes Court Approved for Sierra Leone, CRIMES OF WAR PROJECT, Jan. 8, 2002, available at <http://www.crimesofwar.org/onnews/news-sierra.html>.

<sup>34</sup> S.C. Res. 1315, U.N. SCOR, 54th Sess., 4186th mtg., U.N. Doc. S/RES/1315 (2000).

countered by the Yugoslav and Rwanda tribunals. The individuals found to bear a lesser burden of responsibility for the crimes committed during the Civil War will be tried in the country's Truth and Reconciliation Commission ("TRC"), a "quasi-judicial institution with powers to issue subpoenas and administer oaths and affirmations, but no power to enforce those provisions legally."<sup>35</sup> Individuals who refuse to participate face contempt of court charges, to be litigated in the Sierra Leone High Court.<sup>36</sup>

The Special Court and the TRC are two institutions working for the same purpose with the capacity of reaching different people: the Special Court's jurisdiction is limited, expanding only to those who bear the greatest responsibility for crimes against humanity. The TRC has much greater jurisdiction, with the ability to reach those involved in the atrocities, but who are not eligible for trial in the Special Court.

The Special Court is comprised of eight trial and appeals judges—three appointed by the government of Sierra Leone and five appointed by the UN Secretary General.<sup>37</sup> The Judges are: Renate Winter from Austria, Geoffrey Robertson from England; Pierre Boutet from Canada, Rosulu John Bankole Thompson of Sierra Leone, Benjamin M. Iteo from Cameroon, Hassan B. Jallow of the The Gambia, Emmanuel O. Ayoola of Nigeria and George Gelaga King of Sierra Leone. The Court's Chief Prosecutor is David Crane of the United States.

The Special Court is very unique for various reasons. Primarily, there is no clause that grants immunity to heads of state, therefore, the Special Court has jurisdiction to try those leaders who are responsible for the commanding of the barbaric war crimes. The Special Court also has jurisdiction to try war crimes committed since November 30, 1996, reaching all the way back to the 1995 Amnesty Agreement issued by the Sierra Leone government.<sup>38</sup> Additionally, the Special Court has jurisdiction to prosecute individuals accused

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<sup>35</sup> Office of the Attorney General and Ministry of Justice Special Court Task Force, *Briefing Papers on Relationship between the Special Court and the Truth and Reconciliation Commission* (Jan. 2002), available at [http://www.specialcourt.org/documents/PlanningMission/BriefingPapers/TRC\\_SpCt.html](http://www.specialcourt.org/documents/PlanningMission/BriefingPapers/TRC_SpCt.html).

<sup>36</sup> *Id.*

<sup>37</sup> S.C. Res. 1315, U.N. SCOR, 54th Sess., 4186th mtg., at art. 2, U.N. Doc. S/RES/1315 (2000).

<sup>38</sup> Feilowitz, *supra* note 33. The 1995 Abidjan Accord prevented prosecution of war crimes before that year. *Id.*

of committing atrocities under the age of 18. Both Sierra Leone and the U.N. specifically agreed that the Special Court would be permitted to try perpetrators as young as fifteen years of age.<sup>39</sup> Finally, there are judges of various backgrounds sitting on the Special Court, providing a unique balance.<sup>40</sup> The Special Court is mandated by the U.N. and Sierra Leone for three years and is funded by voluntary contributions. In the event that funds for the Special Court dwindle, Member States of the U.N. will be assessed to meet the Court's needs.<sup>41</sup>

#### IV. THE EFFECT OF THE SPECIAL COURT ON SIERRA LEONE

The success of the Special Court and the TRC relies upon the participation of both ex-combatants and the victims of war crimes. The goal of the processes is to reconcile ex-combatants and victims, and to reintegrate the ex-combatants back into the society they brutalized during the war through the mechanism of an institution of justice. The ex-combatants are necessary to the Court as vital witnesses to the tragic crimes, but also present the greatest challenge to justice. Many ex-combatants are unable to provide for themselves, and remain dependent on their former commanders for support, resulting in a reluctance to betray those guilty of war crimes.<sup>42</sup> One way to possibly increase the participation of ex-combatants in the Special Court and the TRC is to provide these men with adequate economic recovery through employment opportunities.

The ex-combatants must also be educated as to what the Special Court represents and what is expected of them. Prior to sensitization, the ex-combatants believed that the Special Court would prosecute all war crimes, and that they would be held criminally responsible for their actions.<sup>43</sup> They were afraid to aid the Special

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<sup>39</sup> *Id.* "This is the first time in international legal proceedings that war crimes suspects under age eighteen will face prosecution." *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> The Post-Conflict Reintegration Initiative for Development and Empowerment (PRIDE) in partnership with the International Center for Transitional Justice, *Ex-combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone* (Sept. 12, 2002), at 11, available at <http://www.ictj.org/downloads/PRIDE%20report.pdf>.

<sup>43</sup> Sensitization is the term used to describe the government of Sierra Leone and U.N. sponsored campaigns used to make the citizens of Sierra Leone aware of the importance of the TRC in the peace process, and in some instances, to establish the role of traditional leaders in the reconciliation process and to seek infor-

Court out of fear that they, too, would be held accountable for the acts they committed at the bequest of their leaders. This opinion of the Special Court changed after sensitization. However, there is still a large variation in understanding of what function the Special Court serves. After education and sensitization, ex-combatants indicated they would testify if there was effective witness protection provided.<sup>44</sup>

There has also been an outcry for amputee victims of the Civil War to boycott the Special Court. The Special Court has reached out to the amputees to testify against those responsible for the brutality, but the amputees are hesitant. One amputees' association alleges that the victims of the atrocities have been overlooked and that provisions regarding amputee victims in the Lome Peace Agreement are ignored. While efforts have been made to re-settle former rebels and soldiers, little has been done to address the plight of war victims. Many victims are unwilling to cooperate with the Special Court until all of the provisions of the Lome Peace Agreement are honored.<sup>45</sup>

In addition to assuaging fears and encouraging both victims and ex-combatants to participate, the Special Court is also involved in gathering evidence to be used in the murder trials and finding and prosecuting war criminals. Currently, the Court is investigating a suspected mass murder site situated next to a flooded diamond mining pit near the city of Kono, where local residents believe civilian victims were dumped after an attack.<sup>46</sup> The Special Court has also been working on the prosecution of Foday Sankoh, a notorious leader of the RUF, infamous for the brutality of the civil war. Although Sankoh's trial began in March 2002, he was not formally indicted until 2003, when he, along with rebel commanders Issa Sesay, Morris Kallon, and Alex Brima were charged with crimes

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mation on traditional methods of dispute resolution. See Sierra Leone Web, *National Forum for Human Rights Take TRC to Paramount Chiefs/Traditional Rulers in a Nationwide Sensitization Drive*, available at <http://www.sierra-leone.org/trc101101.html> (last visited Apr. 7 2003).

<sup>44</sup> *Id.*

<sup>45</sup> International Justice, *Amputees to Boycott UN Court* (Dec. 5, 2002), available at <http://www.globalpolicy.org/intljustice/tribunals/sierra/2002/1211amp.htm>.

<sup>46</sup> *Sierra Leone News*, Sept. 27, 2002, available at <http://www.sierra-leone.org/slnews0902.html>.

including murder, rape, looting, sexual slavery, and conscription of child fighters.<sup>47</sup>

Although the Special Court is working quickly to gather evidence to prosecute those accused of crimes against humanity, the process is not fast enough to ensure that all alleged war criminals will be brought to justice. Due to its implementing legislation, the Special Court may issue an international arrest warrant by mandate of the government of Sierra Leone and the U.N. If the accused refuses to surrender upon being presented with the warrant, the Special Court must seek the intervention of the U.N. Security Council. One former Junta leader, Johnny Paul Koroma, charged by the Special Court with conspiracy to destabilize the security situation in Sierra Leone, is an example of one of the many war criminals who have fled.<sup>48</sup>

The Special Court may face hardships in the years to come: the refusal of witnesses to cooperate with the Court, the long procedure of finding those alleged criminals escaping from Sierra Leone, and the continued rebel fighting in Sierra Leone and its neighbor, Liberia. This Court must defeat its obstacles and must find the support of Members of the United Nations to face its challenges. The victims of Sierra Leone deserve Justice.

*Marissa Miraldi*

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<sup>47</sup> Rod MacJohnson, *Sierra Leone Takes on 'Milestone' War Crimes Indictments*, AGENCE-FRANCE-PRESSE, Mar. 11, 2003, <http://www.reliefweb.int/w/rwb.nsf/0/bfc59dd055c3ac35c1256ce7005b6e55?OpenDocument>.

<sup>48</sup> *Sierra Leone News*, Jan. 31, 2003, available at <http://sierra-leone.org/slnews0103.html> Because the Court was directly created by the Security Council, it lacks the authority to order the surrender of war crimes suspect residing outside of Sierra Leone; see also Feilowitz, *supra* note 33.