Transitional Justice, Peace and Accountability

Outreach and the role of international courts after conflict

Jessica Lincoln

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Preface and acknowledgements

Katrina Manson and James Knight (2009) provide a most apt and succinct description of Sierra Leone: 'From the wing-flash of an emerald starling, to the shouts of the star-fruit seller in the market, to the salty fur of the ocean, Sierra Leone gleams with life, brilliance and pain'.

It was a privilege to be able to spend time in Sierra Leone. The people I encountered were welcoming, and provided humbling insights into what was a violent and not so recent past. The questions of how to move forward after violent conflict have dominated recent thinking on peacebuilding. The tensions inherent within discussions on peace and justice were never more apparent than in Sierra Leone, where the world's first hybrid tribunal was built and justice delivered on a monumental, albeit limited, scale. Understanding how the Court had been received and understood and what this meant for the country's future are at the heart of this study. This book examines the work of an internationalised court after conflict to try to understand its role, function and wider aims. It does this by looking at the communication strategies employed; namely its Outreach and Legacy sections. It is informed by wider discussions on the link between justice and peace and a desire to understand how this process is understood and accepted by its direct beneficiaries: the people of Sierra Leone. This book is not intended to speak for Sierra Leoneans, and the restrictions to my travel did not permit a countrywide quantitative study; however, the aim is to provide an insight into knowledge and understanding of justice that will contribute to understanding the expectations for international justice, and therefore be instructive for outreach efforts at future internationalised trials.

There are many people I would like to thank for their help, advice and support in the course of writing this book. Most importantly, I owe a debt of gratitude to all the people who gave me their time in Sierra Leone, and who spoke openly about their experiences and thoughts on transitional justice. I hope that I am able to do justice to your beliefs in this subject. Any and all limitations and inaccuracies throughout the book are, of course, entirely my own.

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as you try your best', as spoken by your grandparents, who told me this often, and without whom I would not have had the determination to complete this work. Thank you to my parents, Peter and Susan Lincoln, for your endless love and support.

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The final thanks must go to Usman, Paps and Ed – *Ah gladi wae ah sabi una.* This book is dedicated to the memory of Ed Sawyer.

Jessica Lincoln
October 2010

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Acronyms

AFRC	Armed Forces Revolutionary Council
APC	All People's Congress
CDF	Civil Defence Forces
CSO	Civil Society Organisation
DOO	District Outreach Officer
ECOMOG	Economic Community of West African States Cease-Fire Monitoring Group
ECOWAS	Economic Community of West African States
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
IMATT	International Military and Training Task Force
NPFL	National Patriotic Front of Liberia
NPRC	National Provisional Ruling Council
OTP	Office of the Prosecutor
RSLAF	Royal Sierra Leone Armed Forces
RUF	Revolutionary United Front
SCSL	Special Court for Sierra Leone
SLPP	Sierra Leone People's Party
TRC	Truth and Reconciliation Commission
UN	United Nations

Contents

Introduction

The Special Court for Sierra Leone (SCSL), created in 2002, has a singular place in the field of transitional and international justice. First, it broke new ground as a 'hybrid' internationalised court, created by agreement of the government of Sierra Leone and the United Nations, whereas its immediate precedents had been created either by full authority of the UN Security Council (the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda) or by state treaty (the International Criminal Court, whose statute also came into effect in 2002). Second, the SCSL was distinctive because it was located in the country where the alleged crimes were committed, unlike its forerunners, which were all located elsewhere – initially, all of them in The Hague in the Netherlands.[1] Finally, and most importantly, the SCSL held a truly distinctive place because it was established with the specific means to communicate and connect with the people of Sierra Leone from the outset – an Outreach Office – in stark contrast to the Yugoslavia and Rwanda tribunals, which only falteringly began this work almost a decade after their creation. This was designed to make Sierra Leoneans aware of the Court's work, to assist significantly in the missions of generating a sense of 'justice' being done in a transitional setting, and, thereby, fostering peace and security in a post-conflict environment. This was widely regarded as a major achievement in itself, and a success in practice. Indeed, Outreach has been called the 'jewel in the crown' of the Court in recognition of its work, often carried out with unsecured funding in a post-conflict setting. The SCSL would appear to be a leader in the field, and to set a significant precedent for other bodies dealing with international justice.

This claim for success is an alluring one. Functioning in-country immediately affords the opportunity that operating thousands of miles away does not, reaching out directly to the beneficiaries of the Court's justice. However, there have been suggestions that outreach was not the triumph claimed of it. A study by Sawyer and Kelsall in 2008, looking at the Truth and Reconciliation Commission (TRC) and the SCSL, highlights that while they found people to be familiar with the Court, they discovered that the level of understanding of its work among the people of Sierra Leone was limited. A similar study undertaken by the BBC World Service Trust in 2007 also questions knowledge and attitudes regarding the SCSL and TRC. Although it was found that 96 per cent of respondents knew

of the Court, only 4 per cent claimed to know a lot about proceedings.[2] Thus, there might well be reason to question the extent to which Outreach was the 'jewel' it was claimed to be.

The reality is that, despite the claims made regarding the 'innovative' and 'successful' outreach programme at the SCSL, and subsequent questioning of these claims, no rigorous empirical evidence exists to support this analysis, one way or the other. There has been no focused independent study examining how effective Outreach for the Special Court was in ensuring that its procedures, principles and limitations were widely understood by the beneficiaries of its work – the people of Sierra Leone. It is therefore unknown how far the SCSL helped to end impunity in Sierra Leone, or how far it strengthened the rule of law, or if it allowed people, as hoped, to see that the 'rule of law was more effective than the rule of the gun', as claimed by former Chief Prosecutor, David Crane.

This book examines the work of Outreach at the Special Court to investigate how the Court addressed impunity in Sierra Leone, and fill this knowledge gap. It looks at the role of Outreach at the Special Court, and also considers its legacy – a factor that came to dominate the end of proceedings. It investigates activities undertaken to enable the local population to understand and follow the complexities of the Court process, and considers the popular response to the work of the Court. Based on field work in Sierra Leone, the book explores levels of knowledge and understanding of the Court. It assesses how Outreach informed Sierra Leone about its limited mandate and jurisdiction; the trial process; and the Court's wider ambition – to end impunity. In order to do this, the book asks, first, what is transitional justice, what is its purpose, and for whom is it directed?[3] To understand the role of the Court in Sierra Leone, it is necessary to question its foundation: how did we arrive at this model? Second, to understand how the Court communicated to Sierra Leoneans we need to appreciate how the Court interpreted its mandate and jurisdiction, and how this subsequently informed Outreach's strategy. Third, to appreciate the challenges posed in communicating this, we need to look at the role of Outreach in the Court's structure, while also accounting for the key challenges at the Court: namely, a lack of funds and its sharply defined, narrow focus. Recognising these realities enables a wider assessment of Outreach and its success in generating understanding of the Court and its broader impact.

A timely question is: how essential is outreach for international justice? This book determines that it *is* essential and, most importantly, was so for the Special Court in Sierra Leone. By being based *in situ*, the Court needed a means to communicate to Sierra Leoneans. Without a method of communication, the Court would not have been able to operate effectively in the country. To fulfil the mandate for international justice – to prosecute persons accused of the most serious crimes of international concern – its role and judicial activities needed to be understood. The importance of outreach for international justice has therefore been recognised with the inclusion of an Outreach Unit at the International Criminal Court (ICC). This focuses on building and maintaining cooperation and support, making sure the judicial activities are public and transparent, and increasing the broader

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impact.[4] These are instructive, and speak to both a dedicated and integrated outreach strategy while also considering the legacy for international justice, underpinned by the belief that justice brings peace. However, there are important issues raised by the work of the SCSL that resonate directly with international justice more generally, which centre on the limitations and role of international justice. The work of the SCSL underscored tensions within transitional justice regarding its humanitarian role balanced with greater demands for development assistance – something the Court had neither the capacity nor the resources with which to engage. Outreach was at the forefront of communicating these limitations. It is only by fairly appraising the work of outreach, which includes appreciating the way in which it evolved, acknowledging that in many respects participants were learning as they went along and, ultimately, that they were doing the best with what they had, that we can begin to understand the role of outreach within international justice. Balancing this with Sierra Leoneans' understanding and knowledge of the justice delivered by the Court, we can begin to understand the importance of outreach for international justice.

Conflict in Sierra Leone: the need for justice

The war lasted for over ten years, and is well documented for its breathtaking malevolence (Fanthorpe, 2001) and unspeakable viciousness targeted against the civilian population (TRC Report, 2004: Vol. 2, Ch. 2). The war in Sierra Leone began in 1991, led by the disparate rebel group the Revolutionary United Front (RUF), with the declared objective of overthrowing the corrupt All Party's (*sic*) Congress (APC) government headed by Joseph Saidu Momoh. The APC had ruled Sierra Leone since 1968, when a coup brought Siaka Stevens to power. Stevens, a former senior police sergeant with an educational background in labour and industrial relations, proceeded to turn Sierra Leone into a one-party state, and by 1978 the APC was declared the only legal political party. This period saw Sierra Leone change from a prosperous country to one that emphasised governance by personal rule:

> [n]ot founded on conventional concepts of legitimacy, or even on supporting formal bureaucratic institutions. Instead Sierra Leone's presidents ruled by controlling markets, especially in diamonds, and manipulated other people's access to economic opportunities in ways that enhanced their power.
>
> (Reno, 2003)

Power was concentrated in the hands of a few in the political elite; corruption was systemic, with many of Sierra Leone's natural resources, such as diamonds, being traded through illicit channels; state infrastructure was severely weakened due to lack of investment; literacy levels were low; the judiciary was weakened through bribery and corruption; and poverty was widespread. The decline in state provision and general sense of disenfranchisement created the conditions for the violent conflict that was to follow.

A decade of conflict saw direct targeting of civilians, amputations, forced recruitment of children, sexual violence, and destruction of villages and towns being used as strategies by the warring factions. After two failed peace agreements, at Abidjan, Côte d'Ivoire in 1996, and Lomé, Togo in 1999, and extensive international military intervention, the UN declared peace in Sierra Leone in 2002. Calls for accountability and justice were at the forefront of peace-building demands in the latter stages of the conflict, both nationally and internationally.[5] The level of atrocities committed during the conflict was extensive, and it was widely believed that without justice there would be no peace (Conflict Security & Development Group, 2003).

Violence resumed again in 1999, after the signing of the Lomé Peace Agreement. This period saw some of the worst violence against the civilian population, along with the kidnapping of UN peacekeepers and British soldiers by a renegade Armed Forces Revolutionary Council (AFRC) rebel faction: the West Side Boys. Despite a blanket amnesty granted to all 'combatants and collaborators in respect of anything done by them in pursuit of their objectives' at Lomé (Lomé Peace Agreement, 1999: Art. IX (1)), the continued violence against Sierra Leoneans demanded an appropriate response. In June 2000, Ahmad Tejan Kabbah, then President of Sierra Leone, requested assistance from the United Nations to prosecute those most responsible for these crimes; namely, a Court to prosecute RUF leaders 'for crimes against the people of Sierra Leone and for taking UN peacekeepers as hostage'.

The gravity of the crimes committed, even after the Lomé Peace Agreement had been signed, proved that this amnesty provision was an inefficient deterrent to the commission of further atrocities. At the time of signing the Lomé Agreement, the UN Secretary General's Special Representative, Francis Okelo, entered a caveat stating, 'The United Nations interprets that the amnesty and pardon shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law' (Lomé Peace Agreement, 1999: Art. IX, ss 1&2). This caveat paved the way for the establishment of the hybrid Special Court for Sierra Leone (SCSL or Court hereafter) in 2002. The amnesty therefore applied only to domestic law, and as such was not a barrier to international prosecution (discussed further in Chapter 4). The initial request from the Sierra Leonean government for the Court to focus on RUF crimes was soon broadened by the Office of the Prosecutor to include all parties to the conflict. The decision to investigate crimes committed by all sides, including the Armed Forces Revolutionary Council and pro-government Civil Defence Forces (CDF), proved to be contentious, with the CDF seen largely as the arbiters of peace, as discussed in Chapters 4 and 5.

International justice for Sierra Leone

Initial negotiations took place in 2000, between the Sierra Leone government and the UN, on the creation of a court that would include national and international staff and judges (UN SCR 1315, 2000). The Security Council was unwilling to

establish another expensive ad hoc tribunal, such as the International Criminal Tribunal for Former Yugoslavia (ICTY) or International Criminal Tribunal for Rwanda (ICTR), and was keen for the court not to be an organ of the Security Council, to avoid becoming subject to time-consuming UN bureaucracy. Despite the adoption of the Rome Statute in 1998 for the ICC, it was not actually established until 2002, after sixty states had ratified the Agreement – thus meaning its jurisdiction only extended to crimes after it was created, and that it was therefore an inappropriate judicial method for conducting war crimes trials in Sierra Leone at this time (Frulli, 2000).

A hybrid model emerged as a compromise combining both Sierra Leonean and international law: the Special Court for Sierra Leone. The SCSL was a truly 'ground-breaking institution' that combined international and national laws. It was to use both international staff and Sierra Leoneans, who would work together to 'bring to justice those who bear the greatest responsibility for serious violations of international humanitarian law, and certain violations of Sierra Leonean law' (Statute of the SCSL, Art. 1, para. 1) committed since November 1996, the date of Sierra Leone's first peace agreement in Abidjan, Côte d'Ivoire.[6] The mandate also included a controversial proposal to put child soldiers between fifteen and eighteen years of age on trial, which the Prosecutor later decided against. This was despite the government of Sierra Leone arguing strongly for this inclusion, as the conflict involved thousands of youths as combatants (Dougherty, 2004). The Registrar and Prosecutor arrived in the capital, Freetown, in August 2002, issuing the first indictments in March 2003.

The SCSL represented a new model of international criminal justice, moving away from the larger, expensive ad hoc tribunals. This scaled-down version was designed to be faster, more efficient, and, perhaps most importantly, more cost-effective than the ICTY or ICTR. The concurrent jurisdiction and close involvement of the government of Sierra Leone in the creation of the Court has been compared to the ICC and its principle of complementarity – working with national governments, to prosecute where possible (Frulli, 2000). However, this prudent version of international justice has been criticised for shortcomings in its strategy and practice, mainly due to insufficient funding (Cockayne, 2004–05). As a new model, the Court found itself in the unenviable position of having to learn and adapt on its feet. Although it drew extensively on lessons and experience from the ICTY and ICTR, significant expectations were placed on the Court as setting a precedent for future tribunals and contributing to judicial reform in Sierra Leone, reflecting its dual jurisdiction (Sriram, 2005). Being based *in situ* – that is, trials taking place in the territory where the crimes were committed (Weirda, 2010) – posed both advantages and disadvantages. The Court could work with Sierra Leoneans in order to contribute to rule of law reform through the training of national staff in international humanitarian law practice, which would contribute directly to capacity building, and provide expertise on areas such as penal reform and witness protection. However, there was also a limitation on the number of people it could employ to do this. As will be discussed in Chapters 5 and 6, my research found significant hostility toward the Court for

not employing greater numbers of Sierra Leoneans in senior positions, particularly in the Prosecution and Registry, thus reinforcing the perception that it was more international than national in character. Adding further tension to this was the greater expectation that the Court would be a cure for many of Sierra Leone's other ills. The seeming wealth of the Court was perceived to be an injustice – disproportionate, compared to the limited number of indictments that were released and prosecutions conducted, in relation to other more urgent needs.

The initial optimism with which the Court was greeted eventually turned to criticism as the number of indictments was scaled back to just thirteen rather than the twenty to thirty envisaged in the beginning. Tensions also grew between the SCSL and the Truth and Reconciliation Commission (TRC) – a complementary transitional justice mechanism established at the same time as the SCSL – as access to testimony from the SCSL indictees was granted to the TRC, but on a limited basis.[7] The financial costs involved in establishing and sustaining an internationalised Court *in situ* also eventually superseded many Sierra Leoneans' views in relation to justice delivered by the Court. The expectation gap between what *would* be achieved, and what actually *could* be achieved, had widened. Many within the Court understood the limitations (judges, prosecutors, defence, etc.); however, my research found that many groups external to the Court, particularly within civil society, appeared not to be fully aware of the Court's limitations. There are various reasons for this lack of understanding, such as the disjointed nature of outreach in the beginning (discussed further in Chapter 5). The consequences of this were a perception that the Court would contribute directly to domestic rule of law reform, with little understanding or knowledge that the limited mandate of the Court, and significant funding difficulties, prevented this. This generated hostility and a souring of relations between many NGOs, civil society activists and Outreach at the Court. This was underscored after early outreach efforts by the OTP had claimed, one might say fervently, that 'justice' would be brought to Sierra Leone. With little understanding about what this meant in practice, expectations were raised at the outset about what the Court would do for Sierra Leone.

Reaching out to Sierra Leone

An implicit aim of the Court was to contribute to the rule of law more widely in Sierra Leone, mainly through capacity building, but also through the successful prosecution of those considered to bear the 'greatest responsibility'. The prosecution of those in leadership positions would prove that seniority no longer granted the immunity it once did, bringing accountability where it had been absent for decades. As stated by Prosecuting Attorney Joseph Kamara during his opening statement to the CDF trials: 'This is the time that people in leadership positions all over the world realise that they can be held accountable for human rights violations and breaches of international humanitarian law' (SCSL 2004e, 2 June 2004: 30; Kelsall, 2010: 40). This was particularly important for Sierra Leone, where years of corrupt government had meant that many senior figures

had indeed evaded prosecution for decades (Robertson, 2006); therefore, the Court was successfully filling an impunity gap on one level.[8] Outreach was important in communicating these limitations and the principles on which the Court was based. Concentrating only on those in senior positions, 'including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone' (Statute of the SCSL, Art. 1(1)), the Court placed the blame at the highest level, and inadvertently absolved those beneath. This presented significant challenges in communicating these objectives to a country deeply affected by over a decade of violent conflict, particularly in garnering acceptance for such partial justice.

Outreach

The SCSL was instrumental in setting the agenda for other outreach programmes in international courts. Yet little independent evaluation of Outreach at the SCSL has been undertaken to assess whether it was successful in its endeavours. Members of Defence, Prosecution and Registry all visited the provinces to answer questions and inform people of the Court's procedures, and this was believed to have resulted in raised levels of awareness of the SCSL and proceedings, although it was criticised for concentrating efforts on specific areas rather than conducting a widespread campaign (Gberie, 2003). Extensive sample questionnaires were used by Outreach to assess the changing perceptions of the Court generated by their events, which provided valuable insight into the understanding of the Court and how this may (or may not) have changed over time. However, no independent analysis of this information exists.[9] Clark's (2009) study into the challenge of outreach for international war crimes tribunals considers outreach at the SCSL, along with the ICTY and ICTR efforts. However, this work is focused on the views of SCSL staff regarding outreach, rather than those of the population. The report details the breadth of stated work undertaken by Outreach. The level of recorded work undertaken by the Court is considerable, and, visiting the Court, one cannot but be impressed by the resources and facilities established in a limited time, particularly in such stark contrast to its surroundings. However, this does not equate with success in informing people about the Court and its broader impact, as would appear to be an assumption in Clark's study; neither does it identify the role of the Court in Sierra Leone's transition to peace. Similarly, Clark claims that the Court has an advantage over the ICTY as its materials only needed to be translated into Krio, the main *lingua franca* in Sierra Leone. This is incorrect. As will be discussed in Chapter 2, the perception of a Freetown bias, where Krio was widely spoken, was difficult for the Court to counter, and, despite high illiteracy levels, the Court also published work in Mende and Temne – the two other main languages in Sierra Leone – to ensure that it was reaching out effectively to people in the provinces. This straightforward aspect of the Court's functioning in Sierra Leone, therefore, was one of its biggest challenges in reaching out to the country overall.

Clark's study also refers to a survey undertaken assessing the impact of the Court, and concludes that the impact of outreach was high: an astounding 85 per cent said that the Outreach team had provided sufficient information about the Court; 85 per cent said that they were able to speak adequately about the Court's activities, based on information provided by the Outreach section; and 88 per cent of respondents maintained that the Outreach team was doing an excellent job – a clear contrast to the BBC World Service findings mentioned earlier. This was a study commissioned by the SCSL, entitled 'Public Perceptions of the Special Court for Sierra Leone', headed by a Sierra Leonean academic from Fourah Bay College, Freetown. Discussions in January and April–May 2007 revealed that Outreach had played a significant role in seeking funding, planning, and recruiting for this survey. The former Registrar had also offered editorial assistance for the final project report. This level of involvement with the project planning and outcomes means that it is difficult to view the report as truly independent.

Kelsall and Sawyer's (2007) research on perceptions of the TRC and SCSL found that overall understanding of the Court and Commission was also poor, and therefore these were perceived to have had limited success. However, despite their findings, Kelsall and Sawyer also established that both Court and Commission were considered to be important mechanisms for consolidating peace in the region. Their study found that, overall, understanding of the Court was very low, but this often did not negate its overall importance as a peacebuilding mechanism for the country. Most importantly, the study found that the presence of the Court in-country served to highlight the importance of Sierra Leone on the international agenda. My research also found similar perceptions. The *presence* of the Court often gave it greater acceptance in the country than did its *modus operandi*.

Kelsall and Sawyer's research also found that there was significantly little crossover with domestic judicial reform programmes, whether nationally- or internationally-driven initiatives. Although a hybrid court, the SCSL was separate from the state, which underlined its impartiality but also made it difficult to engage directly with rule of law reform. Although this was not part of its mandate, there was a widely held perception that the Court would engage with this, as will be discussed in Chapters 5 and 6. Despite the training provided to national staff throughout the Court, many stated that there would be a significant 'brain drain' when the Court left, as there were no jobs or money to pay for skilled staff within the national judiciary (discussed further in Chapter 5). The Court indictments were also believed to reflect an 'inappropriately narrow interpretation of the court's mandate, such that several particularly brutal regional or mid-level commanders have not been indicted' (Human Rights Watch, 2004). The indictment of thirteen people in a conflict involving thousands raised questions nationally about the Court's appropriateness as a mechanism to deliver adequate post-conflict justice to Sierra Leone. It raised further questions regarding the role it would play in strengthening the national system when it remained distinct from local processes, and queries about ending impunity when the

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