

REPORT

Legacy: Completing the Work of the Special Court for Sierra Leone

THE SPECIAL COURT FOR SIERRA LEONE will soon become the first post-Cold War international tribunal to conclude its mandate. Yet enormous work remains to be done before the court closes, and the legacy of the Special Court may be undermined if pressing issues are not addressed. This report highlights seven key areas that require urgent national and international attention to safeguard the court's legacy and secure justice for the people of Sierra Leone.



Executive Summary

When the Special Court for Sierra Leone (SCSL) completes its proceedings against former Liberian President Charles Taylor, the court will become the first of the international tribunals set up since the end of the Cold War to close its doors.¹ The trial judgment against Taylor, the final accused, is expected in late 2011.² If appeals are lodged, the appellate judgment could be expected by mid-2012; the resolution of any such appeals will mark the official closure of the SCSL.

Pending the end of the Taylor trial, the SCSL has prosecuted eight of those most responsible for crimes against humanity, war crimes, and other serious violations of international humanitarian law committed during the conflict in Sierra Leone. In addition to enhancing prospects for lasting peace and security, it has also created awareness among Sierra Leoneans that a credible justice system can work to hold powerful people accountable.

However, the legacy of the Special Court is in danger of being undermined if greater attention is not paid to pressing issues that require urgent national, international, and donor support over the next six months, in advance of the court's closing. This report highlights seven key remaining legacy and residual issues that require urgent national and international attention, most of which must be undertaken before the SCSL closes. These issues include: conducting outreach on legacy and residual issues, ensuring the timely establishment of the Residual Special Court, implementing the proposed uses for the current SCSL facilities, articulating archive access and preservation policies, finalizing and funding the national witness protection unit, integrating SCSL jurisprudence into national law, and prosecuting lower-level perpetrators in the domestic courts. These issues are detailed below.

The civil war in Sierra Leone started in March 1991 and continued for 11 brutal years. Grave atrocities were committed, including the recruitment of child soldiers, the burning of civilian houses and public buildings, the amputation of limbs, the rape of women and girls, and the killing of several thousand civilians.³ In 2000, the government of Sierra Leone, largely as a result of civil society advocacy, requested United Nations assistance in establishing a hybrid court—located within the country—to address these atrocities.⁴ The SCSL began operations in 2002⁵ and has issued judgments against high level members of the warring factions: the Revolutionary United Front (RUF), the Armed

¹ The Special Panels for Serious Crimes in East Timor closed its proceedings in 2005; however it can be classified as a hybrid process within the national court system, rather than a true international court. See for example, ICTJ Briefing, *Prosecutions of Crimes Against Humanity in Timor-Leste: A Case Analysis* (June 2011).

² See the Charles Taylor trial website set up by the Open Society Justice Initiative, at <http://www.charlestaylortrial.org/2011/03/11/taylor-trial-concludes-judges-begin-deliberations/>.

³ See Human Rights Watch, *Sowing Terror, Atrocities Against Civilians in Sierra Leone*, July 1997, Vol. 10, No. 3(A), at <http://www.hrw.org/legacy/reports98/sierra/>.

⁴ United Nations, Agreement between the UN and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2000), Annex S/2000/915 (“the Agreement”).

⁵ Special Court Ratification Act, adopted 7 March 2002, amended 15 July 2002.

Forces Revolutionary Council (AFRC), and the Civil Defence Forces (CDF).⁶ The Taylor trial is the only SCSL case to be tried outside the country—in The Hague, the Netherlands—due to concerns that holding his trial in Sierra Leone would be a threat to security in the West African region.⁷

This report is based on research and interviews conducted by staff of the Open Society Justice Initiative from July 2007 to September 2011. Persons interviewed for this report included present and former national and international staff of the SCSL, members of Sierra Leonean civil society, Sierra Leonean government staff, members of the Sierra Leonean legal community, and members of Sierra Leonean victims' groups from around the country.

Recommendations

To the Sierra Leonean government:

1. Sustain SCSL-related legacy programs, including implementing the Peace Museum and legal training center, with an emphasis on providing or seeking funding and maintaining outreach.
2. Ratify the Agreement on the Residual Special Court.
3. Draft operating protocols to facilitate the establishment of the Residual Special Court, based on consultations with the UN, SCSL staff, and civil society.
4. Finalize the implementation of the National Witness Protection and Assistance Program, including the necessary technical assistance agreements with the Residual Special Court regarding protection of SCSL witnesses.

To the Special Court for Sierra Leone:

1. Conduct outreach on the Taylor judgment and the appeals process, the closure of the court, and legacy and residual matters.
2. Task existing staff with achieving legacy objectives.
3. Ensure national ownership of the court's electronic jurisprudence project (Sierra Leone Information Institute, or "Sierra LII"), including coordination with the Sierra Leonean judiciary.
4. Define and disseminate updated budgetary requirements for legacy projects, including the Peace Museum and the Sierra LII project.

⁶ See judgments at Special Court for Sierra Leone website, at <http://www.scsl.org/CASES/tabid/71/Default.aspx>.

⁷ See Security Council Resolution 1688 June 16, 2006.

To the United Nations:

1. Identify ways to share an administrative platform between the Residual Special Court and the residual mechanisms of the UN tribunals for Rwanda and the former Yugoslavia.
2. Facilitate the process of hiring Residual Special Court staff, in particular the president, registrar, and prosecutor prior to the close of the SCSL, and liaise with SCSL staff to assist advance planning of the Residual Special Court.
3. Agree with the government of Sierra Leone on the terms for the potential transfer of the SCSL original archives back to Sierra Leone.

To Sierra Leonean civil society and legal organizations:

1. Engage in dialogue with the SCSL and the government on all legacy initiatives and residual matters and sustain participation in outreach activities.
2. Coordinate peer-to-peer sessions through the Sierra Leone Bar Association to assess SCSL jurisprudence among Sierra Leonean lawyers who worked at the SCSL and the general legal community.
3. Consider test cases regarding national prosecutions of atrocities from the civil war.

To donors and the SCSL Management Committee:

1. Provide adequate funding for the Residual Special Court, the Peace Museum, the electronic jurisprudence project (Sierra LII), and the National Witness Protection and Assistance Program.
2. Assist in establishing the Management Committee for the Residual Special Court.

Legacy Defined

The creation of an international criminal tribunal may by itself be insufficient to promote a just and lasting resolution of conflict. However, the court process should strengthen the rule of law more broadly, thus laying the foundations for a sustainable peace.

This concept of a court's "legacy" has been defined by the United Nations as the "lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, while also strengthening domestic judicial capacity."⁸ Legacy can also encompass objectives which are broader than a purely courtroom-focused remit, such as contributing to lasting peace and security.⁹ Legacy is increasingly recognized as vital to the international justice process, with former UN Secretary-General Kofi Annan noting, "It is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned."¹⁰

The term "legacy" is not specifically contained in the SCSL's founding documents. As a direct result of this omission, legacy projects have not been included in the core budget of the court. Although the SCSL has not provided its own definition of the term "legacy," a court white paper on the issue affirmed its commitment to "engage in activities that go beyond the boundaries of the courtroom and to contribute to efforts being made to address the root causes of the conflict, causes which continue to impede the administration of justice in Sierra Leone and which led to the creation of the Court in the first place."¹¹

The SCSL registrar, who administers the court, set up a Legacy Working Committee in 2005,¹² although it was only in August 2007 that a member of Sierra Leone's civil society was invited to join the committee. The committee focused on five key areas: (1) developing the capacity of the national legal profession; (2) promoting the rule of law and accountability in Sierra Leone; (3) promoting human rights and international humanitarian law; (4) promoting the role of civil society in the justice sector; and (5) assisting the government of Sierra Leone in assessing possible uses for the site of the court beyond the lifespan of the trials.¹³ The SCSL legacy projects to date have touched

⁸ OHCHR, *Rule of Law Tools for Post-Conflict States, Maximizing the Legacy of Hybrid Courts*, HR/PUB/08/2, (New York and Geneva, 2008), pp. 4-5.

⁹ Jessica Lincoln, *Transitional Justice, Peace and Accountability, Outreach and the Role of International Courts After Conflict* (2011), pp. 122-139; see also ICTJ, Caitlin Reiger, *Where To From Here For International Tribunals? Considering Legacy and Residual Issues* (Sept. 2009), available at <http://ictj.org/sites/default/files/ICTJ-Global-Legacy-Tribunal-2009-English.pdf>.

¹⁰ Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, para. 46 (Aug. 23, 2004).

¹¹ Special Court for Sierra Leone Legacy White Paper (Sept. 26 2005), p.2, on file with the Open Society Justice Initiative.

¹² Jessica Lincoln, *Transitional Justice, Peace and Accountability, Outreach and the Role of International Courts After Conflict*, p. 123 (Routledge, 2011).

¹³ SCSL Legacy White Paper, *supra* note 10.

upon a range of these objectives,¹⁴ although the closing phase of the SCSL creates new legacy priorities that center on the need to ensure the process of ending the trials is well understood and appropriately implemented.

Preparing to Close: Seven Key Legacy Objectives for the SCSL's Final Days

1. Conduct outreach focused on legacy and residual issues

It is critical for international or hybrid courts to conduct outreach to explain their work to those most affected by the crimes on trial.¹⁵ These efforts are particularly important as an international court winds down its operations, in order to ensure the closure process is understood and to foster a dialogue on the remaining issues.

While the SCSL has consistently sought to maintain a dialogue with national partners despite funding challenges, the closing of the court poses four new outreach needs. First, it is necessary to address the outcome of the Charles Taylor case. Because the Taylor trial was held outside Sierra Leone in The Hague, the immediate impact of the proceedings on Sierra Leoneans has been muted. More robust outreach is required to explain the outcome of the trial to the people of Sierra Leone, and the trial's significance to the West African region, particularly in Liberia. Second, engagement with Sierra Leoneans on the court's closure is needed, in order to plan the method of the court's closure and to ensure there is understanding on both sides regarding the significance of the ending of the SCSL process. Third, outreach needs to promote the court's legacy efforts, especially the significance of the planned Peace Museum and the future use of the court's premises, as explained in more detail below. Finally, it is necessary to address how outreach efforts will continue to provide information after the closure of the court, as discussed below in the section pertaining to the planned Residual Special Court.

Maintaining contacts between the SCSL and national representatives becomes more challenging when there is less staff available to engage in this process. The SCSL has reduced its staff with the completion of each trial, and currently it has approximately 80

¹⁴ For further reference, see International Center for Transitional Justice, Sierra Leone Court Monitoring Programme, and Thierry Cruvellier, *From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test* (2009), at <http://ictj.org/sites/default/files/ICTJ-SierraLeone-Taylor-Trial-2009-English.pdf>; Brenda J. Hollis, *Legacy of the Special Court of Sierra Leone*, Institute for Security Studies (May 2011), at <http://www.iss.co.za/uploads/19May2011Report.pdf>; Varda Hussain, "Sustaining Judicial Rescues: The Role of Outreach and Capacity-Building Efforts in War Crimes Tribunals," 45Va. J. of Int'l Law 547 (2005); Charles C. Jalloh, "Special Court for Sierra Leone: Achieving Justice?," 32 Mich. J. of Int'l Law 396 (2011); Charles C. Jalloh and Vincent O. Nmehielle, "The Legacy of the Special Court for Sierra Leone," 30 Fletcher F. World Aff. 107(2006) ; Rachel Kerr and Jessica Lincoln, "The Special Court for Sierra Leone: Outreach, Legacy and Impact," War Crimes Research Group Paper, King's College London (2008), at <http://www.kcl.ac.uk/content/1/c6/04/95/60/SCSLOutreachLegacyandImpactFinalReport.pdf> ; Sriram, Chandra Lekha, "Wrong-sizing International Justice? The Hybrid Tribunal in Sierra Leone," 29 Fordham Int'l L. J. 472 (2006); International Center for Transitional Justice, Suma Muhammed, *The Charles Taylor Trial and Legacy of the Special Court for Sierra Leone* (2009), at <http://ictj.org/sites/default/files/ICTJ-SierraLeone-Special-Court-2009-English.pdf>.

¹⁵ For more information about the SCSL's outreach activities, see *Fourth Annual Report of the Special Court for Sierra Leone*, pp.53-54 (2006-2007), at <http://www.sc-sl.org/LinkClick.aspx?fileticket=SaCsn9u8MzE%3d&tabid=176>.

personnel, as compared to approximately 350 at the height of the court's activities.¹⁶ Given this reduced capacity and the absence of funds to hire a dedicated legacy officer, it is critical for the court to ensure legacy efforts are mainstreamed among existing staff.

Partnership with civil society is crucial to the success of these outreach goals and such efforts should acknowledge the important contributions of local actors to the work of the SCSL. Local efforts must be acknowledged at each stage of the legacy process.

2. Ensure the timely establishment of the Residual Special Court for Sierra Leone

Although the SCSL will close after the appeals judgment is issued in the Taylor case, there are matters pertaining to the administration of justice for which continued institutional oversight is required. These include the possible trial of fugitive Johnny Paul Koroma, contempt proceedings, consideration of any requests for review of judgments,¹⁷ protection of witnesses, supervision of enforcement of sentences, assistance to national authorities, and management of the archives.¹⁸

To address these issues, the UN and the government of Sierra Leone negotiated an Agreement on the Establishment of the Residual Special Court for Sierra Leone, which was finalized in 2010.¹⁹ The Residual Special Court is to have its principal seat in Sierra Leone, with an interim seat in the Netherlands until the UN and the Sierra Leonean government agree otherwise, although the criteria for this is not articulated in the Agreement and should be elaborated through consultation with civil society and other interested partners.²⁰

¹⁶ Email communication with Registry staff, dated July 1, 2011, on file with the Open Society Justice Initiative. Of these staff members, 43 are located in the Freetown office and 37 are based in The Hague sub-office. The SCSL also currently maintains, in both Freetown and The Hague, a small number of staff on short-time consultancies.

¹⁷ See Articles 21-23 of the Special Court Statute which refer to review proceedings, enforcement of sentences, and pardon or commutation of sentences, all of which require monitoring throughout the duration of sentences issued by the SCSL, and therefore will require monitoring by the Residual Special Court upon the close of the SCSL.

¹⁸ See, for example, *The Residual Functions and Residual Institution Options of the Special Court for Sierra Leone* (June 23, 2009); Valerie Oosterveld, "The International Criminal Court and the Closure of the Time-Limited International and Hybrid Criminal Tribunals," 8 *Loy. U. Chi Int'l Rev.* 13 (2010); Binta Mansaray and Shakiratu Sanusi, "Residual Matters of Ad Hoc Courts and Tribunals: the SCSL Experience," 36(3) *Commonwealth L. Bulletin* 593 (2010); Gabriel Oosthuizen, Open Society Justice Initiative, *The Residual Functions of the UN International Criminal Tribunals of the former Yugoslavia and Rwanda and the Special Court for Sierra Leone: The Potential Role of the International Criminal Court* (Sept. 30, 2008) (unpublished manuscript); International Center for Transitional Justice, *Closing the International and Hybrid Criminal Tribunals: Mechanisms to Address Residual Issues* (2010), at <http://ictj.org/sites/default/files/ICTJ-Global-Tribunal-Residual-2010-English.pdf> <http://www.ictj.org/static/Prosecutions/ICTJResidIssues2010rpFinal.pdf>; Cecile Aptel, *Planning for Residual Issues and Mechanisms for International and Hybrid Criminal Tribunals: Briefing Paper 4* (2007 *The Residual Functions and Residual Institution Options of The Special Court for Sierra Leone* (June 23, 2009) .

¹⁹ Residual Special Court Agreement, *supra* note 3.

²⁰ *Id.* Article 6.

The Residual Special Court established under this Agreement is intended solely to address issues pertaining to the SCSL. It will be separate from the residual mechanism established by the UN Security Council for the International Criminal Tribunals for Rwanda and the former Yugoslavia both of which are scheduled to close later than the SCSL.²¹ However, there is potential to share at least an administrative platform on some matters. This identification of matters amenable to co-location requires further consultation and exploration by the UN, the Sierra Leonean government, the SCSL, and local civil society representatives. Such discussions need to balance the potential for cost efficiency that co-location could offer against the importance of ensuring that the Residual Special Court is accessible to the Sierra Leonean people.

The Agreement on the Residual Special Court still requires ratification by the Sierra Leonean Parliament before it can be implemented. Although it has already been published in the *Sierra Leone National Gazette* and the country's attorney general and minister of justice has submitted it to the Sierra Leonean Parliament, members of parliament have not begun debating its ratification.²² Delays in this process could seriously affect the timely implementation of the Residual Special Court. After the ratification of the Agreement by parliament, there is still the need to secure funding, establish the necessary infrastructure, and hire support staff. In particular, the early announcement of nominations for the key posts (president, prosecutor, and registrar) could greatly facilitate advance planning for the Residual Special Court. The Residual Special Court is due to come into effect with the closure of the SCSL after the Taylor appeals judgment is released, which is anticipated for mid-2012. The Agreement must therefore be ratified as soon as possible.

There is additional time pressure on this process because the Agreement sets out basic provisions for the Residual Special Court, including its composition,²³ the statute that will govern it, and the need for funding to be secured through voluntary contributions—and fundraising cannot begin until the Agreement is ratified.²⁴ Moreover, the Agreement does not address the specifics of implementation in certain key areas, which cannot be considered until after the Agreement is ratified. For example, the public defender has raised questions regarding the work of her office under the Residual Special Court, including implementing sentences, providing family visits to convicted persons, and continuing outreach.²⁵ For such questions to be addressed, it is necessary to conduct additional consultations with civil society and experts in order to establish additional implementing protocols.

²¹ UN Security Council Resolution, S/RES/1966 (2010).

²² In Sierra Leone, one person holds both offices. Telephone interview with a representative of the Attorney General's Office in Freetown, July 21, 2011, on file with the Open Society Justice Initiative.

²³ Residual Special Court Agreement, *supra* note 3, Articles 1, 2, 4, 5, 10.

²⁴ Residual Special Court Agreement, *supra* note 3, Article 3, Article 9 on the immunity of funds, asserts, and other property.

²⁵ Interviews with the SCSL principal defender conducted by the Open Society Justice Initiative in Freetown during May 2-17, 2011, on file with the Open Society Justice Initiative.

3. Implement proposed uses for the SCSL site: the Peace Museum and training center

Discussions on how the SCSL premises would be used after the court closes began in 2008 when the SCSL submitted proposals to the government of Sierra Leone.²⁶ In April 2009 the government set out its preferences: (1) to use the court chambers to house the Supreme Court of Sierra Leone, or potentially a regional court for the Economic Community of West African States (ECOWAS); (2) to establish a regional or national legal training center; (3) to use the detention facilities as a national prison for female inmates; and (4) to house a Peace Museum documenting the civil war and ensuing peace in Sierra Leone.²⁷

Of these preferences set out by the government, the first is in the process of being implemented, with the transfer of the court chambers to the Sierra Leonean government scheduled to take place with the close of SCSL proceedings.²⁸ For the second project, there are no details available on the establishment of the proposed legal training center. This endeavor therefore requires urgent attention from the Sierra Leonean government and regional partners, particularly on determining the objectives of such a center and the sources of funding. The third proposal is already implemented, with the detention facilities currently housing approximately 30 female inmates.

The fourth project—the Peace Museum—is central to the SCSL’s legacy. The objectives of the Peace Museum are to pay tribute to the victims of the civil war, to provide a narrative of the history of the war and peace, to help build a culture of human rights in the country, and to contribute to conflict prevention.²⁹ The development of a proposal for the museum is being spearheaded by the Project Management Committee, comprised of representatives from the President’s Office, the Office of Attorney General and Minister of Justice, the Chief Justice’s Office, the Ministry of Tourism, the Ministry of Information, the Human Rights Commission, the National Museum, the Monuments and Relics Commission, the National Archives, the Office for the High Commission for Human Rights, the University of Sierra Leone (Fourah Bay College), the SCSL, and Advocacy Movement Network (an NGO representing Sierra Leonean civil society). Within this Project Management Committee there are four sub-committees: the first addresses archives, the second addresses the legal structure of the Peace Museum, the third defines the business model, and the final sub-committee examines the memorial and exhibition aspects of the Peace Museum. The activities of the Project Management Committee are due to end in February 2012, and the Peace Museum is expected to open in mid-2012, after the completion of the court’s mandate.

²⁶ Special Court for Sierra Leone Site Project Summary and Fact Sheet, p. 1 (undated), on file with the Open Society Justice Initiative.

²⁷ Interviews with the SCSL Registry conducted by the Open Society Justice Initiative in Freetown during May 2-17, 2011.

²⁸ Contempt of court proceedings are currently taking place in the courtrooms, thereby delaying the transfer of the buildings; see Special Court for Sierra Leone press release, “Initial Appearance of Five Accused of Contempt Will Take Place July 15,” July 1, 2011, <http://allafrica.com/stories/201107130320.html>.

²⁹ Interviews with the SCSL Registry conducted by the Open Society Justice Initiative in Freetown during May 2-17, 2011, on file with The Open Society Justice Initiative.

In finalizing and implementing the proposed uses for the SCSL site, it is critical that civil society remains engaged in the process to ensure that local concerns are integrated into the project. It is also important that effective outreach about the Peace Museum is implemented across the country in order to create awareness of its existence. In particular, it must be made clear that the public will have easier access to the Peace Museum, in contrast to the strict security measures imposed on access to the SCSL. It was widely reported that many residents of Sierra Leone were hesitant to visit the Special Court's facilities during the trials because they considered access to the court a cumbersome and intimidating process, and there is a risk that it will be assumed to be the same process for access to the Peace Museum.

While an amount of \$195,000 has been allocated from the country's UN Peacebuilding Fund to develop the Peace Museum, other fundraising measures must be intensified in order to sustain the museum beyond this initial financial support.

4. Articulate archive access and preservation policies

Persons affected by the civil war should have ready access to records and other information about the conflict.³⁰ Access is also important for scholars, lawyers, journalists, and civil society members.³¹ If at a future date Sierra Leone decides to conduct prosecutions at the national level for crimes committed during the country's civil conflict, access to the court's records will be particularly significant.

The Peace Museum's sub-committee on archives is examining the feasibility of housing in the Peace Museum documentation related to the civil war and the transitional justice efforts that followed. It is intended that documents from the country's three main transitional justice institutions will be archived in the Peace Museum: duplicate copies of the public records of the SCSL, which include in-court transcripts from every day of the trials, written filings, and decisions pertaining to the trials and appellate proceedings; the records of the Truth and Reconciliation Commission (TRC); and the records of the National Commission for Disarmament, Demobilization, and Reintegration.

The museum will also seek records relating to the civil war and the peace process that are in the hands of other sources such as the UN peacekeeping mission in Sierra Leone, UNICEF, the UN Office of the High Commissioner for Human Rights, ECOWAS, the ECOWAS Monitoring Group (ECOMOG), and various diplomatic missions in Sierra Leone. Local and international NGOs that participated in the transitional justice process may also be asked to contribute archives to the museum. NGOs already identified as potential contributors include Human Rights Watch, Amnesty International, the International Crisis Group, No Peace Without Justice, the Campaign for Good

³⁰ Antonio González Quintana, *Archival Policies in the Protection of Human Rights* (2009), http://www.archivalplatform.org/images/resources/Archival_Policies_in_the_Protection_of_Human_Rights.pdf

³¹ *The Residual Functions and Residual Institution Options of The Special Court for Sierra Leone* (June 23, 2009), pp. 21.

Governance, and the National Forum for Human Rights. Academics have also been asked to submit copies of relevant publications.³²

With respect to the archives from the SCSL, there are approximately 1,000 boxes of materials, including judicial records, court transcripts, and audiovisual materials such as DVDs, audio cassettes, and digital video cassettes.³³ The Special Court faced significant challenges in maintaining its archives given that the SCSL had no specific archiving room and the sporadic supply of electricity ensured there was no guaranteed capacity to maintain a constant temperature. The archives were therefore transferred to The Hague in December 2010 pursuant to an arrangement between the SCSL registrar, the president of Sierra Leone, and the government of the Netherlands. The archives are currently stored with the Nuremberg trial records in the Dutch National Archives, with a certified duplicate set of all public judicial records remaining in Freetown for the Peace Museum. An access policy is expected to be defined in the coming months, before the end of the court's mandate.³⁴

The first step in implementing the archive project is to obtain the necessary agreements between the government of Sierra Leone and the respective sources of the material in order to transfer these documents to the Peace Museum. Housing this range of material from a variety of sources in one location would greatly facilitate the ease of access by providing a “one-stop shop” for people seeking to understand the peace and reconciliation process in Sierra Leone. Although materials could be added on a rolling basis, it is preferable to obtain final numbers on the quantity of material expected in order to best design the physical structure of the museum.

Once the necessary agreements are obtained, and before the materials are transferred to the Peace Museum, it will be necessary to construct appropriate infrastructure to safely store and maintain the archives and prevent damage and deterioration from the heat and humidity.³⁵ Maintaining the archives in appropriate conditions could prove challenging in the face of regular power outages in Freetown.

Appropriate electronic tools—including databases that are able to conduct advanced searches and synthesize information—will then be required so the general population can access the information contained in the archives. Outreach efforts should also try to make information available to people who may not be able to travel to Freetown.

Additionally, the access policy must account for the fact that these sources contain confidential information, particularly the identities of protected witnesses. Archival

³² Telephone interview and email exchange with SCSL Registry staff on July 21, 2011, on file with the Open Society Justice Initiative.

³³ Email exchange with staff of the SCSL Court Management Section on July 14, 2011, on file with the Open Society Justice Initiative.

³⁴ Email exchange with staff of the SCSL Court Management Section on July 14, 2011, on file with the Open Society Justice Initiative.

³⁵ Trudy Huskamp Peterson, *Temporary Courts, Permanent Records*, United States Institute of Peace (USIP), Special Report 170, p.17 (August 2006), at <http://www.usip.org/publications/temporary-courts-permanent-records>.

records need an access policy that balances “the public’s right to know about activity by the court with individuals’ (including defendants, victims, witnesses, and court personnel) rights to protect information about themselves from potentially harmful public disclosure.”³⁶ This access policy requires constant monitoring and updating because security threats may decrease over time and thus permit more materials to be made public. With respect to the SCSL material, this would require a protocol with the Residual Special Court which is responsible for lifting redactions or making confidential documents public in the future.

The location of the original files is a cause for concern. The Agreement establishing the Residual Special Court states that the archives shall be the property of, and are to be managed by, the Residual Special Court.³⁷ As noted above, the originals are currently located in the Dutch National Archives in The Hague. The Agreement states that the originals may be transferred to Sierra Leone by an agreement between the government and the UN upon the construction of facilities that can adequately store and protect the materials.³⁸ However, there is no indication of the criteria to determine the adequacy of such a storage facility in Sierra Leone. There is also no articulation of the process by which such an agreement can be made.

Despite the logistical challenges, housing the originals of the SCSL’s archival documents (as opposed to copies) in Sierra Leone is a deeply emotional and symbolic issue. A member of Sierra Leone’s Human Rights Commission stated that storing the originals outside Sierra Leone “would be the final betrayal of the Special Court to take away the collective memory. We’re dealing with a process where people have been disconnected and distanced in the last five to six years.”³⁹ This concern was echoed by a senior official of the domestic courts, who stated that “the Special Court should help develop the country’s capacity to house the archives as a fundamental portion of its legacy.”⁴⁰ This underscores the importance of articulating the criteria to be used in assessing when the archives may be safely returned to Sierra Leone.

5. Finalize and fund the National Witness Protection and Assistance Unit

The Special Court, in collaboration with the government of Sierra Leone, has been working to establish the country’s National Witness Protection and Assistance Program.⁴¹ The success of this program would make a substantial contribution to Sierra Leone’s criminal justice system, which at present has no mechanism in place to protect and offer psychological or other forms of support to vulnerable witnesses, such as rape victims or children.⁴²

³⁶ *Id.*, at p.9.

³⁷ Residual Special Court Agreement, *supra* note 3, Article 7.

³⁸ *Id.*, Article 7(3).

³⁹ Interview with a human rights commissioner, July 2007, notes on file with the Open Society Justice Initiative.

⁴⁰ Interview with senior official at the High Court of Sierra Leone, July 12, 2011, notes on file with the Open Society Justice Initiative.

⁴¹ Special Court for Sierra Leone Legacy Summary (undated), on file with the Open Society Justice Initiative.

⁴² Interview with a senior Sierra Leone Police officer, July 14, 2011, notes on file with the Open Society Justice Initiative.

The SCSL facilitated an initial feasibility study into the creation of the National Witness Protection and Assistance Program,⁴³ and earlier this year the Sierra Leone Police issued administrative orders establishing the National Witness Protection and Assistance Unit within the Sierra Leone Police.⁴⁴ Trained personnel have been posted to the unit, including police officers who are former SCSL staff members and national police officers who were provided with an intensive one-month training course by British police officers. However, important aspects of staffing, such as salary structures, are still being finalized.

It is anticipated that the permanent location for the main office of the unit will be within the SCSL premises, although the necessary infrastructure assessments are still being conducted. It is hoped that the unit will be functioning by December 2011. However, funding commitments have yet to be obtained for the first five years of the unit's operations, after which it is envisaged that Sierra Leone can maintain the unit through the national budget. In order to facilitate the fundraising process, the SCSL and the government of Sierra Leone must articulate and disseminate the budget allocations required for the functioning of the unit.

A key component of the unit's work would be assisting the Residual Special Court in fulfilling its obligations to continue the protection and support of witnesses and others at risk due to the activities of the court.⁴⁵ It is imperative for the Residual Special Court to continue any necessary protection and support of witnesses under the care of the SCSL and also to provide for any new protection concerns that arise after the closure of the SCSL. This may be particularly important if the Residual Special Court initiates new legal proceedings against its sole fugitive or should it conduct any review proceedings.⁴⁶ Should the Residual Special Court rely upon the unit to implement these protection obligations, it is essential that the necessary protocols be negotiated and signed well in advance of the establishment of the Residual Special Court and that the necessary funds be made available to implement any protective measures required by the court.

6. Integrate SCSL jurisprudence into national law

The use of SCSL jurisprudence by national courts in Sierra Leone is hindered by the limited access to broadband internet and the Sierra Leonean judiciary's lack of an effective electronic records management system. Cases are generally recorded on an ad hoc basis and legal professionals depend on their personal knowledge of prior cases. In 2007, the Sierra Leone Bar Association launched bound copies of *Sierra Leone Law Reports*, providing lawyers and judges with access to previous cases decided in Sierra Leone's criminal courts. While it was anticipated that the Bar Association will continue

⁴³ Special Court for Sierra Leone Legacy Summary, *supra* note 48, on file with the Open Society Justice Initiative.

⁴⁴ Interview and email exchange with Saleem Vahidy, chief of SCSL Witness and Victims Unit, New York-Freetown, July 2011, notes on file with the Open Society Justice Initiative.

⁴⁵ Residual Special Court Agreement, *supra* note 3, Article 18.

⁴⁶ *Id.*, Article 22.

such publications on an annual basis, the necessary resources to make this possible have not been available. This limited access to electronic and online databases is a major challenge to efforts to apply SCSL jurisprudence in the national courts.

The Office of the Prosecutor (OTP) of the SCSL has recently spearheaded the development of the Sierra Leone Legal and Information Institute (LII), which will also be an online tool containing SCSL jurisprudence, Sierra Leonean legislation, and national case law. The OTP engaged with various stakeholders⁴⁷ prior to implementing the project, including the national registrar who offered to share recently scanned Sierra Leone Supreme Court judgments dating back to the early 1960s. Although funding was secured for the initial pilot project in March 2010, funding is still required for the establishment and maintenance of the website. In order to facilitate the fundraising process, the SCSL and the government of Sierra Leone ought to articulate and disseminate budget requests required for operating this website.

Crucial to this process is national ownership over the website, particularly as the SCSL will cease playing a coordinating role after the closure of the court. The finalization of the LII project must be done in close collaboration with the Sierra Leonean judiciary. In particular, its efforts must be coordinated with any existing national initiatives. In October 2009, the Sierra Leonean judiciary, through the office of its registrar, posted a press release stating the judiciary had made efforts to create an electronic version of the laws of Sierra Leone and *Sierra Leone Law Reports*, to be launched later that month.⁴⁸ However, the press release did not mention any collaboration with the SCSL but rather attributed the success of this project to the UN Peacebuilding Fund, of which Sierra Leone is a major beneficiary. As of September 2011, this project has still not come into fruition. Value may exist in collaborating with the SCSL LII to avoid duplication of efforts and to save much needed resources for the maintenance of such an online tool.

However, even if the hurdle of access to information is overcome, it is crucial to also consider the utility of SCSL jurisprudence to national courts. Although there are recent examples of lawyers making reference to fair trial precedents set at the SCSL in support of arguments before national judges,⁴⁹ in general there is a need to bring the international and national legal communities together on an equal footing. The issuing of an appeals judgment, if any, in the Taylor case, will be the final addition to the SCSL's jurisprudence (absent any proceedings before the Residual Special Court against remaining fugitives, contempt proceedings, or review proceedings). The SCSL has continually offered trainings on a wide range of subjects, both internally for national staff

⁴⁷ Stakeholders consulted included the Sierra Leonean judiciary through the chief justice, the master, and registrar, and the owner of a Sierra Leone-based website who shared electronic files of legislation published on his website. Consultations were also held with potential major users of LII: the Sierra Leone Bar Association, the Sierra Leone Law School, and some civil society leaders. Finally, consultations were conducted with key external groups such as potential funders and other LII experts. Interview with OTP staff, May 2011, notes on file with the Open Society Justice Initiative.

⁴⁸ Sierra Leone Judiciary press release, "The Judiciary Goes Electronic; Thanks to the UN Peace Building Fund (PBF)," Julia Sarkodie-Mensah, Oct. 2, 2009, http://www.news.sl/drwebsite/publish/article_200513204.shtml.

⁴⁹ Interview with Sierra Leonean judge in Freetown, May 10, 2011, notes on file with the Open Society Justice Initiative.

of the SCSL and externally for members of the national legal system, including on SCSL jurisprudence.⁵⁰ However, the disparity in resources, the differences in the crimes prosecuted, and the enormous chasm between conditions of service at the national level and at the SCSL, left some top Sierra Leonean legal officials with the sense that the experience and knowledge of those working at the Special Court was, in practice, of limited value to the daily work of those in the national system.⁵¹ Other legal professionals bristled at the notion of a lecture series given by SCSL staff and judges, as opposed to a dialogue among professionals who, together, could identify the common issues with which they both may grapple. As one judge in Sierra Leone's national judicial system put it, "[a]t the practitioner level, people don't want to be seen as being trained by the Special Court."⁵² The Taylor judgment, as the final judgment of the SCSL, provides the opportunity for national Sierra Leonean law officers to meet on a peer-to-peer basis under the auspices of the national Bar Association, and with the assistance of former national SCSL staff, to conduct peer-to-peer sessions to identify strategies for utilizing SCSL jurisprudence in national cases.

7. Prosecution of lower-level perpetrators

The 1999 Lomé Peace Accord between the Sierra Leone government and RUF rebels included an amnesty provision which granted free and absolute pardon to all rebel forces and their collaborators for acts committed during the conflict in the country.⁵³ This amnesty provision appears to block any prosecutions that could take place at the domestic level. However, the representative of the UN Secretary-General, who signed as a moral guarantor to the Lomé Peace Accord, did so with a caveat that "[t]he United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law."⁵⁴ When the SCSL was subsequently established, despite legal challenges by the accused persons citing the amnesty provision in the Lomé Agreement, SCSL judges dismissed such challenges on the basis that the amnesty law did not apply to war crimes, crimes against humanity, and other serious violations of international humanitarian law,⁵⁵ and the statute of the SCSL also made clear that any amnesty that had been granted to perpetrators would not be a bar to prosecution at the Special Court.⁵⁶

⁵⁰ Interview with SCSL staff from 2007-2001, notes on file with Open Society Justice Initiative.

⁵¹ Interview with Sierra Leonean judge in Freetown, Sierra Leone, July 18, 2011, notes on file with Open Society Justice Initiative.

⁵² Interview with Sierra Leonean judge, High Court Chambers, Siaka Stevens building, Freetown, Sierra Leone, July 20, 2007.

⁵³ Lomé Peace Accord, Article IX, July 7, 1999.

⁵⁴ Cited from the *Sierra Leone TRC Report*, fn 23, Vol. 3b, Chapter 6, at 1. The statement by the UN SRSG does not appear in the text of the Agreement as it was published by the United Nations (UN Doc. S/1999/777). The commission is quoted as having seen a copy of the Agreement that had appended a handwritten disclaimer.

⁵⁵ *Prosecutor vs. Morris Kallon and Brima Bazzy Kamara*, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, SCSL-04-15-PT-060, March 13, 2004.

⁵⁶ Statute of the Special Court for Sierra Leone, Article 10 (January 16, 2002), at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJeW%3d&tabid=176>.

To date, no national proceedings have been conducted for crimes committed by mid- and lower- level perpetrators during the conflict. There were efforts to prosecute rebel forces for crimes committed outside the period covered by the Lomé Amnesty. These crimes related mainly to the activities of renegade soldiers who formed a new faction called the West Side Boys and embarked on attacking civilians and looting their properties in 2000.⁵⁷ Another set of RUF rebels were arrested and charged with various crimes in May 2000 when they opened fire and killed civilians who were protesting in front of RUF leader Foday Sankoh's house after his rebel forces had abducted UN peacekeepers. It must be noted that in both cases, there were challenges due to the lack of capacity in the national justice system: many arrested persons were detained for long periods without trial, the government had problems gathering evidence, there were challenges in transporting detained persons to court, there were insufficient courtrooms to hold trials, and the detained persons themselves could not find legal representation.

Members of civil society have clamored for prosecutions to take place, especially against rebel commanders whose names have been consistently mentioned during testimony at the SCSL. There have also been discussions among local lawyers that a submission should be made to the country's supreme court, seeking to have the amnesty law declared unconstitutional on the basis that it violates the constitutional right for victims of human rights violations to seek redress, and because the amnesty law is contrary to Sierra Leone's international obligations to ensure that there is accountability for serious crimes.

Such calls, however, appear to have been overtaken by political considerations, because the government does not want to be seen as responsible for any backlash if such prosecutions cause unrest in the country.⁵⁸ Considering, however, that SCSL prosecutions of senior commanders in the major warring factions did not cause chaos in the country, it may be that concerns over war erupting due to national prosecutions are exaggerated. Additionally, prosecutions took place against former RUF and AFRC fighters without provoking civil unrest following two cases of shootings in May 2000 and in 2003, although admittedly these shootings were not directly linked to the civil war.⁵⁹

If the presence of the SCSL in Sierra Leone helps to ensure prosecutions at the domestic level for crimes committed during the conflict, it would be a highly significant contribution to the country's post-conflict accountability efforts, according to some members of civil society.⁶⁰ Although there are no such national prosecutions pending, if such a case were to be initiated funding would be required to build the capacity of the Sierra Leonean judiciary to manage the investigation and prosecution of complex crimes, including maintaining adequate protective measures for witnesses. The SCSL should

⁵⁷ The West Side Boys were mainly members of the AFRC who were aggrieved for not being made parties to the Lomé Peace Agreement. The group was eventually attacked and their leaders arrested by British Special Forces after they took hostage a group of British soldiers in September 2000.

⁵⁸ Interview with Sierra Leonean judge in Freetown, May 10, 2011, notes on file with the Open Society Justice Initiative.

⁵⁹ The facts concerned the killing of civilians in front of the residence of the RUF leader in Freetown in 2000 and a shooting at an arms depot in Freetown in 2003.

⁶⁰ Meeting with members of Sierra Leone civil society in Freetown, May 2, 2011, notes of file with the Open Society Justice Initiative.

cooperate in transferring to the national authorities evidence pertaining to key suspects not prosecuted by the SCSL, as far as permitted whilst respecting witness protection measures.

Conclusion

The closure of the SCSL represents the international community's first opportunity to implement an appropriate exit strategy for international justice. This process will be observed by the other international courts due to close in the next few years: the International Criminal Tribunals for Rwanda and the former Yugoslavia and the Extraordinary Chambers for the Courts of Cambodia. There is scope for the development of valuable legacy best practices. But if the needs set out in this report are not addressed immediately, it is likely there will be failings that will affect not just the SCSL, but other courts as well. With the impressive commitment and financial contributions the international community has made in the name of ending impunity, it is critical that the SCSL is not left to stumble at the final hurdle. The proper closing of the SCSL is the only way to guarantee the investment in justice in Sierra Leone is realized. The Sierra Leonean government, the UN, the SCSL, the court's donors, and Sierra Leonean civil society and legal organizations must act quickly to safeguard the court's legacy.

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