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Note from the Field

The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission

Abdul Tejan-Cole†

Most countries in transition from civil war face limited choices when imposing accountability for past atrocities. Some, like Mozambique, opt to grant unconditional amnesty. Other countries, like South Africa, have instituted a truth and reconciliation commission and granted limited amnesty, while yet others, like Rwanda, prosecute perpetrators of genocide, war crimes, and crimes against humanity. These solutions are not mutually exclusive. Following a ten-year, bloody war characterized by widespread killings, amputations, rape, slavery, enforced prostitution and extensive use of child soldiers, Sierra Leone has chosen a unique blend of institutional mechanisms. At first, the government purported to grant an “unconditional” amnesty to the perpetrators while establishing a Truth and Reconciliation Commission. When the agreement establishing the latter foundered, the government established a Special Court in addition to the Commission. Amnesty pardons all, the Commission seeks truth, reconciliation and healing for past wrongs, and the Court aims at prosecuting the most culpable perpetrators. This Note examines two of these seemingly conflicting mechanisms – the Truth and

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Reconciliation Commission and the Special Court. The Note compares the mandates of the respective bodies, as well as their basis, composition and jurisdiction and discusses their respective roles in Sierra Leone. The Note highlights several areas in which these bodies need to cooperate while maintaining their independence and emphasizes the need to define the relationship between the two institutions in order to preserve their effectiveness.

I. INTRODUCTION

Societies emerging from political turmoil and civil unrest associated with gross violations of human rights and humanitarian law face the crucial questions of how to deal with these atrocities and how to come to terms with the past.¹ Since the 1980s, this problem has been a major pre-occupation of international law and scholarship. The traditional responses include international intervention pursuant to Chapter VII powers of the United Nations Charter, grants of conditional amnesty to perpetrators of war crimes and crimes against humanity, grants of some form of unconditional amnesty, and prosecution of those responsible.

Nowhere is the difficulty of dealing with the past more pressing than in Sierra Leone, which recently emerged from a ten-year civil war characterized by systematic, serious, and widespread violations of human rights and international humanitarian law.² The government of Sierra Leone needed to make a choice among these four traditional strategies for dealing with pervasive human rights violations. Many discussions on post-conflict accountability mechanisms weigh the merits in choosing among a truth commission, national or international criminal prosecutions, or some other form of establishing accountability. Sierra Leone is unique in trying

1. Steven R. Ratner, *New Democracies, Old Atrocities: An Inquiry in International Law*, 87 GEO. L.J. 707 (1999); see also STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 140-41 (2001); Jose Zalaquett, *Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints*, in STATE CRIMES: PUNISHMENT OR PARDON 23, 41-43 (1989); J. Sarkin, *The Necessity and Challenges of Establishing a Truth and Reconciliation Commission in Rwanda*, 29 HUM. RTS. Q. 767, 768-70 (1999); Dr. Kristin Henrard, *The Viability Of National Amnesties in View of the Increasing Recognition Of Individual Criminal Responsibility at International Law*, 8 MSU-DCL J. INT'L L. 595 (1999). See also Luc Huyse, *Transitional Justice*, in DEMOCRACY AND DEEP-ROOTED CONFLICT: OPTIONS FOR NEGOTIATORS 273, 275 (Peter Harris & Ben Reilly eds., 1998); Jaime Malamud-Goti, *Transitional Governments in the Breach: Why Punish State Criminals*, in TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 189, 206 (Neil J. Kritz ed., 1995); Carlos S. Nino, *Response: The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina*, in TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 417, 418-419 (Neil J. Kritz ed., 1995).

2. For a detailed account of the atrocities in Sierra Leone, see Abdul Tejan-Cole, *Human Rights under the Armed Forces Revolutionary Council (AFRC) in Sierra Leone: A Catalogue of Abuse*, 10 AFR. J. INT'L & COMP. L. 481 (1998). See generally Human Rights Watch at <http://www.hrw.org> and Amnesty International at <http://www.amnesty.org>, particularly the country and special reports on Sierra Leone from 1991 to date.

almost all of these options in attempting to address its post-conflict situation.

In Sierra Leone, both rebel and government forces committed atrocities in the period after the conflict began in March 1991. Members of the Revolutionary United Front (RUF),³ with the military and material support of the National Patriotic Front of Liberia (NPFL),⁴ quickly gained control over a fifth of the territory of Sierra Leone and engaged in a campaign of violence whose only motivating factor seems to have been the control of Sierra Leone's abundant diamond wealth. In a counter-offensive, the army hastily conscripted hundreds of recruits, the enlistment rising from 3,000 to 14,000 men in the first two years of the conflict. Most of the new government recruits were disaffected—the army was mismanaged and underpaid. In April 1992, a group of soldiers arrived in Freetown from the war front to demand better pay and conditions. They soon overthrew President Momoh's Government in a coup. The coup was extremely popular, particularly because social conditions had rapidly deteriorated, labor and student unrest had heightened, and elections had approached, which the opposition parties alleged the government was preparing to rig.

Over the next four years, the RUF continued to fight to overthrow the successive governments. Elected president in 1996, Ahmad Tejan Kabbah was overthrown in a May 1997 coup by the Armed Forces Revolutionary Council (AFRC),⁵ a group created by a cadre of senior military officers. The AFRC then supported Johnny Paul Koroma, who initiated an alliance with the RUF. During the period of RUF/AFRC rule, the rule of law and the economic situation in the country completely deteriorated. In February 1998, the Economic Community of West African States Monitoring Group (ECOMOG), which had been defending the Freetown airport, drove the RUF/AFRC out of Freetown and restored Kabbah to office. Foday Sankoh, leader of the RUF, returned to Sierra Leone after being arrested in Nigeria and was tried, convicted, and sentenced to death for treason. By the end of 1998, however, the rebels had gained control over half the country, particularly in the major diamond mining areas.

In January 1999, the AFRC/RUF entered Freetown and commenced "Operation No Living Thing." The subsequent human rights violations were among the worst of the conflict. After several weeks, ECOMOG was able to push the AFRC/RUF out of Freetown, but many children were abducted in the RUF retreat, and the RUF continued to control much of the country. Many Sierra Leoneans were displaced as a result of the RUF's occupation.

3. The RUF is a loosely organized guerrilla group that started the war in 1991, seeking to topple the government of Sierra Leone and to retain control of the lucrative diamond-producing regions of the country. It was headed by a former Corporal in the Sierra Leone Army, Foday Sankoh.

4. Led by Charles Taylor, president of Liberia, the NPFL launched a civil war in neighboring Liberia in 1989.

5. The Council formed by Johnny Paul Koroma after May 25, 1999.

In May 1999, under the auspices of ECOWAS,⁶ a cease-fire agreement was signed. Sankoh was released from prison in July in order to attend negotiations with Kabbah in Lomé, Togo. On July 7, the Lomé Accord was signed.⁷ To general dismay, Sankoh was appointed Chairman of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development—giving him control of the diamond mines—and also vice-president of Sierra Leone, making him answerable only to the President.

The Lomé Accord provided for the creation of a Truth and Reconciliation Commission (TRC) to aid in reconciling the various factions and to provide a forum for victims and combatants to tell their stories, with a hope toward beginning a healing process for all Sierra Leoneans. The Accord also provided, however, a complete and unconditional blanket amnesty to all combatants for activities occurring after 1991. The U.N. made it explicit that the amnesty and pardon provisions would not apply to crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law committed during the conflict.⁸

In October 1999, the Security Council established the United Nation's Mission in Sierra Leone (UNAMSIL) to assist in carrying out the Lomé Accord. Although disarmament began and peacekeeping troops were present in Sierra Leone, the peace was tenuous. Despite the signing of the Lomé Agreement, hostilities did not cease, and the factions continued to commit atrocities.⁹ In May 2000, the government of Sierra Leone reassessed its stance toward a full amnesty after the rebels took United Nations peacekeepers as hostages¹⁰ and Sankoh's security guards killed several people during a demonstration by civil society groups in front of his residence.¹¹

6. Economic Community of West African States.

7. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999 [hereinafter Lomé Accord], available at <http://www.sierra-leone.org/Lomeaccord.html>.

8. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) November 30, 1996, available at <http://www.sierra-leone.org/abidjanaccord.html>.

9. For a detailed account, see Abdul Tejan-Cole, *The Special Court for Sierra Leone: Conceptual Concerns and Alternatives*, 1 AFR. HUM. RTS. L.J. 107 (2001); see also HUMAN RIGHTS WATCH, *Sierra Leone: Getting Away With Murder, Mutilation, Rape—New testimony from Sierra Leone*, in WORLD REPORT 1999 (July 1999), available at <http://www.hrw.org/hrw/reports/1999/sierra>.

10. Christopher S. Wren, *U.N. Says Leone Rebels Now Hold 92 Peacekeepers*, N.Y. TIMES, May 5, 2000, at A14; James Rupert and Douglas Farah, *Liberian Leader Urges Sierra Leone Rebels to Free Hostages*, WASH. POST, May 20, 2000, at A20; see also SIERRA LEONE WEB NEWS ARCHIVES, May 5, 2000, available at <http://sierra-leone.org/slnews0500.html>.

11. Norimitsu Onishi, *Gunmen Fire on Protesters in Sierra Leone*, N.Y. TIMES, May 9, 2000, at A6. The Sierra Leone Web cited Médecins Sans Frontières (Doctors Without Borders) estimate of approximately 40 civilian casualties. SIERRA LEONE WEB NEWS ARCHIVES, May 10, 2000, available at <http://sierra-leone.org/slnews0500-B.html>.

President Kabbah wrote to the U.N. Secretary-General requesting the establishment of an independent Special Court for Sierra Leone to address the violations committed during the war. In August, the Security Council passed Resolution 1315 mandating the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent Special Court.¹² On October 4, 2000 the Secretary-General submitted his report to the Security Council, annexing the draft agreement between the U.N. and the government of Sierra Leone and the draft statute for the establishment of the court.¹³ Several letters between the president of the Security Council and the Secretary-General from December 2000 to July 2001 made revisions to the Statute.¹⁴

In July 2001 the Security Council approved plans for a court that would prosecute “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.” The Security Council endorsed the establishment of a special tribunal and on January 16, 2002, Hans Correll¹⁵ for the United Nations and Solomon Ekuma Berewa¹⁶ for the government of Sierra Leone signed the agreement establishing the Special Court for Sierra Leone.

Consequently, Sierra Leone will have both a national TRC and an international, U.N.-sanctioned Special Court. This situation is unique as it is the first time a court and a truth commission with related jurisdiction have been established with the assistance of the United Nations. The institutions will operate contemporaneously with concurrent and somewhat overlapping jurisdiction.

12. S.C. Res. 1315, U.N. SCOR, 4168th mtg., U.N. Doc S/RES/1315 (2000) [hereinafter Security Council Resolution 1315], available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/605/32/PDF/N0060532.pdf?OpenElement>.

13. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, U.N. SCOR, 55th Sess., U.N. Doc. S/2000/915 (2000) [hereinafter Special Court Statute], available at <http://www.sierra-leone.org/specialcourtstatute.html>.

14. Letter from the President of the Security Council addressed to the Secretary-General, U.N. Doc. S/2000/1234 (December 22, 2000) [hereinafter December 22, 2000 Security Council Letter], available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/812/77/PDF/N0081277.pdf?OpenElement>; Letter from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2001/40 (January 12, 2001) [hereinafter, January 12, 2001 S-G Letter], available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/211/71/PDF/N0121171.pdf?OpenElement>; and Letter from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2001/693 (July 12, 2001) [hereinafter July 12, 2001 S-G Letter], available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/455/50/PDF/N0145550.pdf?OpenElement>.

15. U.N. Deputy Under-Secretary for Legal Matters.

16. Then Attorney-General and Minister of Justice of Sierra Leone, now Vice President of Sierra Leone.

II. BASIS, COMPOSITION, AND JURISDICTION OF THE COMMISSION AND THE SPECIAL COURT

A. Legal Basis

The Special Court for Sierra Leone will function under a unique mandate. Unlike the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone was established by an agreement between the government of Sierra Leone and the U.N. under Security Council Resolution 1315 (2000), and *not* pursuant to Chapter VII of the U.N. Charter.¹⁷ The agreement determines, *inter alia*, the competence, jurisdiction, and organizational structure of the Special Court. No reference is made in either the agreement or the statute to Chapter VII of the U.N. Charter. Article 1 of the agreement merely states: “*There is hereby established a Special Court for Sierra Leone...*” and the statute traces its authority to an agreement between the government of Sierra Leone and the U.N. “*pursuant to Security Council Resolution 1315 (2000).*”¹⁸

In a number of other resolutions on Sierra Leone, the Security Council explicitly stated that it was acting pursuant to Chapter VII,¹⁹ but it failed to do so in Resolution 1315.²⁰ Although Resolution 1315 used the same terminology found in Chapter VII, reiterating “that the situation in Sierra Leone continues to constitute a threat to international peace and security in the region,”²¹ neither the statute nor the agreement explicitly states that the proposed court was established pursuant to this Chapter. Without such explicit reference, it seems clear that the Security Council was not exercising its powers under Chapter VII.

17. Special Court Statute, *supra* note 13.

18. Special Court Statute, *supra* note 13, art. 1.

19. S.C. Res. 1343, U.N. SCOR, 4287th mtg., U.N. Doc. S/RES/1343 (2001) (imposing sanctions on Liberia for its support for the RUF and its involvement in the illicit arms-for-diamonds trade); S.C. Res. 1306, U.N. SCOR, 4168th mtg., U.N. Doc. S/RES/1306 (2000) (prohibiting the direct or indirect import of all rough diamonds from Sierra Leone); S.C. Res. 1171, U.N. SCOR, 3889th mtg., U.N. Doc. S/RES/1171 (1998) (terminating sanctions imposed on the military junta); S.C. Res. 1132, U.N. SCOR, 3822nd mtg., U.N. Doc. S/RES/1132 (1997) (demanding that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically-elected Government and a return to constitutional order).

20. There are numerous references in United Nations documents categorically stating that the Court was not established pursuant to Chapter VII. The Secretary-General of the U.N. in his Report on the establishment of the Special Court for Sierra Leone endorsed the view that the Court was not established pursuant to the Chapter VII of the Charter and noted that “the Security Council may wish to consider endowing it with Chapter VII powers for the specific purpose of requesting the surrender of an accused from outside the jurisdiction of the Court.” Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, U.N. SCOR, 55th Sess., U.N. Doc. S/2000/915 (2000). The statements by U.N. officials constitute a part of the *travaux preparatoire* of the Special Court Agreement and will be used by the Courts when interpreting the Statute and the Agreement.

21. Security Council Resolution 1315, *supra* note 12.

Unlike the Special Court, the TRC is a national institution. The legal basis of the TRC is in Sierra Leonean law.²² The Commission was first proposed under the Lomé Peace Accord signed between the government of Sierra Leone and the Revolutionary United Front in 1999. Unlike the agreement with the Secretary-General establishing the Special Court, the Lomé Accord is not an international agreement, but a compact between two national parties—the government of Sierra Leone and the RUF. The U.N., Organisation of African Unity, Economic Community of West African States and Jesse Jackson, U.S. Presidential Special Envoy for the Promotion of Democracy in Africa, signed the agreement as witnesses and/or moral guarantors, but not as parties.²³ Cementing the obligations assumed through the signing of the Lomé Peace Accord, the Parliament of Sierra Leone passed the Truth and Reconciliation Commission Act (TRC Act) in 2000,²⁴ specifying the scope, mandate, and jurisdiction of the Commission.

B. Composition

The Special Court will be composed of one or more trial chambers, an appeals chamber, the prosecutor's office and the registry.²⁵ Three judges serve in the trial chambers—two appointed by the U.N. Secretary-General and one by the government of Sierra Leone.²⁶ Six months after the Court commences its functions, a second trial chamber may be set up if requested by the Secretary-General, the prosecutor, or the president of the Special Court.²⁷ In the appellate chambers, three judges were appointed by the Secretary-General and two by the government of Sierra Leone.²⁸

The decision to create a mixed tribunal of national and international judges was due primarily to practical considerations and fears about the neutrality of national trials. The Sierra Leonean judicial system has been largely decimated as a result of the war. It is only functional in Freetown and lacks the enormous human and financial resources required to undertake post-conflict trials.²⁹ Resolution 1315 particularly noted “the negative impact of the security situation on the administration of justice in

22. See The Truth and Reconciliation Act, sec. 2(1) (2000) (Sierra Leone) [hereinafter TRC Act], available at <http://www.sierra-leone.org/trcact2000.html> (“There is hereby established a body known as the Truth and Reconciliation Commission.”)

23. Lomé Accord, *supra* note 7.

24. TRC Act, *supra* note 22.

25. Special Court Statute, *supra* note 13, app. II, art. 11.

26. *Id.* art. 12(1)(a).

27. *Id.* art. 2(1). (As amended by letter from the President of the Security Council. December 22, 2000 Security Council Letter, *supra* note 14.)

28. *Id.* art. 12(1)(b).

29. For the effect of the war on the Sierra Leone judiciary, see The Commonwealth Human Rights Initiative, In Pursuit of Justice: A Report on the Judiciary in Sierra Leone Report, (2002) available at <http://www.humanrightsinitiative.org/publications/Sierra%20Leone%20Report.pdf>.

Sierra Leone and the pressing need for international cooperation to assist in strengthening the judicial system of Sierra Leone."³⁰

Like the Special Court, the TRC is also of mixed composition. The Act provides for seven commissioners: four citizens of Sierra Leone and three non-citizens.³¹ The President of Sierra Leone appoints all the commissioners as well as the chairman and deputy chairman of the Commission.³² The decision to include international members was made to ensure that the Commission creates an impartial historical record of the events in Sierra Leone.

C. Subject Matter Jurisdiction

The Sierra Leone Parliament passed the TRC Act in February 2000.³³ The broad functions of the Commission, as stated in Section 6(1) are: (i) to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement in 1996; (ii) to address impunity; (iii) to respond to the needs of the victims; (iv) to promote healing and reconciliation; and (v) to prevent a repetition of the violations and abuses suffered.

The Commission's mandate embraces investigating and reporting on the causes, nature and extent of the violations and abuses to the fullest degree possible—including their antecedents, their context, the role of both internal and external factors in the conflict, and whether the abuses were the result of a deliberate policy or authorization by any government, group, or individual.³⁴

The Commission's task will also include helping to restore human dignity to victims and promoting reconciliation by providing victims the opportunity to give an account of the violations and abuses suffered, and providing perpetrators the chance to relate their experiences. Its goal is to create a climate that fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuse and to the experiences of children who participated in the conflict.³⁵

The Commission's subject matter jurisdiction overlaps with the Special Court's but is much broader. The Special Court's jurisdiction is limited to serious violations of international humanitarian law and crimes under Sierra Leonean law, whereas the Commission can investigate all or any abuses and violations of human rights and international humanitarian law

30. Security Council Resolution 1315, *supra* note 12.

31. TRC Act, *supra* note 22, § 3(1).

32. *Id.* § 3(3).

33. *Id.* § 6.

34. *Id.* § 6(2)(a).

35. *Id.* § 6(2)(b).

related to the armed conflict in Sierra Leone.³⁶ Pre-conceived notions of the conflict will not limit the Commission's scope.

In contrast, Resolution 1315 limits the subject matter jurisdiction of the Court,³⁷ particularly with respect to crimes under international law, and depends upon documented accounts of the war as well as predetermined ideas about the nature of the conflict and the acts committed during it. The Special Court's subject matter jurisdiction includes violations of humanitarian law. International humanitarian law prohibits crimes against humanity,³⁸ violations of Article 3 common to the Geneva Conventions and Additional Protocol II,³⁹ and acts prohibited under customary international law at the time they were committed.⁴⁰ Crimes under Sierra Leonean law subject to the jurisdiction of the Special Court include offenses relating to the abuse of girls under the Prevention of Cruelty to Children Act of 1960⁴¹ and offenses relating to the wanton destruction of property under the Malicious Damage Act of 1861.⁴²

D. Personal Jurisdiction

The Court has jurisdiction to try "persons who bear the greatest responsibility" for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since

36. Special Court Statute, *supra* note 13, art. 1.

37. Security Council Resolution 1315, *supra* note 12.

38. Article 2 of the Special Court Statute gives the Court power to prosecute persons who committed murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence, persecution on political, racial, ethnic and religious grounds and other inhumane acts as part of a widespread or systematic attack against civilian population. Special Court Statute, *supra* note 13, art. 2.

39. Article 3 of the Special Court Statute gives the Court power to prosecute persons who committed or ordered the commission of serious violations under Article 3 common to the Geneva Conventions of August 12, 1949 for the protection of War Victims and of Additional Protocol II thereto of June 8, 1977. These violations include violence to life, health and physical or mental well-being of persons, particularly murder; cruel treatment such as torture, mutilation, or any other form of corporal punishment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity; pillage; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court and threats to commit any of these acts. Special Court Statute, *supra* note 13, art. 3.

40. Article 4 of the Statute of the Special Court for Sierra Leone lists these as including: intentionally directing attacks against the civilian population or against individual civilians not taking part in hostilities; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict. Special Court Statute, *supra* note 13, art. 3. The original Article 4(c) was amended to read: "Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities." December 22, 2000 Security Council Letter, *supra* note 14

41. Special Court Statute, *supra* note 13, art.5(a).

42. *Id.*

November 30, 1996.⁴³ The U.N. Secretary-General has cautioned that the term “persons who bear greatest responsibility” does not limit personal jurisdiction to political and military leaders and is meant to provide a prosecutorial strategy rather than to form an element of the crime that must be proven:

[T]he determination of the meaning of the term “persons who bear the greatest responsibility” in any given case falls initially to the Prosecutor and the Special Court itself....[P]articular mention is made of those leaders who, in committing such crimes, have threatened the establishment and implementation of the peace process in Sierra Leone. It is my understanding that following from paragraph 2 above, the words “those leaders who.... threaten the establishment and implementation of the peace process” do not describe an element of the crime but rather provide guidance to the prosecutor in determining his or her prosecutorial strategy. Consequently, the commission of any of the statutory crimes without necessarily threatening the establishment and implementation of the peace process would not detract from the international criminal responsibility otherwise entailed for the accused.⁴⁴

Whereas the prosecutor in the Special Court will seek to try those who bear the greatest responsibility, the Commission has no such restriction. The government of Sierra Leone has noted that whereas “the Special Court [is] for the few who meet the personal jurisdiction requirements, the Truth and Reconciliation Commission [is] for everybody else.”⁴⁵ Given the limited resources of the Special Court, it will only be able to prosecute a relatively limited number of persons, despite the length of the conflict and the large number of forces involved. The most optimistic estimates indicate that the Court may eventually try 24 persons.⁴⁶ The Commission will almost certainly investigate more people than that.

Since the overlapping personal jurisdiction of the Special Court and the TRC is a potential source of conflict, the U.N. Expert group suggested that

43. Special Court Statute as amended by letter from the President of Security Council. Dec. 22, 2000 Security Council Letter, *supra* note 14.

44. Jan. 12, 2001 S-G Letter, *supra* note 14, ¶¶ 2-3.

45. Relationship between the Special Court and the Truth and Reconciliation Commission: Legal Analysis and Policy Considerations of the Government of Sierra Leone for the Task Force (Jan. 7-18, 2002) [hereinafter, Briefing Paper on the Relationship between the Special Court and Truth and Reconciliation Commission] available at http://www.specialcourt.org/documents/PlanningMission/BriefingPapers/TRC_SpCt.html.

46. Neither the United Nations, the Government or Court officials have confirmed or denied this figure. However, the Deputy Registrar of the Court, Robert Kirkwood, was quoted on Sierra Leone Web as stating that the new court building will have 26 cells and that all of the accused will be held in individual cells built in accordance with international standards. SIERRA LEONE WEB NEWS ARCHIVES, Oct. 14, 2002, available at <http://www.sierra-leone.org/slnews1002.html>.

the prosecutor should define in his publicly announced prosecutorial strategy “those who bear the greatest responsibility.” Once defined, such defendants should be considered within the exclusive jurisdiction of the Court and outside that of the Commission.⁴⁷

This solution to the personal jurisdiction conflict may not be entirely acceptable as there is nothing in the current law that restricts the TRC from taking evidence from or investigating the actors “who bear the greatest responsibility” and who appear before the Court. Denying the TRC jurisdiction over such individuals would mean denying it access to the leaders of the conflict, and without access to that evidence, the Commission would be unable to fulfill its mandate “to create an impartial historical record of violations and abuses.”

E. Temporal Jurisdiction

The Special Court’s jurisdiction covers events after November 30, 1996.⁴⁸ This date was meant to put the Sierra Leone conflict in perspective without unnecessarily extending the Special Court’s temporal jurisdiction. The Special Court currently has an open-ended mandate: its lifespan will be determined by a subsequent agreement between the government of Sierra Leone and the U.N. This may happen when the judicial activities are completed, when local courts in Sierra Leone have acquired the capacity to assume prosecution of the remaining cases, or when resources become unavailable.⁴⁹

The commencement date for the Court’s temporal jurisdiction is most unsatisfactory. The war in Sierra Leone began on March 23, 1991. Because of the Court’s truncated temporal jurisdiction, the massive violations of human rights and humanitarian law that were committed by all the parties to the conflict between March 23, 1991 and November 30, 1996 will remain unpunished.⁵⁰

Before determining the temporal jurisdiction of the Court, the Secretary-General considered and eliminated several other potential starting dates. The date of commencement of the conflict, March 23, 1991, was ruled out because of the onerous burden in terms of the time and cost of undertaking investigations extending this far back in time. The date of the AFRC coup, May 25, 1997, was rejected as having too many political overtones, and January 6, 1999, the date of the rebel invasion of the capital, was rejected as giving the impression of favoring Freetown over the provinces.⁵¹ The November 30, 1996 date thus represents a compromise.

47. Communiqué issued by the United Nations Expert Meeting on the Relationship Between the Truth and Reconciliation Commission and the Special Court for Sierra Leone, New York, Dec. 20-22, 2001.

48. Special Court Statute, *supra* note 13, art. 1.

49. Special Court Statute *supra* note 13, ¶ 28.

50. For a critique of the temporal jurisdiction of the Court, see Tejan-Cole, *supra* note 9.

51. Special Court Statute, *supra* note 13, ¶¶ 26-27.

By contrast, the Commission's temporal jurisdiction is more satisfactory. Its jurisdiction extends to the conflict's origins, March 23, 1991, and concludes with the signing of the Lomé Peace Agreement on July 7, 1999. Two key points should be noted. First, the temporal jurisdiction of the two institutions overlaps between November 30, 1996 and July 7, 1999. Second, although the Commission's temporal jurisdiction begins in May of 1991, it will not be limited by this time frame in the course of establishing an impartial record. Thus, it must delve beyond the commencement date when determining the underlying causes of the war.

III. THE RELATIONSHIP BETWEEN THE TRUTH AND RECONCILIATION COMMISSION AND THE SPECIAL COURT

A. The Need to Determine the Relationship

From the examination of the mandate and jurisdiction of both institutions, it is clear that their work overlaps. Both have related functions and the same common goals: ensuring accountability in Sierra Leone, bringing sustainable peace to the country, and building a culture of respect for human rights. Without a clearly defined relationship, the danger exists that the institutions may duplicate each other's work, thereby wasting their limited resources.

Another problem is that, because of the lack of a well-defined relationship between the two institutions, Sierra Leoneans are confused about the respective roles the institutions are supposed to play. In addition to clarifying perceptions on the ground, clearly defining this relationship may also help reduce the tension and rivalry that usually exists between such institutions. Both institutions will lose credibility if they are seen to be in conflict. Thus, it is of critical importance that this issue be resolved.

B. The Statutes

The Lomé Peace Accord Act⁵² and the TRC Act,⁵³ which established the TRC, make no reference to the Special Court. At the time the TRC Act was enacted, four months before the president's requests to the U.N., the Special Court had not been contemplated. Similarly, the agreement between the government of Sierra Leone and the Secretary-General of the U.N. establishing the Special Court makes no direct reference to the TRC.⁵⁴

52. Lomé Accord, *supra* note 7.

53. TRC Act, *supra* note 22.

54. There is one indirect reference to the Truth and Reconciliation Commission in the Special Court Statute. Under the title "The Prosecutor," Article 15(5) provides: "In the prosecution of juvenile offenders, the prosecutor shall ensure that the child-rehabilitation program is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability." Special Court Statute, *supra* note 13, art. 15(5).

The statutes remain silent on the relationship between the two entities, suggesting that they are separate and distinct. Even the drafters of the Special Court statute and agreement, which came later and had an opportunity to address the issue, either did not envision any relationship between the institutions or simply deemed the issue unnecessary of examination.

C. The Question of Primacy and the Relationship to National Courts

Although the TRC Act does not explicitly delineate the relationship between the Commission and either domestic courts or the Special Court, reference is made to domestic courts. Section 8(2) provides that failure to respond to a summons or subpoena issued by the Commission, failure to truly and faithfully answer questions of the Commission after responding to a summons or subpoena, or intentionally providing misleading or false information to the Commission will be deemed a contempt of court and that the Commission can, at its discretion, refer the matter to the High Court of Sierra Leone for trial and punishment. Similarly, other offenses created under the Act will be enforced by the High Court, a national court of Sierra Leone. For example, under section 9 (2) of the Act, if a person willfully obstructs or interferes with the Commission or any of its members or officers in the discharge of their functions, s/he will be charged, tried and, if convicted, punished by the High Court of Sierra Leone.

Unlike the Special Court, despite having some international Commissioners, the TRC is a national institution, and, as such, it does not have primacy over national courts. The Constitution of Sierra Leone provides that the Supreme Court is the highest court and the final court of appeal.⁵⁵ Section 125 of the Constitution states that “[t]he Supreme Court shall have supervisory jurisdiction over all other Courts in Sierra Leone and over any adjudicating authority.”⁵⁶ Consequently, the Supreme Court will have supervisory jurisdiction over the Commission.⁵⁷

None of the statutes gives the TRC primacy over the Special Court. On the other hand, the statute of the Special Court gives it primacy over national courts. The Court may at any stage formally request a national court to defer to its competence in accordance with its statute and rules of procedure.⁵⁸ The TRC does not fall under the definition of national court and will be unaffected by this provision in the Special Court’s statute. The Commission has functions akin to a court such as issuing subpoenas but it

55. SIERRA LEONE CONST. (Act No. 6 of 1991) sec. 122, available at <http://www.sierra-leone.org/constitution-vii.html>.

56. SIERRA LEONE CONST. (Act No. 6 of 1991) sec. 125, available at <http://www.sierra-leone.org/constitution-vii.html>.

57. This jurisdiction is not limited to the Supreme Court; all other courts that are part of the Superior Courts of Judicature also have supervisory jurisdiction over the Truth and Reconciliation Commission.

58. Statute of the Special Court, *supra* note 13, art. 8(2).

is certainly not a national court, and the Special Court does not have primacy over it.

Subsequent to the signing of the statute, however, the government of Sierra Leone enacted the Special Court Agreement 2002 (Ratification) Act of 2002.⁵⁹ This enabling legislation provides "for the ratification and implementation of the Agreement between the Government of Sierra Leone and the United Nations signed on 16th January 2002, for the establishment of the Special Court for Sierra Leone."⁶⁰ Section 21 (2) of the Act requires that "[n]otwithstanding any other law, every natural person, corporation, or other body created by or under Sierra Leone law shall comply with any direction specified in an order of the Special Court."⁶¹

In a letter to the Attorney-General sent before the bill became law, Campaign for Good Governance (CGG), a national non-governmental organization, noted that "[i]t would seem from this bill that the consensus forged with regards to parity between the two institutions has not been officially recognized by any of the key decision-makers."⁶² It requested that the government review the bill so as to ensure that "the Act should in no way grant the Special Court primacy over the Truth and Reconciliation Commission, particularly with regards to demanding confidential information." Such a move, they warned, "would decimate any impression of Truth and Reconciliation Commission independence and demote it to a mere research arm of the Special Court."⁶³ CGG's request fell on deaf ears.

Consequently, since both institutions came into existence, the questions of primacy and of the relationship between these institutions and the national courts have dominated the national debate. It is clear that the Special Court will have primacy over persons who bear the greatest responsibility for the crimes listed in its statute. What is uncertain is whether the TRC is obliged to comply with orders of the Special Court.

The Special Court's enabling legislation allows it to direct or order the TRC to do or omit to do a particular act. It may request and demand evidence from the Commission, whether the evidence is confidential or not. In stark contrast, Section 14(1) of the TRC Act makes the Commission an independent institution "in the performance of its functions under this Act, not...subject to the direction or control of any person or authority."⁶⁴

Both institutions are seeking to avoid a confrontation. In the event that a conflict arises, however, the courts of Sierra Leone may have to determine

59. The Special Court Agreement 2002 (Ratification) Act (2002) [hereinafter Ratification Act], available at <http://www.specialcourt.org/documents/SpecialCourtAct.html>.

60. *Id.*, Memorandum of Object and Reasons.

61. *Id.*, art. 21(2).

62. Letter from Abdul Tejan-Cole, Acting Coordinator, The Campaign for Good Governance, to Solomon E. Berewa, Attorney General and Minister of Justice of Sierra Leone (Mar. 15, 2002) (on file with the author and available at <http://www.slccg.org/letterag.htm>). The Campaign for Good Governance is a national nongovernmental organization in Sierra Leone. See www.slccg.org.

63. *Id.*

64. TRC Act, *supra* note 22, art. 14(1).

whether one institution has primacy over the other. The doctrine of subsequent legislation supports the Special Court's primacy over the TRC.⁶⁵ Under this doctrine, if provisions of an earlier bill are inconsistent with those of a later bill, they are impliedly repealed. Since the local enabling legislation giving the TRC its independence was enacted in February 2000, and the Special Court Agreement (Ratification) Act was passed in 2002, the latter will arguably take precedence.

The Special Court Agreement (Ratification) Act, however, aimed at giving effect to the signed statute and agreement. The agreement and statute do not expressly give the Special Court powers to direct the TRC. The government of Sierra Leone has argued that domestic law should bend to international law and that the Act must be limited by the terms of the agreement:

It should also be remembered in this respect that the Agreement for the Special Court is a legally binding international agreement that cannot be circumvented by either pre-existing or subsequently enacted national law. Rather, should there be a conflict, domestic law has to be altered in order to comply with Sierra Leone's international obligations. Sierra Leone is therefore compelled to ensure that the necessary domestic legal conditions exist to enable it to fulfil this obligation as set out in the Agreement.⁶⁶

The statute, which the enabling act seeks to give effect to, only gives the Special Court primacy over national courts, and the TRC is certainly not a national court. The government of Sierra Leone has also noted that Article 17 of the agreement governs obedience of national institutions to the Special Court and "requires complete compliance." Article 17 sets out Sierra Leone's obligation to cooperate with all the organs of the Court, including facilitating access to the prosecutor to sites, persons and relevant documents required for the investigation.⁶⁷ Article 17 is silent on the *scope* of this obligation, however. While the agreement stresses co-operation, the enabling legislation emphasizes direction. The latter is obligatory, and the former is voluntary. The two characterizations of the relationship cannot be reconciled.

D. Information Sharing

65. Also known as the doctrine of implied repeal, *leges posteriores priores contrarias abrogant*, states that an earlier act cannot be used to amend or repeal a later act. Instead, where any conflict arises between acts of Parliament that cannot be smoothed by judicial interpretation, the later act always takes precedence.

66. Briefing Paper on Relationship between the Special Court and the Truth and Reconciliation Commission, *supra* note 45.

67. Ratification Act, *supra* note 59, art. 17.

The question of information sharing was one of the most imperative issues that dominated the initial debate about the relationship between the two institutions.⁶⁸ The issue was raised not only as a matter of academic debate but also as one of the most frequent questions asked at workshops in Freetown. At a preliminary sensitization session conducted by Post-Conflict Reintegration Initiative for Development and Empowerment (PRIDE) in Freetown in October 2001, ex-combatants made it clear that their willingness to participate in the TRC would depend in part on the relationship between the Commission and the Special Court.⁶⁹ The consensus was that perpetrators would be less willing to attend the Commission, or less inclined to tell the truth, if they believed that their evidence would be used against them in the Special Court.

From the outset, the Commission has been adamant that it would not share any confidential information with the Special Court. The TRC Act empowers the Commission to take evidence on a confidential basis. It further provides that the Commission will not be compelled to disclose any such information given to it in confidence.⁷⁰ Although the Commission is competent to disclose confidential information, it may not be *compelled* to do so under the Act. For instance, the Commission cannot be subpoenaed to produce its own evidence to the Court.⁷¹

Prosecutorial strategy may resolve some of the confusion. Special Court Prosecutor David Crane has stated that the Prosecutor's Office will not seek to use testimony taken by the TRC.⁷² Crane also has said that the

68. The Attorney General of Sierra Leone has stated that the issue of information control has often been confused with the issue of primacy. However, the Attorney General notes that: Primacy refers solely to the question of which court has jurisdiction over a particular case or individual. As such, it only applies in respect of Sierra Leonean Courts and only in the limited situation where one body either is or could be seized of jurisdiction in a particular matter. Primacy is legally and conceptually different from the issue of information sharing or compliance with orders of the Court. Thus the fact that the Special Court has primacy over Sierra Leone courts is separate from the question of whether a national institution is required to comply with orders of the Special Court: this is governed solely by article 17 of the Agreement, which requires complete compliance.

Briefing Paper on Relationship between the Special Court and the Truth and Reconciliation Commission, *supra* note 45.

69. POST-CONFLICT REINTEGRATION INITIATIVE FOR DEVELOPMENT AND EMPOWERMENT & THE INTERNATIONAL CENTRE FOR TRANSITIONAL JUSTICE, EX-COMBATANT VIEWS OF THE TRUTH AND RECONCILIATION COMMISSION AND THE SPECIAL COURT IN SIERRA LEONE 19 (Sept. 12, 2002) available at <http://www.ictj.org/downloads/PRIDE%20report.pdf>. However, at the press conference launching the report, PRIDE Executive Secretary Joe Patrick Amara said that although the possibility of the Special Court using information from the Truth and Reconciliation Commission is a concern of some ex-combatants, 63% of those surveyed expressed a willingness to testify before the Truth and Reconciliation Commission, even if the information could be used by the Special Court.

70. TRC Act, *supra* note 22, § 7(3). The Act does not prohibit the sharing of information disclosed in public.

71. If the subsequent Ratification Act is deemed to have repealed this provision then the Special Court has the authority to demand any information from the Truth and Reconciliation Commission. See note 65 *supra*.

72. SIERRA LEONE WEB NEWS ARCHIVES, Dec. 10, 2002, at <http://www.sierra->

Court and the TRC will operate separately, but that both institutions will work to address “the entrenched problem of impunity” and to ensure accountability.⁷³ The matter seems to have been resolved between the Office of the Prosecutor and the TRC. There is the likelihood, however, that if the Commission is in possession of confidential exculpatory evidence, the defense may request access to such information.

This scenario may not be very worrisome for the Commission. A perpetrator will not be afraid to make statements if he is aware that the only circumstance in which his statement will be used is to secure his own acquittal or the acquittal of another perpetrator. Giving the defense limited access to confidential information from the Commission will address some fears and concerns and reduce the risk of the institutions undermining each other’s work. A distinction must be drawn, however, between gaining access to confidential information and using such information as evidence in a court of law. This access must be very limited in order to ensure that the Commission is not seen as another chamber of the Court.

In addition, the defense must not be given free access to *all* information in possession of the Commission. Information should be given based on three preconditions: the information requested must be specific, it must be essential to a fair determination of the innocence of the accused, and it must not be reasonably obtainable from any other source.

This approach was endorsed in the government’s briefing paper on the relationship between the two institutions. The briefing paper suggests that the TRC should share with the Special Court “confidential” material provided to it solely when the information can only be obtained from the TRC, and the information is “essential for the conviction or acquittal of the accused.”⁷⁴ This approach would preserve the confidentiality of most materials while allowing the Special Court to trump that confidentiality in order to prevent a miscarriage of justice.

The question then arises who determines whether these preconditions have been met. It would certainly be undesirable for the institutions to use their enforcement powers against each other. Such matters should be resolved on a cooperative basis when practical.

E. Sharing Resources

The TRC and the Special Court have a common problem—lack of funding. Cooperating in three areas could make maximal use of these limited resources to improve accountability in Sierra Leone: investigation, disseminating public information, and witness protection.

leone.org/slnews1202.html.

73. *Id.*

74. Briefing Paper on Relationship between the Special Court and the Truth and Reconciliation Commission, *supra* note 45.

The Special Court has sufficient resources for 18 months, but the Secretary-General has warned that, as its funding is entirely voluntary, this will “not provide the assured and continuous source of funding which would be required....”⁷⁵ In 2001, a revised budget was presented to Member States, putting the costs of the first three years of operation at \$57 million, with \$16.8 million reserved for the first year.⁷⁶ While the majority of funds for the first year have been deposited into the Court’s trust fund and pledges for the following twenty-four months have been made, there is still a significant gap between amounts pledged and the money collected.⁷⁷ It is uncertain whether these pledges will be honored.

At the same time, the TRC is in financial dire straits. It has struggled to secure even a fraction of its necessary operating budget. In an interview given to Sierra Leone Web, the interim Executive Secretary of the Commission stated that the Commission was operating with a two person skeletal staff.⁷⁸ Commissioner William Schabas also drew attention to the Commission’s critical funding situation. To date, pledges amount to \$1,580,739, of which \$1,107,825 has been received.⁷⁹ Although the Government of Sierra Leone has also donated the sum of \$97,000 and contributed the site for the Commission, the Commission has been unable to obtain one-fifth of its estimated budget. With attention now focused on the war on terror, the Commission is unlikely to receive any significant additional funding.

This shortage of funds means that the institutions must strive to work together, out of necessity if nothing else. The government of Sierra Leone has endorsed this view and identified two main areas of in which critical resources might be beneficially shared, viz., training of investigators, interviewers and other staff members, and public information and education.⁸⁰

The Government noted that it is crucial to the enterprise of both the Commission and the Court that investigators and interviewers be properly trained as they will frequently be required to explain the mechanisms to participants and answer questions and often will be the first people to whom witnesses tell their stories. Therefore, investigators and interviewers

75. Special Court Statute, *supra* note 22.

76. July 12, 2001 S-G Letter, *supra* note 14 (referring to an amended budget and a letter on June 14, 2001 from the Secretariat to Member States regarding revised budget estimates). These numbers include contributions received up until July 6, 2001.

77. The shortfalls amount to approximately \$1.8 million for the first year and \$19.6 million for the second and third years combined.

78. SIERRA LEONE WEB NEWS ARCHIVES, Oct. 14, 2002, available at <http://www.sierra-leone.org/slnews1002.html>.

79. Eighth Weekly Briefing of the Truth and Reconciliation Commission Chaired by Professor William Schabas, on Wednesday Sept. 11, 2002, available at <http://www.sierra-leone.org/trcbriefing091102.html>.

80. Briefing Paper on Relationship between the Special Court and the Truth and Reconciliation Commission, *supra* note 45.

should be "properly trained both to facilitate the gathering of information as well as to make the process as beneficial as possible for the witness."⁸¹

The underlying objectives of the public information campaigns for the Commission and the Special Court should be: (i) to dispel fear, confusion and misinformation because they are disruptive to the peace process; (ii) to build confidence in the institutions through emphasizing their independence and credibility; and (iii) to encourage the public's effective participation in and support of the Commission and Court. The two institutions should commit themselves to a public information policy of "do no harm" and together espouse the independence and distinctiveness of the Commission and the Special Court.

The collaborative aspects of the public information strategy of both institutions could include joint and shared training to ensure that those working on the information strategy are familiar with each other's role. The two bodies should also commit to sharing public informational material for pre-release consideration by the other body. This will serve as a useful means of exchanging information and ensuring that the independence, credibility and efficiency of one body is not affected by a conflicting publication associated with the other.

A joint public information strategy for the TRC and the Court should emphasize that the Court will prosecute a limited number of perpetrators "who bear the greatest responsibility" for atrocities, while the TRC will process all violations from 1991 until 1999. It should also indicate that proactive and full co-operation by a perpetrator with the Commission would be considered favorably by the Prosecutor as he develops his short list of possible candidates for indictment, as well as during the sentencing phase.

The Commission and Special Court should also coordinate their methodologies on evidence gathering. For example, to the extent the Commission investigates a particular site or is provided with materials, it will be important to ensure that its investigators do not in any way disturb or taint evidence that the Court might need, or break a chain of custody that the Court might need to prove. If both the Commission and Court conduct the same investigations it will save resources, financial as well as human. There are very few qualified forensic experts within Freetown. Because bringing in two teams from abroad to do the same investigation would be very costly, experts will need to work together.

Another possible area for cooperation is the provision of protection services to victims and witnesses. This includes ensuring the safety and security of all witnesses brought before the relevant accountability mechanisms, which involves dealing with highly confidential information; linking national and local authorities; and ensuring safe transfer, accommodation and, if necessary, the relocation of witnesses. Protective measures are necessary not only for witnesses who actually appear before

81. *Id.*.

the Commission or the Special Court but also for potential witnesses. A perception that adequate protection may not be available will deter people from deciding to testify before either body in the first place.

The question facing Sierra Leone is not only what kind of protective measures should be adopted, but also whether the Commission and the Special Court should adopt a joint structure within which to provide those measures. If there is *any* sharing of information between the Special Court and TRC, meetings between the two institutions will be needed to ensure that sharing of information does not inadvertently result in a person failing to be covered by witness protection.

Close cooperation could blur the distinction between the institutions, however, and risk seriously damaging the independence of the institutions in the public eye. The perception that both institutions are the same when created may be difficult to erase. If the investigators of the Commission and the Court work too closely together, then people who would otherwise have cooperated with the Commission, but not with the Court, will find excuse not to do even that. They may see the Commission as another chamber of the Court.

IV. CONCLUSION

The Special Court and the Truth and Reconciliation Commission have the capacity to contribute dramatically to the stability and longevity of peace, justice and democracy in Sierra Leone. However, if they are poorly designed or lose support from civil society and the legal community, the impact could be minimal or even negative. They face a difficult dilemma – each must function and appear to the public as distinct, independent entities while simultaneously seeking common goals: ensuring accountability for human rights violations in Sierra Leone, bringing sustainable peace, and building a culture of respect for human rights.

In order to be successful and avoid structural conflict, the relationship between the Commission and the Court should take account of the cultural, social and other contexts within which the institutions must operate. Enabling the people of Sierra Leone to have input into the establishment and operation of accountability mechanisms in their country would help ensure their cooperation.

The Special Court should set as a fundamental substantive and methodological priority to work together, co-operatively, with national institutions, including the Commission. The Court should not use its legal powers to impose its will. It should do everything it can to make national institutions effective in the short term and strong and self-sufficient in the longer term.

By developing a cooperative relationship that reduces or even removes the need for the Special Court to exercise its coercive powers, each institution will be better placed to serve the accountability process and contribute to a sustained peace in Sierra Leone. Furthermore, a proper

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explanation of these issues to the people of Sierra Leone can itself contribute to the accountability process and go a long way to reducing the confusion and distrust generated by misinformation that has already been widely disseminated regarding the respective roles and powers of the two institutions.

