Power, Security, and Justice in Postconflict Sierra Leone

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The international community established a Special Court for Sierra Leone (SCSL) in 2002. However, this article contends that relatively little political acceptance of justice as a peace-building mechanism has occurred and that the court consequently fails to fully address core justice issues and grievances that constituted key drivers of the conflict. The failure to establish or reform justice systems that Sierra Leoneans actually access—including district courts, chiefdom courts, and other local mechanisms—and the establishment of an entirely international court have led to a continuation of prewar political patterns in the countryside and the inability of the international community to address local justice issues.

The article addresses the related matter of justice more broadly, beyond the transitional phase. The SCSL and the Truth and Reconciliation Commission (TRC) "dual track" approach was designed not only to be transitional but also to lead to a more just postwar settlement. The article argues that to a large degree, this has not happened. Furthermore, despite the short-term success of the transitional program in bringing a small number of perpetrators to justice very publicly, a failure to take into account local approaches to justice and the close relationship of power and justice at the local level has meant that justice remains somewhat elusive for many people across the country.

The transitional justice mechanisms in Sierra Leone rested primarily on a bureaucratic-institutional model that has always been weak within Sierra Leone and, to a certain extent, has always been subjugated by a charismatic and patronage system with multiple, competing, and complementary political powers.[1] The emphasis on legal-bureaucratic approaches clearly satisfied international authority but did not penetrate into the country through its lack of recognition of alternative sources of justice, their division into a "modern/traditional" dichotomy that relegated the traditional to the second tier of a hierarchy, and a disinclination to recognize the interrelated nature of power and justice in Sierra Leone.

For most people, justice is not dispensed from formal, modern systems but from a dense network of institutions at the local level, which may or may not be codified or even

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visible. These institutions constantly change and are subject to a variety of controlling bodies that regulate the meaning and enforcement of common law. Indeed, even the formal institutions of local and magistrate courts draw on common law rather than state law in many of their cases, and this practice is open to interpretation and influence according to changing local customs. Different social structures exercise influence over justice processes and outcomes. These biases exist despite the public, national agreements, for example, to enforce human-rights legislation. Local power is at least partly exercised through the appointment to courts and through the role of elders within villages, many of whom are relatively old and male. As documented, this situation leads to institutional bias within the customary system, particularly against women and individuals classified as youths.

Transitional Justice Mechanisms in Sierra Leone

The SCSL was established through an agreement between the United Nations (UN) and the government of Sierra Leone with the aim of bringing to justice those who bore the most responsibility for the human-rights abuses perpetrated during the war. The latter included the leadership of all sides, particularly the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council as well as—and more controversially—the Civil Defense Forces. In addition, the court also tried Charles Taylor for crimes in Sierra Leone and still seeks a former leader, Johnny Paul Koroma. The court was explicitly created as a hybrid institution mixing domestic and international staff and approaches as part of a post-2000 expansion of international law into non-Western societies. Like its equivalents in East Timor and Cambodia, the special court was located in the country where the abuses happened and sought to meet the justice needs of local people as well as international legal standards.

In targeting senior members of the armed groups, the SCSL not only wished to show impartiality in terms of which side stood trial but also resolved that senior leaders could not enjoy impunity when it came to international law. Notably, the court did not have a mandate to tackle wider issues within Sierra Leone and, perhaps more controversially, could not pursue those responsible for individual crimes carried out by rank-and-file members of the groups. In this regard, the SCSL has been relatively successful. Despite the fact that Sam Bockarie, Sam Hinga Norman, and Foday Sankoh all died during the process, they and the other senior actors have actually been prosecuted, convicted, and sentenced, sending a powerful signal to others. Undoubtedly, however, the failure to prosecute any but a very small number of leaders has created considerable disappointment within Sierra Leone.[2]

Although the SCSL has been described as a "hybrid," there are questions about how far the court made real concessions to the local social environment within which it operated. In particular, the Civil Defense Forces trial, as it was called, represents an important element of the transitional justice process since it put on trial a group of Kamajor fighters who operated on the side of the democratically elected government and against the RUF.

Widespread belief held that the Kamajors, who gained their power from local hunting traditions, were impervious to bullets as a result of magic. Consequently, they were willing and able to defend their communities against the RUF and to support or reestablish civilian rule. At the same time, the Kamajor tradition, by its very nature, is violent, and several reports indicate that its members use terror techniques similar to those of the RUF.

Against this socially embedded structure, the SCSL levelled an array of international law on child soldiers, atrocities, and belief systems that represented a failure to understand the context in which it was operating and a related inability to grasp the nature of the Sierra Leonean ideas of justice. At the same time, Tim Kelsall points out that the SCSL also did not recognize that the notion of superior responsibility was problematic in an organization like the Civil Defense Forces and that the witness statements used to convict those leaders were flawed since the witnesses gave evidence on a different basis than the expectations of the court.[3] All of these issues damaged the legitimacy of transitional justice within Sierra Leone beyond Freetown.

The SCSL was designed to enact retributive justice through trying "those who bear the greatest responsibility," but the TRC sought to bring restorative justice to individuals and to the country as a whole. The TRC described its work as carrying out a "series of thematic, institutional and event-specific hearings in Freetown."[4] This process was supplemented by four days of public hearings and one day of closed hearings in each of the 12 district headquarters towns across the country. The hearings were intended to "cater for the needs of the victims" and to promote "social harmony and reconciliation."[5] The hearings consisted of witnesses, perpetrators, and victims all telling their stories to a panel of commissioners and a "leader of evidence." The TRC did not specifically aim to gather new information since an earlier evidence-gathering phase had occurred; rather, it wished to allow for catharsis through storytelling and recognition that, hopefully, would facilitate wider societal healing.

However, several scholars have pointed out that the TRC failed to provide what the local people wanted or needed.[6] Even though the truth-telling aspects of the process had logic based on reconciliation between clear protagonists (e.g., Rwanda), its value is significantly reduced where the boundaries between the violent groups are less well defined and it becomes more difficult to determine "other" particular identities. As Gearoid Millar points out, the real issue in Sierra Leone is that the theory of how conflict resolution should work does not hold up in a situation in which clear identities are hard to find.[7]

The basic assumptions of the TRC were similar to those in other TRC examples; that is, the conflict happened between groups that dehumanized each other through hatred and an in-group/out-group dichotomy.[8] However, in Sierra Leone, very little clear demarcation and certainly no clear divisions existed along ethnic or religious lines, for example. Instead of a clearly delineated, structured conflict between two distinct protagonists, Sierra Leone was an evolving morass of different groups with unclear command structures and institutional organization, characterized partly by shifting alliances and changing loyalties and motivations.[9]

Indeed, the TRC partly identified successive governance problems at the beginning of its own report: "While there were many factors, both internal and external, that explain the cause of the civil war, the Commission came to the conclusion that it was years of bad governance, endemic corruption and the denial of basic human rights that created the deplorable conditions that made the conflict inevitable."[10]

This situation led to a wave of opportunism as different, fragmented groups recruited disenfranchised and alienated youth. In other words, this was not a structures conflict that allowed a TRC to persuade one side to reconcile with another. In fairness, the TRC did not intend to do so, specifying that it wished to reconcile victims and perpetrators. The hearings were designed to create "a climate which fosters constructive interchange between victims and perpetrators" and to "promote healing and reconciliation and to prevent a repetition of the violence and abuses suffered."[11] However, the situation in Sierra Leone, partly because of its fluidity and partly because of sympathy with some of the young men within the RUF, did not generate significant hatred of perpetrators. In fact, similarly to Northern Uganda, it is striking how many people regard perpetrators as "our brothers" or "our children."[12]

To What Extent Should Sierra Leone's Transitional Justice Processes Be Considered a Success?

Regardless, the SCSL did achieve a number of firsts, including hearing cases of gender-based crimes and child soldiers as well as those involving responsibility for war crimes by individuals in leadership positions. Importantly, it was the first to receive the specific mandate to prosecute people who bore the most responsibility for serious crimes; the first to sit in the place where those crimes were committed; the first to be overseen by a management committee of independent member states; the first to provide some scope for the appointment of local officials; and the first to be funded voluntarily by member states of the UN. In legal terms, it also set a number of important precedents, including establishment of a principal defender to ensure a fair defense, an outreach office, and a Legacy Phase Working Group to assure a lasting legacy for the court. In addition, the SCSL was the first body to sit alongside a truth and reconciliation process. However, a number of areas regarding the success of the SCSL and its twin process, the TRC, remain open to question.

Firstly, the Sierra Leone legal profession stayed away from the court, believing that its proceedings lacked legitimacy—a perception not helped by some early decisions. This attitude reflected a more general view arising from the establishment of the SCSL after the TRC. Specifically, many Sierra Leoneans felt excluded from the discussions about creation of the court. This top-down approach caused significant issues, and even the UN recognized its error when it tried to include Sierra Leonean actors late in the day. At the same time, concerns arose over the perceived privileging of the SCSL over the TRC, which resulted in a statement from a group of nongovernmental organizations requesting parity between the two.[13] That is, the TRC was seen as having local legitimacy as a result

of local consultation and active Sierra Leonean participation; moreover, it was less controversial than the special court.[14]

Secondly, both the TRC and the SCSL have had differing impacts. The TRC is perceived to be quite broad, constructing a particular narrative of the conflict, whereas the SCSL is seen as far too narrow—partly a result of the UN's insistence on efficiency. Toward this end, the SCSL has proven remarkably efficient in terms of its narrow mandate, resulting in fewer trials at lower cost and indictments issued within nine months. However, the trials themselves have been slower. Further, the fact that the SCSL model operates outside the usual constraints of the local legal system has had some advantages. Significant issues have arisen, not least of which is the idea that the SCSL has been "parachuted in" and is unrelated to the domestic legal system and that the extremely small number of people tried amounts to no more than a symbolic gesture, particularly if there is no real legacy within the justice system more broadly. Kelsall points out some real issues in establishing responsibility in organizations that lack clear command structures.[15]

The TRC and the exercise in "truth telling" that comprised the core of the process had a different sort of effect. Extensive local research on the TRC by Rosalind Shaw and Millar shows clearly that the process itself was largely regarded as redundant by most Sierra Leoneans.[16] Although the external imposition of a process was considered a cathartic experience for both individuals and society as a whole, clearly a deep misconception existed about what the process was supposed to achieve and the nature of justice expected from it. Millar points out that the impact and perception of the TRC depended very much on the initial expectations of the individual taking part.[17] At its core, this depends on what constitutes restorative justice for an individual—telling one's story is not necessarily restorative justice if the initial infringement has been social, economic, or cultural, or even all three. In other words, the effect of the TRC was limited by its dearth of engagement with local systems and perceptions of justice and redress.

The impact of the TRC process was further limited by its attempt to seek out narratives that engaged with hatred or "othering" of specified groups within society. TRCs in Rwanda and South Africa, for example, worked partially because of the narratives to be written of oppression by a clearly identifiable group against another in an institutionalized conflict. Such was not the case in Sierra Leone, so the process of the TRC needed to change to adapt to the context of transitional justice—something it could not do.

Thirdly are the issues concerning legitimacy. The TRC, for all its faults, enjoyed significant local support among both civil society groups and most of the political and professional class within Sierra Leone. Despite its limitations, the TRC report stands as a monumental effort of narrative reconstruction and assimilation of evidence. One may question its overall impact, but it was an invaluable research exercise that enjoyed support and legitimacy. However, as the TRC Act itself states, the commission was empowered to "seek assistance for traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations of abuses in support of healing and reconciliation."[18] Despite this recognition of the issue, the actual use of traditional justice actors in the process remained very weak throughout.[19] The SCSL, though, was affected

from its inception by the perception that it was an "international court" creating what the International Center for Transitional Justice labelled a "spaceship phenomenon," whereby local people came to perceive the court as an interesting curiosity that had very little effect on their lives.[20]

Fourthly, questions have arisen regarding fairness, specifically in relation to the standards of the defense counsel available. Within the court, defendants received an unusually high level of institutional support, to the extent that a report by the International Center for Transitional Justice identifies the level of support as higher than the usual provisions in other trials.[21] Clearly, international justice demands performance of a certain standard of justice, but certainly the perception in Sierra Leone was that the defendants received special treatment in both their defense and the standards of accommodation they enjoyed while on trial, held to be better than that for most Sierra Leoneans.[22]

The question of the TRC's and SCSL's success remains somewhat thorny. Even on its own criteria, the TRC failed to meet its own aims of reaching out to traditional justice mechanisms that dominate justice beyond Freetown. An inability to recognize that justice is essentially political in Sierra Leone meant that both the TRC and SCSL did not reach out as widely or as effectively as they desired. The SCSL remained largely an international court, detached from both the legal profession in Sierra Leone or most of the population, who were either unaware of or unconcerned with the very small number of cases dealt with. The success of the SCSL remains primarily in the efficiency of concluding a small number of cases in a cost-effective way, but even here analysis by Kelsall, among others, points to issues with understanding of culture, definitions of categories, reliability of witnesses, and the culpability of individuals in decentralized command and control mechanisms.[23]

The TRC, on the other hand, represents a mechanism that raises differing views on the process. In particular, discussion has taken place about the scope of the TRC as a whole and whether the "truth" could be realized—or if reconciliation was a realistic goal in such a traumatized country.[24] At the same time, several of the issues raised in criticism of the SCSL also occurred in relation to the TRC— specifically, whether or not witnesses told the truth at all, given the alien nature of the process through its adversarial approach, the lack of cross-referencing and cross examination, and the large number of people involved in the conflict who did not testify at all. Nevertheless, the report itself enjoys almost universal respect, standing as an impressive historical document in its own right and probably the definitive account of the war, despite its faults.

At the same time, in some of its long-term goals, the TRC process fell short of its aims. In terms of addressing impunity, the commission had no power to compel the giving of evidence and was relatively unsuccessful in its attempt to generate a virtuous circle of confession and forgiveness. The closest it came to this objective was in recognition of what "our side" did during the war rather than individual culpability. Further, the TRC lacked any teeth and believed that for the perpetrators themselves to participate at all was sufficient "punishment"—a belief rather weakened by the fact that not many participated.

One of the defining features of the TRC was the emphasis on victims and restorative justice, particularly through recognition of suffering through public hearings. However, this is a very Western cultural approach, and Kelsall, among others, criticizes it as too alien for many victims and too formal a mechanism.[25] The lack of funding also meant that in many cases the expense of attending the TRC fell on the participant; thus, it actually cost people to give evidence. Coupled with the government's disinclination to provide reparations for the testimony and a perceived lack of emphasis on victims, despite public promises, it is hardly surprising that the TRC is regarded with some cynicism among victims.[26]

Cynicism and perceived failure are undoubtedly linked to the matter of the government's inability to address underlying issues that led to war in the first place. Without structural reform and engagement with local processes and politics, one can hardly imagine how longer-term reconciliation can take place. The TRC was supposed to lead to reconciliation through the perpetrators recognizing and confessing their crimes and the community then forgiving them, but without support packages, training, employment, and a change in the political systems of inclusion and exclusion, there is no real foundation for reconciliation. At the same time, the Sierra Leone war was relatively unstructured in that no clear institutional boundaries existed and several changes of side occurred during the conflict. In some places, it took the form of a generational convulsion or an agrarian slave revolt and certainly a revolt against authority in the countryside, where the role of the chiefs and local political systems became central.[27]

The Truth and Reconciliation Commission, the Special Court for Sierra Leone, and Justice in Sierra Leone

One little-discussed question asks how much the TRC and SCSL have affected justice more broadly in Sierra Leone. Clearly, this point is critical if there is to be a lasting legacy. However, very little linkage existed, and in fact the postwar interventions were dominated by reestablishing security through disbanding the RUF, forming a new military, and reconstructing the Sierra Leone Police.[28] One of the unintended consequences of a focus on policing was that reforms of other institutions forming part of the justice sector moved forward more slowly. This lag in the development of justice alongside security has been characteristic of the reform process right from local courts, formal legal systems, and prisons to ministerial development. Even by 2008, the police themselves were regularly commenting that weaker capacity across justice institutions was undermining effectiveness through an inability to process cases.[29]

Although some development of the justice system has taken place at a relatively late stage in the postconflict reform process, the capacity to use these courts had not necessarily developed.[30] The legacy of a failing justice system that had built up over several years was still being felt in Sierra Leone as late as 2008. In particular, the system faces a huge backlog of cases—including those awaiting trial, imprisonment, or enforcement decisions—poor record keeping, and insufficient space in prisons.

In common with many countries, Sierra Leone also has issues in incorporating traditional systems within the justice system as a whole. It is clear that the traditional system, operated by paramount and section chiefs, offers access to many more people than the formal state system. The traditional system has been seen as part of the justice sector reform supported by donors at least partly because the formal system does not reach into the countryside.[31] Local citizens have made limited use of traditional systems in Sierra Leone to affect reconciliation and peace building within local communities although the extent of this usage remains underresearched.[32]

In hindsight, it is easy to criticize the lack of progress in justice reform, but one should recognize that the justice sector had been subject to a very long decline. Reconstructing a legal system takes time and investment. By 2008 the Sierra Leone Bar Association included approximately 200 members, virtually all of whom reside in Freetown, thus leaving access to justice extremely difficult for those who live in the countryside. Given the fact that the RUF may be considered a rural-based organization, the lack of justice in the countryside must be seen as extremely risky in a fragile country and a very real threat to any process of reconciliation.[33]

Moreover, prior to the emergence of the Justice Sector Development Programme, which started in 2005, the Ministry of Internal Affairs, responsible for governing the justice sector, had received no assistance. This omission has had implications in terms of a lack of representation for the police and justice sector at the ministerial level, access to government resources for justice in general, and leadership for the justice sector as a whole. In conjunction with the decentralization process, this situation produces considerable variation in interpretation of customary law at the local level, with lack of coherent and effective central oversight. A broad and detailed consultation at the village level carried out by the Department for International Development concluded that the populace had a general desire for better governance rather than abolition of the chiefdom system.[34]

Local support for the chieftancy might be surprising, given its role as a key element in driving the population into conflict by enhancing its economic, social, and political alienation.[35] The rule of a rural, male gerontocracy in the countryside, complete with degraded and corrupt links to elements of the state and particularly to the diamond trade in diamond-bearing areas, meant that the chiefdom system had been in decline for a long time before the war eventually destroyed large parts of it. It was not an accident that the first target sought out by RUF fighters during the war, in almost every case, was the chief, closely followed by the district officer. One should also note that reconciliation relies on similar systems at a local level, creating a whole series of political biases and issues over access and accountability.

The reality of local justice for most people in Sierra Leone is not a bifurcated system with two mutually exclusive and antagonistic systems (formal versus informal) but a hybrid consisting of a number of differing choices with a wide variety of differing possible outcomes. This fact is reinforced not only by the apparent contradiction of having a "modern" government system coexisting with a "traditional" one, but also by the willing-

ness of local people to exercise a preference for the lowest possible level of justice (i.e., the most local to them) and to "shop around" for the desired forum for any given situation.[36]

The reality of justice is that of shades of gray rather than a sharp division between "formal" or "informal" exist, with the District Magistrates' Court at the formal, state end of a spectrum and the informal family elements at the other. The government of Sierra Leone itself estimates that around 70 percent of people in the country cannot access the formal state system and rely on the customary system through the local courts or informal mechanisms at the local level (such as talking to the chief) that remain undocumented.[37] Again, this means that reconciliation at a local level frequently relies on former combatants being subject to the rule of a chief who may be related to a victim of those combatants and who also might use the court as a source of power rather than a source of justice.

For example, during the consultations on the draft Local Courts Act in 2006, one paramount chief directly equated justice with power by stating that "if you take the authority of the local courts away from the Paramount Chiefs, they won't have any power."[38] In some chiefdoms, the close alliance among the local council chief administrator, the chief, and senior councillors means that the magistrates and local courts can be placed under significant pressure to bring about particular outcomes, usually in favor of the family or interests of the local political elite.[39]

Powerlessness and Access to Justice

The previous section outlined the nature of political power and pointed to the close link between local political power and justice, which becomes clear when we examine the lack of access to justice of specific groups within society. Urban areas may offer an option of a formal justice mechanism, usually a magistrates' court or an appeal court, but in rural areas most of the population relies on access to local courts, presided over by a board appointed by the paramount chief, leaving the chiefdom as the only real actor "beyond the tarmac road."[40] The local courts mainly investigate and make judgements based on customary law, and chiefs have the power to set bylaws in conjunction with predominantly male elders. Consequently, citizens do not necessarily know the bylaws that apply to them or realize that they may contravene human rights.[41] At the same time, a poor person has little chance of bringing a successful case against a chief or a member of a chief's family.

One additional factor is the continuing importance of kin groupings to rural society. Chiefs themselves are constrained by ruling family and kin linkages as well as traditions within the rural hierarchy.[42] Family history is frequently taken into account in selecting people for formal positions, so descendants of chiefs are more likely to gain positions of influence than are relative newcomers. Kinship also has the effect of restricting power to a particular ethnic group—the *indigenes*—or the original founders. Because chiefdom and kinship are so tied to the land, legitimacy is usually linked to the length of time that a particular family has occupied a piece of land.

This practice places certain groups of people in an increasingly powerless position. Non-*indigene* (stranger) women and youth are in particularly vulnerable positions with almost no representation and no power to influence decisions in local courts. Paramount chiefs are frequently cited as hearing cases when they have no mandate to do so, and individuals who oppose the chief are likely to be ostracized from the community.[43] Young men are expected to obey their elders while (male) elders wield power in families, social groupings, and justice forums like the courts. "Youth" in Sierra Leone, as elsewhere, is a social category, having more to do with social status, belonging, and kinship relations than with age.[44]

Women have also been marginalized by the customary system of justice although this pattern varies between the north and south of the country.[45] The customary system tends to govern domestic issues that concern many women while women also face higher barriers to entry to the formal sector in terms of financial and social issues. The management of domestic affairs, dominated by men, is institutionally biased against women and frequently violates their constitutional and human rights. Many of these practices continue within the customary system despite the introduction of human-rights legislation, including women having the status of "minors" in many local courts.[46] Research within the chiefdoms in 2002 revealed comments from women that expressed pleasure at being asked their opinion because they "are not considered worthy of taking any challenging responsibility other than cooking and nursing children."[47] The same report goes on to note that the following were all rigorously supported by local courts: polygyny (one man with several conjugal relationships), leviratic marriage (inheriting a brother's wife), collecting "marriage tax" while girls were still at school, hearing serious rape cases in local courts rather than district courts (and therefore treating them as minor cases), and patrilineal inheritance.[48]

Conclusions: The Impact of the Truth and Reconciliation Commission and the Special Court for Sierra Leone

The TRC did realize some outreach, but it is also clear that there has been very little penetration of the underlying justice systems that face most people in the countryside. Insufficient funding for the TRC, poor sensitization across the countryside, and even significant gaps in geographical coverage added to a significant shortfall in terms of the methods used by the TRC. In particular, in a country where many people had nothing and where a campaign partly relied on amputations that robbed families of breadwinners, justice meant getting some form of compensation. Storytelling came in a poor second to many, especially when it was not always clear who was to blame.

The SCSL, though, had an even narrower remit than the TRC and arguably has been more problematic in terms of impact beyond Freetown. In keeping with the TRC, a strong demand for some form of reparation has always existed, even though it is ac-

knowledged that this was not in the remit of the court. This fact led many individuals to question the value of the court and the perceived distance between international versions of justice and local ideas of what constituted justice. The situation was further exacerbated by the location of the court in Freetown and its lack of effective outreach, including that to local organizations such as the Amputee Association, which actually threatened to boycott the court over reparations. Undoubtedly, this has limited the impact of the SCSL within the country itself.

The limitations can also be perceived in terms of something that court has done well but has seen limited application in the broader justice system—specifically, the position of women and gender crime as a significant element of war.[49] Consequently, significant work has occurred internationally in terms of recognizing sexual and gender-based violence, as well as humanitarian law and witness protection as an element thereof. Given the nature of the local justice system, however, one has to ask why the court and the institutions around it did not try to transfer some of those approaches to the broader justice mechanisms as part of its legacy.

Importantly, the local legal community has largely shunned the court, and the bar association has provided very mixed views about its effectiveness since the supposed "hybridity" of the court proved a bit less hybrid than it expected. The bar association itself expected that as many as half the posts in the court would go to local professional staff; in reality, virtually no Sierra Leonean lawyers are working in the court, and all of the major roles have been taken by international staff. In fact the SCSL statute says that three Sierra Leonean judges should be in the trial and appellate courts. The government of Sierra Leone then changed this wording to "nominees of the government," resulting in the appointment of one Sierra Leonean judge, another who had been lecturing in the United States since the 1980s, and an Australian. This early disappointment was then followed by work in a severely dysfunctional and underresourced legal system beyond the court, fuelling a perception that long-term justice was not really what the court was interested in. Further, many of the elite in Freetown feel that "this is not how we do things in Africa" and that individual guilt is not a traditional way to deal with the justice issues. For example, the case of Sam Hinga Norman and the Civil Defense Forces, outlined above, was a serious miscalculation that has led significant groups within the country to view the court as an entirely external imposition with little to do with local justice.[50] For many people in the countryside, Norman was a hero, not a criminal, and support for him in the south was so strong that it became part of the political cause of senior politicians like Charles Margai, himself a defense counsel before the court.

So where does that leave an analysis of the SCSL and the TRC? This article has outlined some of the core issues with both bodies and then put them into the broader context of justice in Sierra Leone. The study shows that the legacy of the both the TRC and the SCSL remains extremely weak. The real question is why?

Firstly, a number of technical issues indicate why lack of impact might be the case. Take for instance an issue about funding for the SCSL and the TRC, to the extent that many members of the court, for example, were accused of spending more time trying to

raise money than doing anything else.[51] The TRC also suffered from financial shortfalls that clearly limited its ability to reach all parts of the country and spend enough time gathering testimony. Despite the excellence of the final report, it remains flawed due to the lack of coverage and the nature of the evidence. At the same time, the absence of any reach into local justice systems effectively means that the customary systems play almost no part in reconciliation efforts.

Secondly, the nature of intervention is necessarily "international," and the SCSL in particular exhibited some of the weaknesses of this approach, privileging international staff over local staff, applying international rules to local problems, and appearing to apply justice to persons regarded as local heroes. A complete failure to establish any meaningful links with the local judiciary, let alone with any broader justice mechanisms in the country, has severely limited the legacy of the court itself.

Even the TRC, which had a mandate to engage with these broader groups, in many ways failed because the mechanisms used were based on a series of misconceptions of justice (see below). Furthermore, tensions existed between the two that unusually coexisted. Since both had funding problems and some degree of overlap, they competed for the same staff. Moreover, the TRC was undoubtedly hampered by the perception that if someone gave testimony, then that person was also in danger of being dragged before the SCSL.

Thirdly, the nature of justice in Sierra Leone is not the same as perceptions of justice internationally—at least in terms of how justice is performed. In particular, Kelsall addresses these failings as representing a "politics of culture"—specifically, around the guilt or otherwise of individuals as perpetrators, whereas local traditions would not seek individual guilt; around the role played by child soldiers in a culture where the age of participating in hunter groups, for example, remains very young; and around significant questions about the nature of a "witness" in Sierra Leone and what that actually means.[52] Expectations of payment for testifying at the TRC and the validity of some witnesses' statements at the SCSL raise issues concerning how well such mechanisms can reach "the truth."

All of these matters relate to both the TRC and SCSL. In an area where the TRC should have performed well—violence against women and children—issues arose with the sensitivity of the process, specifically requiring the victims to testify.[53] The experience of local methods of reconciliation did not call for children to testify and offered a form of "cleansing" and reacceptance into the community that the TRC did not.[54] Perhaps the most telling finding with regard to women was that the SCSL has had an enormous effect on recognition of the crime of sexual violence within international law while the actual justice available to many local women remains somewhat opaque.

Lastly, one needs to reflect on the meaning of hybridity with respect to the SCSL in particular. Specifically, hybridity has to be more than employing a couple of local people. The failure of both the TRC and the SCSL to leave a lasting legacy on the domestic justice system, thus preventing meaningful reconciliation over time, amounted to a wasted opportunity. The inability to actually develop a hybrid mechanism whereby an

international system could interact with the dense network of local institutions that offer justice in Sierra Leone means that the international effort remains something of a "spaceship" intervention.

International legal interventions face difficult choices. Local institutions are greatly flawed, but so are the formal legal frameworks and institutions in countries like Sierra Leone. Interventions confront a balance of how to interact with flawed local systems used by people. This article contends that the SCSL and TRC in many ways missed opportunities to engage with these systems to make them more representative and less political in a local sense. Selecting the "spaceship" model or leaving local justice systems to deal with the issue is not a hard choice. The spaceship model severely limits impact—and, therefore, reconciliation—whereas the version of reconciliation offered by local systems is related to the preservation of a social hierarchy that benefits some at the expense of others. Where both exist, one can carry out successful intervention in enabling those seeking justice to access beneficial choices for them.

For international justice mechanisms like the SCSL and the TRC, this means that they must be properly resourced, flexible enough to deal with local mechanisms, properly explained to the local population, sensitive to needs and local customs, and able to involve local people within them. The experience of Sierra Leone comes very close to a mixture of poor financing and misunderstanding (the TRC) and a parachuted-in court of foreigners "doing justice" to a small group of Sierra Leoneans.

Notes

1. Paul Richards, *Fighting for the Rain Forest: War, Youth, and Resources in Sierra Leone* (Portsmouth, NH: Heinemann, 1996).
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28. Paul Jackson and Peter Albrecht, *Security Sector Transformation in Sierra Leone, 1997–2007* (Basingstoke, UK: Palgrave, 2010); and Lisa Denney, *Justice and Security Reform: Development Agencies and Informal Institutions in Sierra Leone* (Abingdon, Oxon: Routledge, 2014).

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31. The commonly cited figure—but very difficult to verify—is that around 80 percent of people access justice through traditional mechanisms.

32. Bruce Baker, "The African Post-conflict Policing Agenda in Sierra Leone," *Conflict, Security & Development* 6, no. 1 (April 2006): 25–50.

33. Jackson, *Reshuffling the Deck*, 95–96.

34. Richard Fanthorpe, Alice Jay, and Victor Kalie Kamara, "A Review of the Chiefdom Governance Reform Programme, Incorporating an Analysis of Chiefdom Administration in Sierra Leone," unpublished report (Freetown, Sierra Leone: Department for International Development, November 2002).

35. Jackson, *Chiefs, Money and Politicians*, 58.

36. Tim Kelsall, "Law and Legal Institutions in an Upcountry Sierra Leonean Town," 2006, unpublished report prepared for Timap for Justice and the National Forum for Human Rights, Sierra Leone.

37. Atlas Project, *Transitional Justice in Sierra Leone*, 5–10.

38. R. E. Manning, "The Landscape of Local Authority in Sierra Leone: How 'Traditional' and 'Modern' Justice Systems Interact," in *Decentralization, Democracy, and Development: Recent Experience from Sierra Leone*, World Bank Country Study, ed. Yongmei Zhou (Washington, DC: World Bank, 2009), 131, https://

openknowledge.worldbank.org/bitstream/handle/10986/2672/503610PUB0Box31601OFFICIAL0USE0ONY1.pdf?sequence=1.

39. Clare Castillejo, *Building Accountable Justice in Sierra Leone*, FRIDE Working Paper 76 (Madrid: FRIDE, January 2009), 1–21, http://fride.org/descarga/WP76_Building_Accountable_Eng_ene09.pdf. Kelsall also reports a case of a man's daughter being beaten by another child and involving the paying of hospital fees, but he also seeks compensation for the beating. The treasury clerk is a friend of the offender's mother and intervenes, promising to settle the case privately. The case is not settled, however, and the man either has to go to the district appeal court or the magistrates' court, where he will incur considerable costs for fees, a letter, and an arrest. Of course, he could go to the treasury clerk's boss, the local court supervisor, but he is a relative of the treasury clerk. Kelsall, "Law and Legal Institutions."

40. Bruce Baker, "Beyond the Tarmac Road: Local Forms of Policing in Sierra Leone and Rwanda," *Review of African Political Economy* 35, no. 118 (2008): 555–70.

41. Castillejo, *Building Accountable Justice*, 1–2.

42. Secret societies come in here partly since they perform a regulatory function in society, including influencing the chief.

43. Castillejo, *Building Accountable Justice*, 1–21; and Richards, "To Fight or to Farm?"

44. Richard Fanthorpe, "Neither Citizen nor Subject? 'Lumpen' Agency and the Legacy of Native Administration in Sierra Leone," *African Affairs* 100, no. 400 (2001): 363–86; and Paul Richards, "The Social Assessment Study: Community-Driven Development and Social Capital in Post-war Sierra Leone," 2003, unpublished paper commissioned by the Community Driven Development Group of the World Bank for the National Commission for Social Action of the Government of Sierra Leone.

45. Castillejo, *Building Accountable Justice*, 1–3.

46. Ibid., 10–11.

47. Fanthorpe, Jay, and Kamara, "Review of the Chiefdom Governance Reform Programme," 31.

48. Ibid.

49. A. Tejan-Cole, "Sierra Leone's 'Not-So-Special' Court," in *Peace versus Justice? The Dilemma of Transitional Justice in Africa*, ed. Chandra Lekha Sriram and Suren Pillay (Oxford, UK: James Currey, 2010), 223–48.

50. Exacerbating this perception is the position of the United States, which pressured the SCSL to sign Article 98 in 2003. The latter states that the court would not hand over US citizens to the International Criminal Court, fuelling a view that the court was just another arm of US foreign policy.

51. Tejan-Cole, "'Not-So-Special' Court."

52. Kelsall, *Culture under Cross-Examination*, 1–35.

53. Thelma Ekiyor, "Reflecting on the Sierra Leone Truth and Reconciliation Commission: A Peacebuilding Perspective," in Sriram and Pillay, *Peace versus Justice?*, 223–48.

54. Ibid., 223.