THE CRITICAL COMPARISON OF THE SIERRA LEONE SPECIAL TRIBUNAL WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: THE BENEFIT OF HYBRIDITY OF A COURT.

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ABSTRACT

The International law is a branch of law that works internationally within the boundaries of the States that have signed and ratified such international law which often comes under a form of an agreement or a convention . After 1994 Genocide against Tutsi in Rwanda, the UN created a tribunal for Rwanda (ICTR) in order to prosecute those who participated in the Genocide,this court was working under international law with international lawyers in a foreign country (Tanzania),this proved the fact that international is not enough to deal with all atrocities that can happen and that the access to justice can be a challenge when local lawyers and the in situ trials are not taken into consideration.

To the othe side , The special court of Sierra Leone (SCSL) was a result of an agreement between the UN and the government of Sierra Leone to prosecute those who committed atrocities from 30 November 1996 in the civil war. The court was hybrid one which works internationally and nationally,taking into account both laws and considering local lawyers as well as trials in the place where crimes have been committed and this has drawn a positive attention for the expense it can take which is logical and the access to court which is promising. In this study we will examine the benefit of hybrid court and compare it to normal international court.

Key words: ICTR,SCSL,UN,International law,Genocide,Civil war

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Introduction

The idea that, if the criminal law has as its object the protection of the internal social order, international society constitutes a specific social order which is necessary to protect. And, for that, to create the standards and jurisdictions that will allow it to do so. Social disorder, which is manifested in war, as well as in the behavior of men and states during the war, it will be around these notions that the reflections, the elaboration of the proposals, The conventions that has lead to what is now called International Criminal Law.

The International Criminal Tribunal for Rwanda (ICTR) was established to try those responsible for acts of genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens presumed responsible for such acts or violations of the law International crimes committed in the territory of neighboring States between 1 January and 31 December 1994.

The Special Court for Sierra Leone was established by Security Council resolution 1315 on 14 August 2000, which mandated the Secretary-General of the United Nations to negotiate with The Government of Sierra Leone for the establishment of a joint jurisdiction to try crimes Perpetrated in that country during the civil war. The agreement between the United Nations and Sierra Leone on Establishment of a Special Court was signed in Freetown on 16 January 2002.

Post conflict countries often suffer weak or non-existent rule of law, inadequate law enforcement, insufficient capacity in the administration of justice, and increased instances of human rights violations. This situation is often exacerbated by a lack of public confidence in State authorities and a shortage of resources.

International criminal justice, has the aims of ending impunity for human rights abusers, achieving peace, and establishing as well as enforcing a normative framework for an increasingly globalised world. The implimentation of this justice is seen in different courts and tribunals created on international standards where ICTR and SCSL are included.

In this work we will treat the benefit of having hybridity in a court of law especially after a tragedy like what happened in Rwanda or in Sierra Leonne. Some facts has

been obviously observed where ICTR case outcome did not please the victims and in our view we think that ICTR's lack of hybridity is the reason.

I. THE PRESENTATION OF THE TWO COURTS

1.1 The International Criminal Tribunal for Rwanda

On April 6, 1994, at 8:30 pm[2], the Rwandan President's plane exploded in full flight, victim of an attack. This event is the detonator of what has been preparing for a long time: the genocide of the Tutsi by the Hutus in Rwanda. In eight weeks, approximately one million people were murdered.

The United Nations Security Council established the International Criminal Tribunal for Rwanda to "prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighbouring States, between 1 January 1994 and 31 December 1994".[3] The Tribunal is located in Arusha, Tanzania, and has offices in Kigali, Rwanda. Its Appeals Chamber is located in The Hague, Netherlands.[4]

The ICTR is the first ever international tribunal to deliver verdicts in relation to genocide, and the first to interpret the definition of genocide set forth in the 1948 Geneva Conventions. It also is the first international tribunal to define rape in international criminal law and to recognise rape as a means of perpetrating genocide.[5]

The article 6 of the statute talks about people to whom the court can exercise its competence :

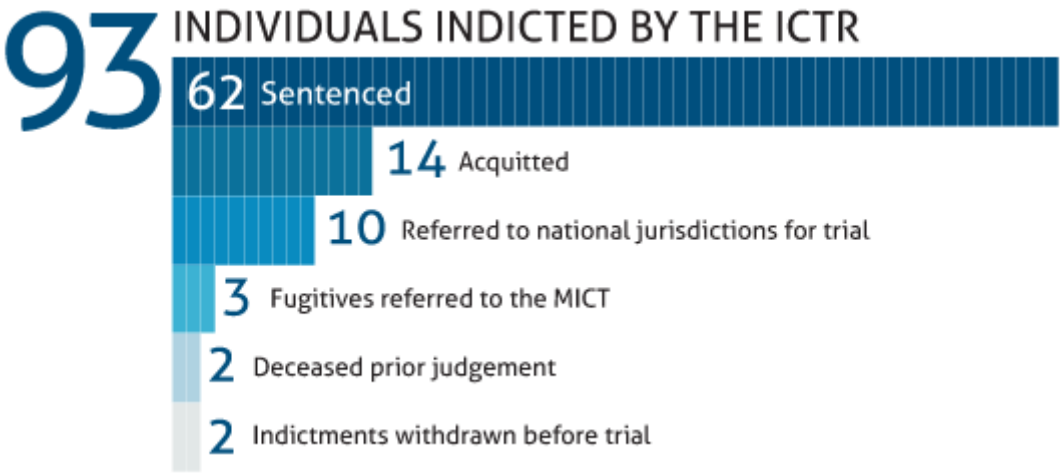
1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

[2] L'histoire d'un genocide found at http://www.canalacademie.com/ida4453-Rwanda-l-histoire-d-un-genocide.html accessed on 17 March 2017.
[3] Article 1 of the statute establishing ICTR
[4] About ICTR found at http://unictr.unmict.org/en/tribunal visited on 14 March 2017.
[5] About ICTR,supranote 4

2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

International Tribunal for Rwanda was expected to extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens.[6]

ICTR was started in 1995 and since then it indicted 93 persons whom It considered they have committed gross violations of human rights during Tutsi Genocide of 1994.



[6] See art 7 of the ICTR statute.

The ICTR closed on 31 December 2015 and was replaced by a mechanism of the UN to finalize its mandate . The Mechanism for International Criminal Tribunals ("Mechanism" or "MICT"), formally referred to as the International Residual Mechanism for Criminal Tribunals, is mandated to perform a number of essential functions previously carried out by the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY").[7]

1.2 The Residual Special Court for Sierra Leone

Since gaining independence in 1961, Sierra Leone has been politically unstable and economically weak. [8]In 1991, the Revolutionary United Front (RUF) attempted to overthrow the government. A brutal conflict erupted, Defense Force. In addition to mass amputations, systematic rape, sexual slavery and the use of child soldiers, the conflict claimed 75,000 lives and displaced a third of the population. [9]In July 1999, the Lomé Peace Agreement was signed, providing for the creation of a TRC and granting a blanket amnesty to excombatants

"in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement." [10]Fighting resumed briefly in 2000 until the United Nations Mission in Sierra Leone (UNAMSIL), the UN peacekeeping operation set up in October 1999 to implement the Lomé Peace Agreement, and British troops intervened.

The government of Sierra Leone, which had now taken into custody the RUF leader, Foday Sankoh, was well aware that the domestic judicial system was not able to prosecute serious cases involving the atrocities committed during the civil war. Moreover, there were risks associated with a purely domestic process, not least the

[7] MICT found at http://www.unmict.org/en/about accessed on 14 March 2017.
[8] J Webster "Sierre Leone – Responding to the Crisis, Planning for the Future: The Role of International Justice in the Quest for National and Global Security"(2001) 11 Ind Int'l & Comp L Rev 731, 733735.
[9] International Centre for Transitional Justice (ICTJ) "The Special Court for Sierra Leone: The First Eighteen Months" (2004) <http://www.ictj.org> (last accessed 13 march 2017) .
[10] E. M. Evenson "Truth and Justice in Sierra Leone: Coordination Between Commission and Court" (2004) 104 Colum L Rev 730, 737.

risk that Sankoh might somehow walk free. The system was ripe with corruption and all those involved could be subject to retaliation. At the same time, the idea of a purely international tribunal was opposed by the government and not really supported by the international community.[11] Sierra Leone thus asked the UN for assistance in bringing to justice those most responsible for the atrocities committed during the civil war.[12]

In August 2000, the Security Council requested "the SecretaryGeneral to negotiate an agreement with the Government of Sierra Leone to create an independent special court."[13]

The United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, have established the Special Court for Sierra Leone with the power to 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, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.[14]

The court listed offices[15] in Freetown, The Hague, and New York City and July 2002 the court started working in Freetown the capital city of the country. And the SCLS closed its doors in December 2013.

The article 6 of the statute shows the court's compentence on persons:

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.
2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

[11] Laura A. Dickinson, The Promise of Hybrid Courts, 97 AM. J. INT'L L. 295 (2003) (discussing the merits of hybrid tribunals); Cohen, supra note 1 (evaluating hybrid tribunals in East Timor, Sierra Leone, and Cambodia); Dickinson, supra note 1 (discussing hybrid tribunals in Kosovo and East Timor),p.299

[12] ICTJ, above n 66, 1. D A Mundis "New Mechanisms for the Enforcement of International Humanitarian Law" (2001) 95 Am J Int'l L 934, 935.

[13] UNSC Resolution 1315 (14 August 2000) S/RES/1315/2000.

[14] Article 1 of the statute establishing the special court of Sierra Leonne.

[15] SCSL at http://www.sc-sl.org/CONTACTUS/tabid/77/Default.aspx visited on 16 March 2017.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.
5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

The Special court of Sierra Leone apart from Genocide that did not happen in the country other serious violations of human rights fall under the competence of this court including those violating Sierra Leonian laws as provided by the article 5 of the statute, especially those related to cruelty on children.[16]

II. HYBRIDITY OF A COURT

Hybrid courts are viewed by the international community as a pragmatic strategy to legitimate international involvement in post-conflict and other transitional situations and to develop local capacity; such tribunals have been proposed or created in Sierra Leone, East Timor, Cambodia, Kosovo and Bosnia and Herzegovina.[17] Typically, they comprise both foreign and domestic judges, and they may apply domestic law, international law or a combintion of both.[18]

2.1 Common elements not captured by hybridity

[16] Art.5 SCSL Statute.
[17] Laura A. Dickinson, *supranote 11 at 295*
[18] Dickinson, *supra* note 11 at 295 (discussing hybrid tribunals in Kosovo and East Timor); Etelle R. Higonnet, *Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform*, 23 ARIZ. J. INT'L & COMP. L. 347 (2006).

Some common features of the current examples of hybrid courts are not covered by the concept 'hybridity', as they do not involve a mixture of the national and international. The literature nevertheless sometimes considers these common features as defining characteristics of hybrid courts. However, upon closer examination of five of those features – the seat of the court, UN involvement, an ad hoc nature, no compulsory cooperation with third States and no assessed contributions – it emerges that these features are not necessarily defining and could be coincidentally common to the current hybrid courts. They are features with important effects on the functioning of courts, and can be modified to enhance the effectiveness of courts, either hybrid or not.

2.1.1 Seat of the court

Unlike the ICTY, the ICTR, and – hopefully for the Netherlands – the ICC, all current hybrid courts are located in the State where the atrocities took place. The promise attributed to this factor is that it enhances domestic ownership by providing an 'opportunity to connect and interact with the civilian population in explaining the purpose of the Court and identifying their expectations of it'.[19] However, although much of the literature considers the domestic seat of hybrid courts as a defining characteristic,[20] locality is a feature of the current hybrid courts, but not inherent in their design. For instance, the Agreement establishing the Special Court makes relocation outside Sierra Leone possible 'if circumstances so require.'[21] The Court considered this to be the case for the trial of Charles Taylor and for this case moved to The Hague.[22] This does not, however, affect the nature of the court as a hybrid court. The other way around, the physical and psychological distance that has become characteristic of the ICTY and ICTR is not inherent in purely international courts either. International courts *could* reside in the country where

[19] First annual report of the President of the Special Court for Sierra Leone for the period 2 December 2002 – 1 December 2003', availableat http://www.sc-sl.org/specialcourtannualreport2002-2003.pdf (last accessed 10 February 2006), p. 31.
[20] C. Sriram, 'Globalising Justice: From Universal Jurisdiction to Mixed Tribunals', 2004 Netherlands Quarterly of Human Rights, pp. 7-32
[21] Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002, Art. 10
[22] President Special Court for Sierra Leone, Order Changing Venue of Proceedings, 19 June 2006, and S/RES/1688 (2006).

the crimes took place, as was considered for the ICTR, if the security situation allows it.

Locality could be considered as a characteristic of the current hybrid courts that is not necessarily a defining feature. Therefore, it cannot be said that because of their seat hybrid courts per se provide more domestic ownership of trials or, alternatively, that because of their seat international tribunals per se lack such domestic ownership.

2.1.2. UN involvement

Some view UN involvement as a defining feature of hybrid courts. '(…) [I]n substance what characterizes these four instances [East Timor, Kosovo, Sierra Leone and Cambodia] is the fact that they are linked to the United Nations (...).'[23] Indeed, in these four cases '(…) The organization of the united nations has played a decisive role in their creation either in the form of an negotiated with the government concerned or by the adoption of a regulation the administrative authority of the United Nations.'[24]

However, in this respect hybrid courts are no different from the purely international ICTY/ICTR and ICC: in the creation of these courts, although very differently for the ICC, the UN also played a key role. If one considers the ICTY and ICTR as the first-generation courts of this type, the hybrid courts could indeed be called the 'second-generation UN-based Tribunals.'[25] However, whilst the UN may have played ' a key role ' in the establishment of these four courts, this key role has varied substantially from hybrid to hybrid. It has ranged from acting as a transitional /interim administrator establishing the courts in East Timor and Kosovo, to providing assistance in Cambodia, to co-establishing in Sierra Leone. [26]

Hybridity implies a mixture of the national and the international, but the question arises whether international involvement must necessarily be that of the UN or could also consist of the involvement of a different organization or another State.

[23] L. Condorelli et al., 'Internationalized Criminal Courts and Tribunals: Are They Necessary?', in: Romano et al. (eds.), supra note 6, p. 429

[24] UN Doc. S/2004/616, Dickinson, supra note 11, C. Romano et al., 'Tribunaux Pénaux Internationalisés: Etat des Lieux d'une Justice Hybride', 2003 Revue Génerale de Droit International Public, pp. 111

[25] D. Schraga, 'The Second Generation UN-based Tribunals: A Diversity of Mixed Jurisdictions', in: Romano et al. (eds.), p. 16.

[26] S. Katzenstein, 'Hybrid Tribunals: Searching for Justice in East Timor', 2003 Harvard Human Rights Journal, p. 116

Unless in the hypothetical case that a country requests another country or organization to take over governance, only the UN can grant the authority to establish panels through regulations as was done in Kosovo and East Timor. However, the Special Court could also have been established by an Agreement between Sierra Leone and for instance the African Union.[27]

2.1.3. Ad hoc nature

Some consider 'ad hoc-ism' another characteristic of hybrid courts. They 'have been created on an ad hoc basis to respond to special situations.'[28] So far this has been true and it distinguishes these courts from the permanent ICC. However, this feature also characterizes the non-hybrid ICTY and ICTR. It immediately illustrates the inappropriateness of language distinguishing the hybrid courts from the ICTY and ICTR by referring to the former as hybrid courts and to the latter as 'ad hoc courts.'[29] One way to distinguish them is to refer to the ICTY and ICTR as (direct) Chapter VII courts. As it is theoretically possible that the Security Council establishes a hybrid court, this would then be a hybrid Chapter VII court. Leaving aside the terminological battle, a more fundamental question is what 'ad hoc' means. Whilst all these courts have indeed 'been created on an ad hoc basis to respond to special situations',[30] it does not necessarily imply that 'they have a temporary nature'[31] and are 'bound to disappear' once they 'accomplish a certain objective.'[32] The validity of this statement depends on who 'they' are. Certainly, in Sierra Leone and Cambodia the Court and Chambers were established as a temporary project, like the ICTY and ICTR. However, it is intended that the courts in Bosnia and Kosovo will continue to exercise jurisdiction over both national and international crimes.

2.1.4. No compulsory co-operation from third States

[27] Sarah M.H. Nouwen 'Hybrid courts'The hybrid category of a new type of international crimes courts, Utrecht law review,p.210

[28] L. Condorelli et al,*supranote* 23,p 249.
[29] Sarah M.H. Nouwen, ibid,.211
[30] Condorelli *et al., supra* note 11, p. 429.
[31] *Ibid.*, p. 429.
[32] *Ibid.*, p. 429.

One of the key advantages of the Chapter VII courts, the ICTY and ICTR, in comparison with national courts, is that the Security Council can oblige third States to co-operate with these tribunals. The current hybrid courts, as part of a domestic system or established by an international agreement not binding on third States, do not benefit from such compulsory cooperation. Although indirectly based on a Chapter VII resolution, the panels in Kosovo and East Timor do not have that power either;[33] the resolutions granting administrating powers to UNMIK and UNTAET bind third States to the extent that they have to recognize the power of the transitional administrators to administer those territories.

However, the decisions of the Secretary-General's Special Representative are no more binding upon third States than the decisions of a regular sovereign of a third State would be. Some regard the fact that hybrid courts lack a Chapter VII obligation for third States to cooperate with the court as a flaw inherent in the model of hybrid courts.[34] However, the fact that the operations of the hybrid courts in East Timor, Sierra Leone and Kosovo have to a larger or lesser extent been hampered by this feature does not mean that it is a defining characteristic of hybrid courts as such.[35] Compulsory cooperation by third States is not necessarily an exclusive feature of international courts established by the Security Council.

2.1.5. No assessed contributions

'One of the most important departures of the internationalized criminal tribunals from typical full international tribunals is the way they are funded.'[36] The ICTY, ICTR and ICC are funded by assessed contributions: in accordance with a predefined scale of assessment the costs of the Chapter VII courts are borne by the UN member States and those of the ICC by States that are parties to the ICC Statute. The current hybrid courts are *not* funded in this way. However, this is where the commonality ends. The Special Court is entirely funded by voluntary international contributions. As has proven to be the case for the seat of the court, ad hoc-ism

[33] UN Doc. S/2004/616, *supra* note 5, Dickinson, *supra* note 1, C. Romano *et al.*, 'Tribunaux Pénaux Internationalisés: Etat des Lieux d'une Justice Hybride', 2003 *Revue Génerale de Droit International Public*,p.113..

[34] Romano et al., supra note 24, p. 121

[35] G-J. Knoops, 'International and Internationalized Criminal Courts: The New Face of International Peace and Security?', 2004 *International Criminal Law Review*,
p.540

[36] T. Ingadottir, 'The Financing of Internationalized Criminal Courts and Tribunals', in: Romano *et al.* (eds.), *supra* note 24, pp. 271-289, p. 271.

(depending on the interpretation of the term), UN involvement and the lack of compulsory cooperation of third States, the absence of assessed contributions is not a given aspect of hybrid courts. It may be a common characteristic of the current hybrid courts, but in the theoretical example of a hybrid court established by the Security Council, assessed contributions are also conceivable.[37]

2.2 The benefit of hybridity of a court with the case of Special court for Sierra Leone

The difference between the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone can be found in the advantages the later has got that the former never achieved. Hybrid tribunals offer several advantages over international tribunals due to their proximity to the atrocity situation and the influence of international staff on a domestic judiciary. Regardless of the civil or common-law nature of a particular system, a general and achievable legacy goal for hybrid courts may be to create a permanent technical capacity to investigate and prosecute complex and organized forms of crime, including war crimes and crimes against humanity, but also other complex crimes, such as trafficking in humans or drugs and corruption[38].

The following represent commonly cited advantages to hybrid tribunals, but they might also represent priorities to optimize when designing a tribunal. Framers will want to focus on institutional design elements that will increase respect for rule of law and ensure that the tribunal's facilities help rebuild the judicial infrastructure of a post-conflict country.

2.2.1 Location of the Court – (In situ trials)

The fact that the trials were held in the country where the crimes took place (in situ) meant that the victims could see justice at work.

It also gave all the principals of the Court unhindered access to the people. This contributed immensely to the success of outreach and public affairs Unit in terms of disseminating timely and useful information to local and international audiences,

[37] Recommended by the Secretary-General in UN Doc. S/2004/616, para. 43.

[38] In Kosovo (Special court for Kosovo) , the creation of a Special Prosecutor's Office seeks to accomplish some of these goals.

thus enhancing the legitimacy of the process. In a sense, the proceedings helped create both a sense of ownership among the victims and respect for the potency of international criminal justice.

Post-conflict societies have an interest in seeing perpetrators of human rights abuses and war crimes brought to justice, and courts located in The Hague or elsewhere in Europe cannot as easily convey important milestones in a high-profile trial to the affected population. A tribunal staffed by domestic legal professionals and jurists can help a post-conflict society come to terms with past atrocities, especially when the jurists have high profiles in the country. Victim participation in the proceedings can also allow victimized groups to reclaim their dignity in the wake of a genocide, and of course allowing victims to face perpetrators gives a meaningful opportunity for affected populations to see justice done. Finally, public proceedings in country mean that the court can publicize its work broadly, giving post-conflict societies an illustration of an impartial judicial proceeding. [39]These benefits are more difficult to achieve with ICTR where the court stays in Arusha and the Hague.

2.2.2 Address the needs of Victims

While it is absolutely critical to bring perpetrators to justice, addressing the social and economic needs of victims is just as important. Since the verdict in the Taylor trial was handed down, for example, we have received mixed messages from the victims in Sierra Leone. While some have expressed relief at Taylor's conviction, others say the verdict means little to them as long as they continue to suffer.

the Sierra Leone government has the primary responsibility of ensuring that the recommendations of the Truth and Reconciliation Commission (TRC), including the reparations programme, are fully implemented.

The Sierra Leone experience has shown that efforts at combating impunity must be complimented by a meaningful and sustainable reparations programme in order respond to the needs of those most affected by the conflict. Really, victims who were disabled physically and emotionally by the conflict cannot move on, regardless of who is tried and convicted, as long as they continue to live in squalor.

[39] Paul W. B,Matthew R. ,Sean C. ; Improving Hybrid Tribunal Design: Domestic Factors, International Support, and Court Characteristics, Stanford Law School, 2012,p.5

The presence of international personnel ensures respect for international procedural standards and the involvement of local and foreign legal experts helps building bridges between the international dimension of the work and local customs, language and mentalities.[40] Moreover, its location in Freetown, the capital of Sierra Leone, in the country where the atrocities took place, enables the population to identify more easily to the process. It also impacts on the development of the local judiciary, still in its infancy.

The Rwandans seem to have little information about the Arusha verdicts, for reasons that probably also depend on the tense relations between the regime in place and the ICTR, perceived as an attack on Rwandan sovereignty and a criticism of its judicial institutions. The article 31 of the statute establishing ICTR provides that the working languages of the court shall be Emglish and French. This is in conflict with the principle of fair tial where cases were against Rwandans in foreigner languages. This issue caused delay in hearing because of official translators and the audio translator toolkits necessity. In addition there is no single ICTR's case that has been translated in Kinyarwanda in favor of the victims.

As a first approximation, the ICTR appears to be hardly visible on the international scene, and without real echo on the side of the Rwandan people, even though the object of this institution is to participate in its reconciliation. Moreover, the proceedings themselves, which do not involve the possibility of a civil party, seem strangely to ignore the victims, since the survivors can not appear in the proceedings as witnesses.

2.2.3 Intersection of peace and justice: Lesson for the ICC

The proceedings of the Special Court for Sierra Leone (SCSL) have taught the world valuable lessons about the intersection of peace and justice. The Defence Office proposed to expand capacity-building efforts to the broader national legal system in a project called the "Sierra Leone rule of law and justice sector capacity-building project'' [41]. The approaches that have been taken by defence offices in the

[40] Article 20 of the SCSL Statute provides that the SCSL will "be guided by" the decisions of the ICTY and the ICTR in relation to the interpretation of international humanitarian law and by the decisions of the Supreme Court of Sierra Leone as regards the interpretation of domestic law.

[41] The project sought to hire 18 new lawyers to work with the Defence Office in various capacities (as co-counsel, legal assistants and interns). These numbers went beyond the Court's strict needs, but would have been incorporated for the sake of legacy, and with a view towards a possible establishment of a public defender's

hybrid courts provide both inspiration and invaluable experience on successfully building relationships with local lawyers and devising effective capacity-building programmes.

During the trial of former Liberian President, Charles Taylor, the Prosecution argued that Taylor's involvement in the various peace negotiations between the Government of Sierra Leone and the RUF[42] was a deliberate attempt to appear to the outside world as a peacemaker, thus providing a front for his continued clandestine activities of arming and financing the RUF and AFRC[43]. The SCSL Trial Chamber looked beyond the surface in order to issue a nuanced ruling that extensively details and considers Taylor's involvement in the peace process. The Chamber did find that Taylor was undermining the peace process by continuing to privately provide arms and ammunition to the RUF in contravention of a UN and ECOWAS arms embargo while he was publicly engaged in the peace negotiations in Lomé. In essence, the international criminal.

The most critics about ICTR is that it has never indicated RPF' members who could have had a role in some crimes commited during Genocide by this reason it has been seen as victor's justice[44] by many scholars but the contrary is viewed by RPF because many decisions of this court have been critical for being unfair. For the SCSL,it was not the case since the prosecutor indicated civil defense forces [45]who were suspected to have been involved in the committed atrocities. This has been possible because of hybrid nature of the SCSL and the fact that everyone was feeling represented by the court.

2.2.4 Less expensive than an adhoc tribunal like ICTR

office at the national level. A training programme would also have been implemented for lawyers, police and prison officials, outside the Court's realm.

[42] United Nations, "Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000) paragraph 19, in relation to Sierra Leone," December 2000, para. 20, 182, 193

[43] United Nations Panel of Experts resolution 1306, para. 1.

[44] L.N. Sadat, "Transjudicial Dialogue and the Rwandan Genocide: Aspects of Antagonism and Complementarity," 22 Leiden Journal of International Law 543 (2009) reprinted in Proceedings of the Second International Humanitarian Law Dialogs 123 (ASIL 2009),p.546.

[45] Charles Chernor Jalloh, Special Court for Sierra Leone: Achieving Justice?, 32 MICH. J. INT'L L. 395, 425 (2011).

Justice was handed over to the ICTR in Arusha under a UN Security Council mandate on the basis of prestigious international criminal law in an ad hoc institution employing directly 1,000 people, including 600 civil servants Including some 20 judges, most of whom are former presidents of the Supreme Courts of their countries of origin. The total budget allocated by the United Nations to the tribunal between 1995 and 2007 is more than one billion dollars.[46]where the SCSL formally closed in December 2013 after spending about $300 million.[47] While ICTR cost some $700 million dollars each year, The Special Court for Sierra Leone (SCSL), similarly, averaged about $50 million per year for each year of its existence.[48]

The procedural constraints, the strategies of the parties and the complexity of the case are combined to obscure the visibility of the cases tried in Arusha, a small Tanzanian town of 500,000 inhabitants far removed from international political and media scenes[49]. International Justice, both by its personnel, UN officials of eighty-five nationalities, and by its missions defined by the Security Council and the universalist ambition of international law, the ICTR is at the same time an institution Isolated, not very visible, characterized by a slow and complex operation, the scope of which is not easy to determine.

2.2.5 Building Respect for Rule of Law

Many post-conflict societies face a cycle of impunity, in which perpetrators of war crimes and crimes against humanity go unpunished. Such societies may also feature a judiciary rendered toothless either by a hostile regime's political maneuvering, or by simple corruption, that will fail to bring war criminals to justice. Hybrid tribunals have the potential to end this cycle of impunity by enforcing international law against perpetrators and demonstrating to would-be criminals that illegal actions have consequences. In addition, the interaction between domestic jurists and

[46] ICTR Facts , official brochure distributed by the ICTR, 2007

[47] http://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good accessed on 18 March 2017

[48] Ford, S. (2013). How Special Is the Special Court's Outreach Section? In C. Jalloh (Ed.), The Sierra Leone Special Court and its Legacy: The Impact for Africa and International Criminal Law (pp. 505-526). Cambridge: Cambridge University Press.

[49] Arusha demography at http://www.arusha.go.tz/index.php/councils/arusha-city-council visited on 17 March 2017.

professionals from external judiciaries with robust legal infrastructures may inculcate a sense of respect for the rule of law in a domestic judiciary. Finally, the opportunity for a post-conflict society to witness an effective judicial process may create demand and, thus, political pressure on post-conflict officials for a more independent domestic judiciary[50]

2.3 What was wrong with the SCSL?

The SCSL Statute, unlike those of ICTY and ICTR, does not impose obligations on other states to cooperate with it. The Court lacks the UNSC Chapter VII powers which can oblige states to cooperate with the tribunal in the investigation and prosecution of crimes. Some commentators have suggested this limitation might have contributed to the prosecutor's decision not to indict late Muammad Ghaddaffi of Libya, Blaise Campaore of Burkina Faso, and other influential business men who clearly provided immense financial support to the rebels in exchange for diamonds. In fact, this limitation presented a practical challenge after Charles Taylor, who as an indictee of the Court, sought refuge in Nigeria as part of a political arrangement. Since the Court did not have the powers to force Nigeria to transfer Taylor into its custody, the Court had to rely on the goodwill of Presidents Ellen Johnson-Sirleaf of Liberia and Obansajo of Nigeria to transfer Taylor into the custody of the Court. The Taylor trial, in particular, showed the important relationship that exists between international criminal justice and the decisions that are made in political headquarters. It is such level of political support that the ICC, for instance, needs from state parties and non-state parties alike to get the job done. Alleged perpetrators will continue to escape justice unless there is political will to promote the interests of justice.

Conclusion

While hybrid tribunals offer considerable advantages over either wholly international or wholly domestic criminal justice systems when prosecuting war crimes in a post-conflict society, there are substantial impediments to their

[50] İbid.

successful implementation. Staffing, funding, and choice of law, jurisdiction, and procedural rules should each be carefully considered within the context of the domestic country to ensure success. The hybrid tribunal model is a crucial mechanism for holding accountable those who commit crimes that offend the global conscience, and for bringing some measure of justice and community healing to the affected societies. In addition to this, local control can also confuse proceedings, especially where post-conflict governments and the international community do not clearly apportion responsibility for judicial appointments and staffing

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