

Transitional Justice & the Women's Rights as Human Rights Campaign

Abstract

Since the early 1990s the language of women's rights has become an institutionalised feature of international organisational discourse. One of the sites where feminists appear to have made particularly significant inroads has been the area of transitional/international criminal justice. The ICTY and ICTR were the first to specifically prosecute gender-based and sexual violence and the development of international criminal law in this area has been heralded as reflecting an important step forward for protecting and promoting the rights of women in times of war and times of peace.

The transitional justice mechanisms established in Sierra Leone in the early 2000s in response to the atrocities committed during the 10-year civil war also demonstrate the extent to which gender has become an important factor to be taken into account. Both the Truth and Reconciliation Commission and the UN Special Court for Sierra Leone dedicated significant attention to gender-based violence. In its final report, the TRC contained an entire chapter on the specific experiences of women during the armed conflict. Meanwhile the Prosecutor of the Special Court in deciding whom to try and for which crimes announced that gender would be the cornerstone of his prosecution strategy. Alongside the inclusion of charges of recruitment of child soldiers, he also added the crime of 'forced marriage' in the indictments of three of the four accused groups: a move that was widely celebrated within the women's rights and broader human rights community.

So what has been the significance of transitional justice mechanisms apparently taking up the women's rights cause? How has this affected the lives of women in post-conflict Sierra Leone? And what might be the implications for future transitional justice interventions in post-conflict societies elsewhere? These are some of the questions this paper will attempt to answer. In particular, this paper will seek to explore not only what international transitional justice advocates claim to be the outcomes of initiatives such as the gender focussed prosecutions of the Special Court for Sierra Leone, but also the perspective of local Sierra Leonean women's rights activists.

Introduction

Transitional justice – the process of assisting societies move from periods of conflict or state-sanctioned violence to peace and stability - has become an increasingly important feature of international community discourse in the post-Cold War period.¹ Moreover, whilst the concept of transitional justice potentially incorporates a range of institutions, courts are

¹ 'The Rule of Law and Transitional Justice in conflict and post-conflict societies', Report of the Secretary-General, UN Document S/2004/616, summary. For a detailed discussion of the history of transitional justice see Teitel, Rudi G. (2003) 'Transitional Justice Genealogy' *Harvard Human Rights Journal*, Vol. 16: 69-94, at 77 and Teitel, Rudi G. (2000) *Transitional Justice*, Oxford University Press, Oxford.

frequently identified as playing an important role. Whether through the International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), the establishment of various internationalised or 'hybrid' tribunals and courts in the late 1990s and early 2000s or the establishment of the first permanent International Criminal Court (ICC) in 2002, the paradigm of international criminal justice has emerged as central to any discussion about how to address the legacies of conflict and build peace post-conflict.

At the same time the 1990s also saw the flourishing of the 'women's rights as human rights' campaign. Following the statement in the Vienna Declaration (1992) that '[t]he human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women',² the language of 'gender mainstreaming' has become a permanent feature of international community initiatives on human rights, development and security. The language of 'gender mainstreaming' has been reflected in the increased pressure on international criminal justice institutions to pay particular attention to 'gender crimes': a vague term used to describe crimes committed specifically against women and frequently – although not exclusively - in the form of sexual violence. Aside from the institutional interest in 'mainstreaming gender', many human rights and feminist scholars and activists have identified international criminal justice as potentially enhancing the development of women's rights in conflict and post-conflict societies as well as more broadly.³

² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993 at para. 18.

³ Askin, Kelly Dawn (2003) 'Prosecuting Wartime Rape and Other Gender-related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles' *Berkeley Journal of International Law*, Vol. 21: 288-349 at 288; Goldstone, Richard (2002) 'Prosecuting Rape as a War Crime' *Case Western Journal of International Law*, Vol. 34(3): 277- 286; Kuo, Peggy (2002) 'Prosecuting Crimes of Sexual Violence in an International Tribunal' *Case Western Reserve Journal of International Law*, Vol. 34(3): 305- 322; McDonald, Gabrielle Kirk (2000) 'Crimes of Sexual Violence: The Experience of the International Criminal Tribunal' *Columbia Journal of Transnational Law* Vol. 39 (1):1-18; Amnesty International, 'Stop Violence Against Women: How to use International Criminal Law to Campaign for Gender-Sensitive Law Reform' Document Index: IOR 40/007/2005, 12 May 2005, available at

However, while many normative claims are made regarding the importance of legal interventions to peacebuilding and human rights projects, there remains a dearth of empirical evidence on what contribution this new legalism makes. This is significant for generally evaluating the validity of the claim of 'no peace without justice' as well as the more specific claim that international justice institutions contribute to the promotion of women's human rights. In an attempt to address this gap, this paper considers the work of the Special Court for Sierra Leone (SCSL): a hybrid court established in 2002 to prosecute those deemed 'most responsible' for international crimes committed during the ten year civil war in the small West African republic.

The Special Court for Sierra Leone (SCSL)

The SCSL was established in August 2000 following a request to the UN by the Sierra Leonean government. The original peace agreement – the Lomé Agreement – signed in July 1999 had contained an amnesty provision and had named a Truth and Reconciliation Commission (TRC) as the preferred model for addressing the conflict.⁴ However for the most part the rebel faction, the Revolutionary United Forces (RUF) failed to abide by the conditions of the Lomé Agreement and fighting continued throughout 2000. A particularly embarrassing incident occurred in May 2000 when the UN Assistance Mission in Sierra Leone (UNAMSIL) was attacked, 11

<http://www.amnesty.org/en/library/info/IO40/007/2005> (last accessed 1/06/2010).

⁴ It should also be noted here that a Truth and Reconciliation Commission (TRC) was also established, making Sierra Leone the first place both models of transitional justice were run in conjunction. Evaluating the TRC is beyond the scope of this chapter. However it is interesting to note the more 'structural' approach taken by the TRC to violence against women. Links between women's roles in peacetime and their experiences during war were emphasised. Unfortunately, the TRC's contribution has been undermined by the ongoing failure by the government to deliver on the reparations recommended by the TRC: see for example Amnesty International (2007) 'Sierra Leone: Getting reparations right for survivors of sexual violence' Document Index AFR 51/005/2007, 1 November 2007 – available at <http://www.amnesty.org/en/library/info/AFR51/005/2007> (last accessed 20/06/10).

peacekeepers were killed and 352 members abducted.⁵ Following this, a much tougher stance was taken by both the Sierra Leonean government and the international community and a number of RUF leaders were arrested and imprisoned. In November 2000 a ceasefire was finally signed between the RUF and the Sierra Leonean government and plans began for the establishment of a 'special court'.⁶ Unlike the ICTY and ICTR, the SCSL was not a solely international enterprise but set up as a joint institution between the UN and the Sierra Leonean government. This reflected a shift in the thinking around international criminal justice with both the financial and jurisdictional concerns of the *ad hoc* tribunals weighing heavy on the international community's mind.⁷

Aside from its perceived benefits in terms of funding and political legitimacy, the SCSL was also envisaged as being advantageous to the development of human rights and rule of law in post-conflict Sierra Leone. With local institutions in ruins and plagued by corruption and inefficiency, the SCSL was argued to be not only a necessary measure to address past crimes but also as a model for future justice sector development.⁸ Its location in-

⁵ O'Flaherty, Michael (2009) 'Sierra Leone's Peace Process: The Role of the Human Rights Community' in Eileen F. Babbitt and Ellen L. Lutz (eds) *Human Rights and Conflict Resolution in Context: Columbia, Sierra Leone, and Northern Ireland*, Syracuse University Press.

⁶ For a detailed discussion of how the Special Court for Sierra Leone (SCSL) came into being see Roht-Arriaza, Naomi (2009) 'Justice and Reconciliation after Conflict' in Eileen F. Babbitt and Ellen L. Lutz (eds) *Human Rights and Conflict Resolution in Context: Columbia, Sierra Leone, and Northern Ireland*, Syracuse University Press.

⁷ See for example the Secretary-General's comments in 'The Rule of Law and Transitional Justice in conflict and post-conflict societies,' Report of the Secretary-General, UN Document S/2004/616, at paras. 42 and 44.

⁸ *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, Document S/2000/915, 4 October 2000, at para. 7; Report of International Center for Transitional Justice /UNDP on the Legacy of the Special Court for Sierra Leone (2002) – available at <http://www.ictj.org/downloads/LegacyReport.pdf> (last accessed 10/12/2009); Sriram, Chandra L. (2006) 'Wrong-Sizing International Justice? The Hybrid Tribunal in Sierra Leone' *Fordham International Law Journal*, Vol. 29: 472-506, at 498; Cassese, Antonio (2006) 'Report on the Special Court for Sierra Leone' independent expert report, 12 December 2006 – available at <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx> (last accessed

country and the heavy emphasis placed in the early days on outreach, were identified as key features necessary to enhancing the peace process.⁹ Moreover, early expressions by the Chief Prosecutor of commitment to gender-based and sexual violence were celebrated in a country where violence had been a major blight in women's lives before, during and after the conflict.

The Promise of the SCSL for Women

In particular, with regard to women's rights, the SCSL was identified as holding positive potential through an apparent dedication to ending impunity for crimes committed specifically against women. Human rights and women's rights organisations and scholars alike have praised the public statements made by the first Chief Prosecutor that he would be making gender crimes the 'cornerstone' of his prosecution strategy.¹⁰ For example, Shana Eaton

10/06/2010); McAuliffe, Pádraig (2008) 'Transitional Justice in Transit: Why Transferring A Special Court for Sierra Leone Trial to the Hague Defeats the Purposes of Hybrid Tribunals' *Netherlands International Law Review*, LV: 365-393 at 383; Arzt, Donna E. (2006) 'Views on the Ground: The Local Perception of International Criminal Tribunals in the former Yugoslavia and Sierra Leone' *The ANNALS of the American Academy of Political and Social Science*, Vol. 603: 226-239 at 228-229.

⁹ Ibid.

¹⁰ Amnesty International 'Sierra Leone: International Community must continue to fund the Special Court', Document Index AFR 51/008/2005, 15 September 2005 – available at <http://www.amnestyusa.org/document.php?id=ENGAFR510082005&lang=e> (last accessed 10/1/2009); Nowrojee, Binaifer (2005) "Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims?' Occasional Paper 10, *United Nations Research Institute for Social Development* available at <http://www.unrisd.org/publications/opgp10> (last accessed 9/1/2009); McAuliffe (2008) *supra* note 8 at 385; Jefferson, LaShawn R.(n.d.) 'In War as in Peace: Sexual Violence and Women's Status' at 11 – available at www.hrw.org/wr2k4/download/15.pdf (last accessed 10/06/2010); Oosterveld, Valerie (2009) 'The Special Court for Sierra Leone's Consideration of Gender-based Violence: Contributing to Transitional Justice?' *Human Rights Review*, Vol. 10: 73-98 at 77-78; Damgaard, Ciara (2004) 'The Special Court for Sierra Leone: Challenging the Tradition of Impunity for Gender-based Crimes?' *Nordic Journal of International Law*, Vol. 73: 485-503 at 492; Park, Augustine S.J. (2006) "Other Inhumane Acts": Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone' *Social and Legal Studies*, Vol. 15(3): 315-337.

proclaimed in her article on the SCSL and its potential contribution to addressing impunity for rape:

In four of the five indictments, David Crane, the Chief UN Prosecutor, specifically charged crimes of sexual violence. These charges mark a turning point for the women of Sierra Leone, who are gaining both a measure of control over their bodies and a chance to assert control over their own lives through prosecution of such crimes.¹¹

Indeed one of the key contributions the SCSL was identified as making to gender justice was the Prosecutor's decision to charge a number of gender crimes in the indictments of all but three of the defendants. As one of the Chief Prosecutors, Alan White was quoted as stating:

Gender crimes will be emphasized as a war crime and will be pursued from the outset. It will not be an afterthought. We are making gender crimes a top priority of our investigations because rape and sexual assault used as a tool of war needs to be prosecuted.¹²

Aside from charging rape and sexual violence as crimes against humanity and war crimes, the Prosecutor also included for the first time in the history of international criminal law charges of sexual slavery – made possible by the explicit inclusion of sexual slavery as a crime in the SCSL statute - as well as counts of 'other inhumane acts' in which he included the charge of 'forced marriage'.¹³

¹¹ Eaton, Shana (2004) 'Sierra Leone: The Proving Ground for Prosecuting Rape as a War Crime' *Georgetown Journal of International Law*, Vol. 35(4): 873–919 at 908.

¹² Cited in McAuliffe (2008) *supra* note 8 at 385, fn. 82.

¹³ In *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu*, Case No. SCSL 2004-16 (the AFRC case) the indictment contained counts of rape, 'sexual slavery and any other form of sexual violence' and 'other inhumane acts' as crimes against humanity as well as 'violence to life, health and physical or mental well-being of persons' and 'outrages against personal dignity' as violations of common Article 3 of the Geneva Conventions (ie. war crimes). In *The Prosecutor vs. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Case No. SCSL-04-15 (the RUF

The support for the Prosecutor's approach to gender crimes went beyond praising its symbolic significance in addressing the traditional impunity for crimes committed against women in armed conflict. Alongside the prosecution of the recruitment of child soldiers, the inclusion of the crimes of sexual slavery and forced marriage by the Prosecutor were heralded as innovations that would assist the development of more gender sensitive international criminal law.¹⁴ As noted above, the SCSL statute included the first explicit reference to sexual slavery as a crime under international law (apparently a lesson learned from the ICTY where sexual slavery had to be prosecuted under the general heading of enslavement). With this crime also included in the Rome Statute, the SCSL's definition and reasoning was identified as holding potential significance for future international criminal prosecutions.¹⁵

case) the indictment contained counts of rape, 'sexual slavery and any other form of sexual violence' and 'other inhumane acts' as crimes against humanity and 'outrages against personal dignity' as a war crime. In *The Prosecutor vs. Charles Ghankay Taylor*, Case No. SCSL-03-01 (the Charles Taylor case), the indictment includes counts of rape and sexual slavery as crimes against humanity and 'outrages against personal dignity' as a war crime. The Prosecutor also attempted to amend the indictment in *The Prosecutor vs. Sam Hinga Norman, Moinana Fofana and Allieu Kondewa*, Case No. SCSL-04-14 (the CDF case): discussed further later in this chapter. Details of the indictments for cases that did not proceed are not included here but are available on the SCSL website - <http://www.sc-sl.org> (last accessed 10/06/2010).

¹⁴ Nowrojee, Binaifer (2005b) 'Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims' *Harvard Human Rights Journal*, Vol. 18: 85-105; Muddell, Kelli (2007) 'Capturing Women's Experiences of Conflict: Transitional Justice in Sierra Leone' *Michigan State Journal of International Law*, Vol. 15(1): 85-100; Park (2006) *supra* note 10; Frulli, Micaela (2008) 'Advancing International Criminal Law: The Special Court for Sierra Leone Recognizes Forced Marriage as a 'New' Crime Against Humanity' *Journal of International Criminal Justice*, Vol. 6: 1033-1042; Jain, Neha (2008) 'Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution' *Journal of International Criminal Justice*, Vol. 6: 1013-1032; Damgaard (2004) *supra* note 10.

¹⁵ Oosterveld (2009) *supra* note 10; Park (2006) *supra* note 10; Bélair, Karine (2006) 'Unearthing the Customary Law Foundations of "Forced Marriages" during Sierra Leone's Civil War: the Possible Impact of International Criminal Law on Customary Marriage and Women's Rights in Post-Conflict Sierra Leone' *Columbia Journal of Gender and Law*, Vol. 15(3): 551-607.

Moreover, the decision to prosecute the crime of forced marriage as distinct from sexual slavery was identified as reflecting a real desire to incorporate victim's experiences of the violations they suffer into international criminal trials.¹⁶ It was also identified by feminist observers of the ICTR as addressing a lacuna in that tribunal's response to evidence of women being forced into relationships against their will.¹⁷ As a result there was real enthusiasm for the SCSL in terms of its contribution to developing a more gender sensitive body of international law.

So what has been the legacy of the SCSL in relation to advancing women's rights in post-conflict Sierra Leone? Now as the SCSL is completing its mandate – all the cases conducted in Freetown have been completed and Charles Taylor's defence is in the process of closing its case in the Hague – it is interesting to consider what the SCSL and its 'gender mandate' has meant for women in Sierra Leone. In the next section of this paper I will present some of the preliminary findings of a recent research trip to Sierra Leone in which I asked those working in the area of law reform, gender-based violence and women's rights what the SCSL has meant to them and their work.

Legacy of the SCSL

The language of 'legacy' is frequently used by those working on international criminal tribunals to capture the lasting impact, both structural and psychological, of such institutions. Given the vagueness of the SCSL's legacy plans (a problem in itself), I will define legacy by referring to the claims made by its advocates in support of its establishment and continued funding. As a result I will attempt to address three aspects of the proposed legacy of the SCSL in relation to women's rights: the first is a general awareness-raising function, the second, its contribution to standard setting for law reform and finally its contribution to building the capacity of local institutions. By way of disclaimer, the material being presented comes from interviews I have just

¹⁶ Muddell (2007) *supra* note 14 at 95-96.

¹⁷ Frulli (2008) *supra* note 14 at 1041.

completed. As a result, I apologise in advance if the claims being made are under-analysed and somewhat generalised: having had very little time to properly digest the information, it is my aim to more properly analyse the material over the next few months. In the meantime, I appreciate any feedback offered.

(a) Awareness Raising

Respondents' views were mixed on this issue. Even though civil society had campaigned for some sort of institutional redress in the aftermath of the war, many of those involved with the human rights movement in Freetown were quite sceptical about what the SCSL had contributed. In some cases - for example one of the commissioners at the national Human Rights Commission (also one of the prominent women peace activists during the war), the national coordinator for the Federation of African Women Educationalists (FAWE), the gender-based violence (GBV) team coordinator at the International Rescue Committee, those within the DFID and UNDP Rule of Law programmes, ActionAid and Amnesty International Sierra Leone – they expressed frustration at the SCSL taking credit for the work they had been doing before its inception and subsequently. They stated they had had very little contact with the SCSL and as far as they were concerned it had done very little to enhance the human rights climate. Some of this disinterest in and in some cases animosity towards the SCSL seems to be partly due to the approach taken by the SCSL in its outreach activities. For a start, as one international who had worked with the SCSL and was now in charge of an access to justice programme funded by the Open Society Justice Initiative (OSJI) described, the SCSL did not tailor its outreach activities according to its audience. As a result, even though there was – and continues to be – an interactive forum between the SCSL and local civil society, many well-educated and experienced activists found the message and the approach patronising. In many ways, this seemed to me to mirror Julie Mertus' findings in relation to UN efforts at engaging civil society in Kosovo. She gives the example of the Kosovo Women's Network that, following a series of disputes with UN gender officers, ultimately withdrew from all dialogue with the

international administration and quotes some of the reasons offered for this tension between pre-existing civil society and the international human rights community:

‘They find us difficult to deal with,’ one long-time Kosovar women’s rights activist explains, ‘because they want to *train us* and we don’t want their training.’ As another Kosovar women’s rights activist explains, ‘I’ve been in Vienna [UN 1993 World Conference on Human Rights] and Beijing [UN 1995 World Conference on Women]. I *do* gender training, and [the internationals] try to tell me what gender is and why we need a gender focal point.’¹⁸

Furthermore, much of the information provided within the outreach activities focussed narrowly on the operation of the SCSL and the trials themselves. As the director of the Amnesty International Sierra Leone office commented, ‘there is a difference between telling people that they [the accused] are being prosecuted for rape and opening a discussion on what constitutes rape and why it is wrong’. As a result, some of those working in the area of human rights and law reform stated they stopped attending sessions organised by the SCSL as it was always the same information whilst others said they found the information about the trials interesting but largely unrelated to the broader human rights agenda.

Having said this, not everyone completely dismissed the symbolic contribution the SCSL has made to establishing a human rights culture in Sierra Leone. Many people I spoke with believed that the war in general had contributed positively to creating an awareness of human rights within Sierra Leone. For them, the fact that institutions such as the TRC and the SCSL were created was a reflection of a significant change in attitudes towards suffering and inequality. Almost everyone with whom I spoke told me

¹⁸ Mertus, Julie (2003) ‘The Impact of Intervention on Local Human Rights Culture: A Kosovo Case Study’ in Anthony F. Lang Jnr (ed.) *Just Intervention*, Georgetown University Press, Georgetown USA, at 165.

that the SCSL meant 'an end to impunity' and 'those most responsible' being held accountable. This was especially so in the provinces and further away from Freetown (perhaps due to the fact that the majority of the outreach work done by the SCSL took place out there).

However it is worth adding a disclaimer here. It became increasingly evident to me that few people (especially outside of Freetown) fully understood the difference between the TRC and the SCSL. Even for those within the legal profession, some saw the two institutions as inter-connected and in some cases as one institution. It was not uncommon for people to respond to a question about the SCSL by telling me about the problems they had seen with reincorporating the perpetrators into the community and expecting people to 'forgive and forget'. Considering the only perpetrators tried at the SCSL have all thus far been convicted and are serving time in prisons overseas, it became apparent to me they were talking about the perpetrators who had testified at the TRC. Moreover, various women's groups when asked about their relationship with the SCSL referred to the assistance provided in identifying victims to testify at the TRC and in subsequently registering victims eligible to receive the reparations package recommended by the TRC and slowly being implemented by the Sierra Leonean government through the National Committee for Social Action (NaCSA).

Furthermore, they would speak positively of the links drawn in the TRC report between women's experiences during the war and structural inequalities that existed prior to the war. In light of the fact that the SCSL in its judgment in the AFRC case on forced marriage specifically distinguished between the practice of early or arranged marriage in times of 'peace' and the practice of forced marriage during the conflict, it became evident that many activists and legal professionals were not very clear on what the SCSL had actually found. This point is significant when considering the second aspect of legacy I will discuss.

(b) Standard Setting

Again, the findings in relation to this aspect of the SCSL's legacy remain ambiguous. Just before I left Sierra Leone I was told that there was a new criminal procedure code being drafted and one of the Supreme Court judges who had previously worked as a lawyer at the SCSL was heavily involved. I was unable to meet with him before leaving but he provided me with his email address so I hope to follow up with him and obtain further details. Moreover, an international conference has been organised for next week on the issue of forced marriage and when I interviewed the chairperson the Women's Forum (an umbrella organisation for a coalition of different women's rights groups) she spoke positively about what the SCSL's judgment in relation to rape and forced marriage had meant for reinforcing laws protecting women and girls.

However, as others working more directly in the area of law reform pointed out, the sexual offences bill which was drafted and advocated for by women's groups alongside 4 other pieces of legislation (collectively called 'the Gender Acts') back in 2004 remains in draft form and the SCSL has done nothing to assist with its passage into law. The three gender acts, which have passed (the *Domestic Violence Act* and the *Registration of Customary Marriages Act* in 2007, and the *Devolution of Estates Act* in 2009), were enacted through concerted efforts by a coalition of women who simultaneously mobilised the broader civil society sector to make it a shared campaigning priority, untiringly lobbied the government and appealed to international donors and the diplomatic community to intervene. Whilst the heads of both the Public Affairs and the Outreach sections of the SCSL told me that they had done some information sessions on the Gender Acts and prepared a booklet which simplified the Gender Acts, there was certainly no sense within which the SCSL was instrumental or even involved in instigating law reform in this area.

Moreover, whilst I was disturbed by how few people even within the judicial sector had any knowledge at all of the SCSL's judgments, it occurred

to me that this may have been beneficial! As I have written previously, the definition of forced marriage adopted by the SCSL in the *AFRC* case in fact provides no support for the movement against forced and early marriage which is a focus of many women's rights and human rights activists working in rural Sierra Leone. This is due to the fact that in order to avoid any controversy in relation to its jurisdiction over the alleged crime the SCSL stressed the distinctiveness of forced marriage in the context of the conflict. Not only did this contradict the TRC's finding that the traditionally low status of women (particularly in the east and north of the country) made them vulnerable to gender-based violence including forced marriage during the war, it also provided little support for activists or law reformers seeking to strengthen laws preventing girls being married without their consent but with the consent of their families.

However, whilst I was concentrating on the details of the judgment it became clear that for both activists and the legal community in Sierra Leone it was more the principle that mattered. As the registrar of Makeni High Court explained to me, the fact that the international community seemed to care about prosecuting crimes committed against women had at least created a climate within which these issues seemed worth discussing. Whilst to my mind this did little to enhance the actual legal standards set down, I realised that in many ways my expectations in relation to the standard of the local legal system were far too high. Which leads me to the final aspect of legacy I will discuss in this paper.

(c) Capacity Building

The one point on which the people I interviewed were unanimous was the lack of interaction between the SCSL and the domestic legal system. Whilst a few people believed the SCSL had contributed to capacity building, this was not at an institutional level. Rather, they pointed out that some local legal professionals who had worked at the SCSL were now in prominent positions within the domestic system and were applying some of the lessons they had learnt. As mentioned above, I was given the example of Justice

Brimacke who I was told was a highly influential and well-respected Supreme Court judge and who was apparently drawing on the SCSL rules of procedure as the model for the new criminal procedure code he was involved with drafting. I also observed at the Bo Magistrates Court, the Magistrate made special efforts to ensure unrepresented defendants properly understood what was happening and had the opportunity to prepare their defence (not generally characteristic of magistrates). In the interview I conducted with him afterwards he specifically mentioned the 'equality of arms' principles as one of the most important things he learnt during his time as a junior attorney at the SCSL.

From the point of view of civil society and particularly women's rights, perhaps the most positive contribution made by the SCSL has been the establishment of the court monitoring programme (now called the Centre for Accountability and the Rule of Law). An initiative started by the founding director of the outreach program and designed to monitor the SCSL trials, it was later expanded to cover courts in Freetown and then in the provinces. Again, the success of the programme has largely been dependent on the individuals involved but it has at least introduced a culture of accountability and transparency into the court system. And in Makeni (a provincial town two hours North of Freetown) at least this has been working to the advantage of women seeking redress in the formal justice sector.

The court monitor for Makeni explained that since the passing of the *Domestic Violence Act* she and a local women's rights group have sought to monitor all cases of domestic violence from the time they are reported to the police. When she becomes aware of a case, she visits the Family Support Unit of the police (the unit established to deal with crimes committed against women and children) to ensure the investigation moves forward and then attends the ensuing court proceedings. Through concerted pressure on the Magistrate's Court, these women have also succeeded in securing a special closed session each Tuesday for cases involving gender-based violence. In a context where the majority of instances of domestic violence are dealt with by mediation conducted by the Chief (a situation that has been strongly criticised

by human rights groups – see for example the 2006 Amnesty International report), increasing the opportunities for women to obtain formal redress is no small achievement. This is not to underestimate the problems associated with the court system. However, in the context of Sierra Leone the very possibility of cases of domestic violence being dealt with by the formal justice system and resulting in imprisonment or fines has at least contributed to a sense that it is serious and unacceptable.

So it seems that at least at an individual level the SCSL may have made some positive contribution to strengthening the capacity of the domestic justice system. However those working in justice sector reform were amongst the most critical of the SCSL, commenting on how little interaction there had been between the international and domestic systems and how far removed the SCSL - used to try 10 people - was from the system the majority of Sierra Leoneans had to deal with. The director of Amnesty International Sierra Leone also commented that whilst individuals such as Justice Brimacke may exist, many more of the local professionals who worked within the SCSL had ended up taking other posts internationally within the UN system.

Perhaps one of the most striking lessons that can be drawn from the SCSL is that whilst outreach is important, it must go beyond simply informing people about the particular trials being conducted. This is especially true when the scope of the court or tribunal is so limited. As noted above, it has succeeded in trying 10 people for a war that lasted a decade and was widely reported as amongst the most brutal. Whilst people for the most part seemed positive about the existence of the SCSL, for many it has had virtually no impact on their lives. The majority of people outside of Freetown rely on the customary legal system: a system blighted by lack of consistency (due to the unwritten nature of the laws), nepotism and lack of facilities. In relation to women's rights, the SCSL finding that gender-based violence can constitute a crime against humanity may have some symbolic value but it has meant little in terms of actually changing women's experiences or improving their prospects for redress.

Conclusion

So what conclusions can I draw in this paper? As I said before, the material presented is all too new for me to have reached any definitive conclusions. One thing I can say is that whilst I was very sceptical about the impact of the SCSL's gender mandate, my most recent research has yielded some surprising and positive findings. At the same time, almost all of those seem to have been unexpected and arbitrary outcomes rather than the result of concerted efforts on the part of the SCSL. Whilst women's rights activists and others do seem to have found constructive uses for the SCSL, the SCSL itself has not really lived up to the expectations of many of those who have advocated for international criminal justice as a means of advancing the cause of women's rights: an outcome which should at least cause those committed to the women's human rights movement to rethink their allegiances.