

## **Nuremberg, Justice and the Beast of Impunity**

By Wanda M. Akin\*

I have listened carefully to the powerful and varied voices that have spoken so eloquently during this Conference about the Nuremberg trials. If I was requested to elicit a consensus from amongst these voices about the most important aspect of Nuremberg's legacy, I would expect to hear the phrase "a challenge to impunity" echo from Courtroom 600. This idea is so powerful that if the question were posed to a conference evaluating the specific impact Nuremberg has had on the Ad Hoc Tribunals for Rwanda and the Former Yugoslavia, the Special Court for Sierra Leone and the fledgling ICC, the echo would be the same, "a challenge to impunity!" A similar response would doubtless arise concerning Nuremberg's impact on municipal efforts to try violators of human rights and humanitarian law since World War II. However, with respect to these post-Nuremberg proceedings, there arises the question of whether adequate concern has been devoted to the defense function to justify the claim that impunity has been fairly challenged.

### **The Beast of Impunity**

This Nuremberg "impunity" has been so powerful that many of its champions in the international human rights community have come to lose sight of Robert Jackson's pre-Nuremberg warning about the highest principle of justice:

"The ultimate principle is that you must put no man on trial under the forms of judicial proceedings if you are not willing to see him freed if not proven guilty. If you are determined to execute a man in any case, there is no occasion for a trial; the world yields no respect to courts that are merely organized to convict."<sup>1</sup>

My own experience with the Special Court for Sierra Leone has led me to believe that the establishment of that Court did not involve a careful examination of the costs of challenging impunity or of the consequences of not having adequate resources to ensure that the international court solution was the preferable answer to the post war challenges facing that nation.

The civil war in Sierra Leone consumed the decade before 2000, as well as 50,000 lives, tens of thousands of human limbs and the homes of 500,000 refugees. The fighting was part of a larger armed conflict in West Africa that engulfed Sierra Leone, Cote d'Ivoire, Liberia and parts of Guinea. The entire conflict was characterized by significant violations of humanitarian law. In 2000, after a period of disarmament the Special Court for Sierra Leone was established by agreement between the UN and Sierra Leone.<sup>2</sup> A Truth and Reconciliation Commission was established in 2002. There is little evidence of coordination in the decision to launch these two bodies or of significant appreciation of the true "costs" of the Special Court.<sup>3</sup> Nonetheless, the banner "a challenge to impunity" was raised often and sometimes inappropriately during the early stages of trials before the Special Court. During the first trial session of the RUF<sup>4</sup>, in which I served as Co-counsel, prosecutor David Crane<sup>5</sup> began his opening statement with talk of impunity:

“May it please the Court; this is a tale of horror, beyond the gothic into the realm of Dante's inferno. They came across the border, dark shadows, on a warm spring day, 23 March of 1991. Hardened rebels trained by outside actors from Liberia, Libya and Burkino Faso. These dogs of war, these hounds from hell, unleashed by cynical –

MR. BROWN: I object. Objection. I object, your Honour.”<sup>6</sup>

Crane frequently used the phrase “beasts of impunity”, employing it to link the accused on trial with others whose guilt may be manifest but who are likely to never face a court:

“Throughout this war crimes trial against Sesay, Kallon and Gbao, the phantoms of the deceased indictees, Foday Sankoh and Samuel Bockarie, will be ever present in this hall of justice. Additionally, Charles Taylor would be sitting next to these accused war criminals today had he been turned over to this tribunal for a fair trial. Their alleged crimes against humanity cannot justly or practically be ignored, as they were the handmaidens to the beast, the beast of impunity that walked this burnt and pillaged land.”<sup>7</sup>

Counsel for Morris Kallon gave an opening statement in which he offered a response to the “impunity” notion.

“...[T]here is something troubling about talking about impunity by itself because it invites us to say, ‘Well there clearly were,’ and this Court has judicially noticed ‘wide-scale humanitarian violations in Sierra Leone during the period of this conflict and someone must pay,’ and the phrase ‘beast of impunity’ invites us to say, ‘Well we must find someone who can pay from among these Accused,’ ... when in fact the nature of impunity does not revolve [sic] such sacrifices, but rather a continued adherence to the rule of law and the burden of this Prosecution ...to prove a case against Morris Kallon.... The evidence about Morris Kallon will not demonstrate or even come close to suggesting that he is a hand-maiden of evil as has been suggested in this hall.”<sup>8</sup>

This colloquy squarely puts the question of whether the accused should be tried on the basis of the evidence against him, or on the basis of society's resentment of historical “impunity” for humanitarian and human rights law violations. As my husband and co-counsel argued, “this beast of impunity ought not to be satiated by feeding him – Morris Kollon - in the absence of evidence of proof beyond a reasonable doubt.”<sup>9</sup>

### **An Ironic Smuggling Incident**

The question which disturbed me was whether the need for resources for the defense severely prejudiced the defense function in disregard of Robert Jackson's warning. In seeking an answer to these questions, I have been continually haunted by an ironic smuggling episode long after leaving West Africa. The incident occurred during the first trial session whose opening statements I have already touched upon. The narrative's unwillingness to retreat from my consciousness reflects its symbolic connection to important questions surrounding the Special Court.

On July 22, 2004, Counsel to Issa Sesay, regarded as the senior ranking accused, informed the Court that on the previous day an incident had arisen which was “of great concern to the defense.” Counsel said that when the families of the accused, including women, had terminated their visits, “[T]he accused [sic] families were then taken to the old courtroom wherein a search took place of the females which involved the removal of clothes and the insertion of fingers into the vaginas of the women.”<sup>10</sup> The Court appropriately directed that the Registrar and the head of the Detention Facility report to the Court on this event as soon as possible.<sup>11</sup> Because this exchange took place in open session, the *Sierra Leonean Press*, which can resemble tabloids on steroids, provided headlines such as, “Sexual Harassment at Special Court.”<sup>12</sup> Readers had to explore the smaller print to find suggestions that these were mere allegations.

Consumers of the Sierra Leone Fourth Estate did not have long to wait to learn of further developments. On July 25, 2004, the headline in the *Salome Times* declared “No Private Parts Were Searched,”<sup>13</sup> while the *Concord Times* took a stab at legal journalism with the lead “Judge Itoe Rules Against Private Parts.”<sup>14</sup> These reports were based on a hearing at which Barry Wallace, the Chief of Detention for the Special Court, reported that there had been a proper search, conducted by Sierra Leonean personnel, under the supervision of his international staff. Furthermore, Wallace testified that, “at no time was any person asked to remove clothing or subject to an intimate internal search.”<sup>15</sup>

More importantly, Wallace said the investigation revealed that family members, were smuggling “medication, cigarettes, and bars of soap” *out of the detention facility*. In the world of criminal justice and incarceration, it is extremely rare for contraband to flow *out* of a prison. The normal laws of supply and demand usually direct the flow of forbidden items from the world outside in to the incarcerated. However, the poverty of Sierra Leone, in particular that of demobilized former combatants, meant that the tiny, thriving sub-economy in the comparatively well-appointed detention facility behind the walls of the Special Court Compound, provided more basic necessities than even the former leaders of the RUF, AFRC and CDF could muster. Consequently, a logical resource for the accused’s families to explore was the rations available to their detained breadwinners.<sup>16</sup>

As if to reemphasize the depth of the continuing economic depression in Sierra Leone, this “reverse smuggling” episode took place six days after the United Nations Development Programme (UNDP) released its annual Human Development Index<sup>17</sup> which ranked Sierra Leone last *in the world*.<sup>18</sup> War obviously takes a toll on developing countries.<sup>19</sup> However, governments like those of Sierra Leone which continuously fail to meet the economic needs of their people also contribute to this effect.<sup>20</sup>

The refusal of this strange episode to leave my mind as I anticipated participating in the “Genocide Conference” and later at this Conference<sup>21</sup> led me to wonder if the reverse smuggling tale had importance beyond illustrating a Sierra Leonean nuance to the laws of prison economy. My exploration of this possibility raised two questions requiring further examination:

1. Is the Special Court for Sierra Leone part of a broader international effort that is likely to help produce social justice for Sierra Leone?
2. What is the “Quality of Justice” likely to be dispensed by the Special Court? Is the court likely to achieve significant advances in international humanitarian law? Are

the Court's resources adequate to explore these issues in the context of a fair trial? (These are the criteria by which any international judicial effort is evaluated.)

### **Justice in Sierra Leone**

I shall explore both of these questions briefly, hoping in the future to examine them in greater depth. Is the Special Court for Sierra Leone part of a broader international effort that is likely to help produce social justice for Sierra Leone?

I whole heartedly embrace the movement against impunity described in the first section of this paper for those guilty of serious violations of international humanitarian law. The movement has existed since Nuremberg, and gained momentum since the Cold War with the advent of the ad hoc-Tribunals,<sup>22</sup> a series of "hybrid" courts,<sup>23</sup> and the International Criminal Court. However, in the aftermath of a specific conflict, one of the questions posed about the effectiveness of a special court or tribunal is whether the institution can contribute to social justice and whether nations can insure adequate resources so that the challenge to impunity involves fair proceedings.

The particulars of the Special Court for Sierra Leone suggest the need for close examination of our "special lesson" in prison economics. The international community will spend \$50 to \$100 million dollars<sup>24</sup> on this Court, which will try nine men while suffering from the "big fish" syndrome.<sup>25</sup> Charles Taylor, viewed by many as the prime moving force in the series of civil wars in West Africa and under indictment at the Special Court, currently is sheltered in Nigeria. RUF leaders Foday Sankoh, acknowledged as the leader of the RUF during the war, and Sam "Mosquito" Bockarie, an RUF leader regarded as perhaps the most egregious violator of humanitarian laws during the ten year Sierra Leone civil war, died before they could be tried. Also indicted by the Special Court, is former AFRC leader, Johnny Paul Koroma, who is at large or deceased.

According to the statute of the Special Court for Sierra Leone the Court has jurisdiction over those "who bear the greatest responsibility for serious violations of international humanitarian law....".<sup>26</sup> Although it could be argued that it is still too early for final judgment, it can easily be maintained that eight of the nine accused<sup>27</sup> fall outside of this description. In fact, the negotiators of the statute specifically rejected language proposed by UN officials which would have broadened the Court's mandate to include those who bore "most" responsibility.<sup>28</sup> This suggests that the Court's activities may ultimately be found wanting when the final assessment is made of the balance between deterrence, retribution, judicial economy, and the economic prospects of most Sierra Leoneans. Resources expended in prosecuting major alleged violators, like Charles Taylor, could produce a more favorable evaluation of the Court's performance than when used to try nine accused, eight of whom clearly do not bear the greatest responsibility.

The large shadow cast by Taylor over Sierra Leone's bloody decade raises an even more profound question. Are there times when economic and social justice requires security and stability rather than judicial process? In Liberia itself, the international community opted to support Nigeria's grant of "asylum" to Taylor, even in the face of an outstanding indictment at the Special Court for Sierra Leone and quite possibly in lieu of any future prosecution of Taylor in Liberia. In defending Taylor's continued presence in Nigeria, President Olusegun Obasanjo recalled the reached solution with

then US Secretary of State, Colin Powell, and stated, “[w]e put our heads together and decided that Charles Taylor must be eased out because if we fail to ease him out, he would dig in and there would have been a tremendous destruction of lives and property. In coming to that decision to ease him out, we were mindful of our duty and responsibility to humanity, the people of Liberia and West Africa.”<sup>29</sup>

This same analysis of the importance of social and economic justice in the Sierra Leonean context leads to the question of whether any resources expended on any trials of any persons can be justified in light of the economic plight facing most Sierra Leoneans in the post-war economy. As I have already noted, the TRC concluded that bad governance was a primary cause of the civil war. A renewed focus on the problem of bad governance and the related issue of economic development may be seen one day in retrospect to have been a wiser channeling of resources than any trials.

While avoiding a comparative analysis of expenditures on criminal justice versus an attack on bad governance and poverty, a variety of voices have noted that because of bad governance Sierra Leone missed the latest wave of economic assistance and debt relief to poor countries.

“Sierra Leone this month [June 2005] received a double blow. First, a meeting between prospective donors in Paris to discuss the World Bank’s poverty-reduction strategy was called off and the country was left off the G 8’s list of 18 nations marked down as the first beneficiaries of its debt-cancellation plan. In both cases Sierra Leone’s government failed to convince donor and creditor countries that it is truly tackling corruption.”<sup>30</sup>

Sierra Leonean journalist Rod MacJohnson observed that, “[t]he European Union has withheld two million euros that were to be used to fund local elections set for May 22, citing among its reasons the fact that the electoral commission has not accounted for how it disbursed funds for the 2002 presidential and general elections. The EU is also sending audit teams this month to the capital Freetown to see just how the millions it has contributed to help rebuild the country have been spent.”<sup>31</sup> He also quoted former British MP from Bridgend, Winston James Griffiths, who led a November 2003 Parliamentary corruption investigation into Sierra Leone as warning, “[t]he government of Sierra Leone must do everything within its power to stop corruption.” Other sources have noted similar warnings from Gordon Brown, the UK’s finance minister.<sup>32</sup>

The Special Court compound may serve as a tangible metaphor for the failure to assess accurately the need for justice expenditures versus anti-corruption and economic development activities. The Special Court’s physical courthouse has been touted as a state-of-the-art facility, outfitted with the latest advances in architecture, design and technology.<sup>33</sup> Justification for these expenditures on bricks, mortar, and wire for an international tribunal in poverty stricken Sierra Leone, as opposed to bread, butter, and books has been questioned. Advocates for the SCSL have argued that perhaps, the Special Court could be a legacy for the country, as a permanent locale for a regional or even international tribunal once the Special Court has outlived its usefulness under the Statute.

The ten-year Sierra Leone civil war left a government with its economy in tatters, still influenced by corruption, and susceptible to charges of bad governance. At the same time, its citizens continue to be denied basic human rights. There is at least an entire generation of the population left uneducated, tens-of-thousands in the population in need of health care, thousands of amputees in camps in Freetown, and a country with

a cobbled together infrastructure – without a “Marshall Plan” to rebuild it. The ultimate assessment of the value of the Special Court will have to acknowledge the economic plight of most ordinary Sierra Leoneans.

The question about the quality of justice requires an examination about whether the Special Court has the appropriate structure and adequate resources in order to significantly improve international humanitarian law. The international community has lauded the Special Court for the opinion of its Appeals Chamber finding that its Rule 4(c)<sup>34</sup> permits the accused to be tried for the recruitment of child soldiers. While this is the first ruling on this subject by an international criminal tribunal, the only real issue in dispute in the Appeals Chamber was whether this duty flows from the Geneva Conventions and the Convention On The Rights Of The Child, which would establish a pre-war duty, or from the Rome Statute for the International Criminal Court which would establish a duty as of 1998.

Within the framework of the fight over funding for the Special Court, the share of the resource pie for the defense is insufficient, arguably an afterthought, in marked contrast to careful planning for the outfitting of judicial chambers, the Office of the Prosecutor, and the Registry.<sup>35</sup> The debate over insufficient funding for the defense of the accused at the SCSL is well documented.<sup>36</sup>

I have experienced firsthand the limitations that a lack of resources places on developing a defense and preparing for trial. I was responsible for amassing the statistical data and anecdotal facts to support the defense’s theory respecting the child soldier and forced marriage issues. The defense to the charge of conscription of child soldiers can be profoundly affected by the determination of exactly who was a child. Obtaining age information for all of the disarmed “children” was impossible in Sierra Leone, a country having a birth registration rate of less than 10%.<sup>37</sup> Additionally, adult males frequently visually appear to be significantly younger than their stated age. Further complicating matters, many witnesses were uncertain of their actual ages and had to guess. UNICEF noted in its report on *The Progress of Nations 1998* that, “[a] birth certificate is a ticket to citizenship. Without one, an individual does not officially exist and therefore lacks legal access to the privileges and protections of a nation.”<sup>38</sup> Pursuit of this birth registry aspect of the defense was particularly daunting, requiring interviews with dozens of government officials, and many hours on the ground “gum shoeing” the facts and chasing down statistical data in a multitude of cyber locations.

The indictment of the RUF accused on the forced marriage-charge is the first in international humanitarian law.<sup>39</sup> The defense to the charge of forced marriage is profoundly affected by the various defense teams’ ability to conduct research and line up witnesses to expound upon Sierra Leone’s customary family law. Presented with this challenge, it was only through a serendipitous confluence of events and circumstantial meetings, taking place all over the world that I was able to speak with a Sierra Leonean jurist and legal scholar, H.M. Joko Smart, B.A., LL.M, Ph.D, who authored a long out of print authoritative text<sup>40</sup> on this question. Extensive interviews with the “bush wives” and their families and in-depth exploration of their circumstances and motives for their involvement with the accused were required. *Sierra Leone Customary Family Law* had to be read and fully digested to explore the evolution of family law in Sierra Leone and to trace its tribal origins. A collective of brilliant interns was needed to break down these tribal notions of traditional marriage into the relevant facts in order to organize this aspect of the defense. As in municipal law,<sup>41</sup> unraveling

the social relationship and legal history of any couple in the context of family law litigation can be extremely complicated. Add to this the component of international criminal prosecution of an accused, in a war crimes-tribunal where the defense has limited resources, and this task can be characterized as extraordinarily daunting.

Without resources to develop fully these issues and to unveil them to the international legal community at trial, the SCSL's contribution to any "advance" in international humanitarian law may prove one-sided and lack credibility. Simply put, the prosecution of these charges has not been tested in a fair fight. The Special Court was created as a model for other regional tribunals and heralded as a viable option for the resolution of other "African conflicts". The failure to fund fully the defense efforts could give rise to the charge that the prosecutions were unjust, and that the "advance" in international law that the prosecutions ushered in may be discredited as soundly achieved precedent.

### **Conclusion**

I began this paper with an exploration of the challenge to impunity. The question which is dramatized by my experience in Sierra Leone is whether the rush to challenge impunity causes us to undermine the integrity of the institutions we build for this purpose. Someday, historians will evaluate the impact of "completion strategies" on the Special Court and even perhaps the ad hoc-Tribunals. These fiscal, administrative and politically driven requirements that the task of administering justice be completed within financial and time constraints are necessary but risky. If these constraints are developed without adequate consideration for their impact on the quality of justice, then the legacy of Nuremberg is seriously jeopardized.

The London Charter negotiations were full of spirited debates involving Robert Jackson and General I.T. Nikitchenko, the Soviet representative, about the need for speedy trials for the accused Nazi war criminals. The Soviets were so committed to a rapid trial process that they sought to bypass the determination of guilt altogether and proceed to the question of sentencing. The Soviet delegate said, "The whole idea is to secure quick and just punishment for the crime."<sup>42</sup> Robert Jackson was equally convinced of both the culpability of the accused and of the need for speed but sought to resolve those dilemmas in the context of a complete and fair trial.<sup>43</sup> Jackson's sensitivity to competing concerns about speed and justice was reflected in his opening statement:

"Before I discuss the particulars of the evidence we are about to offer, some general considerations which may affect the credibility of this trial in the eyes of the world should be candidly faced. There is a dramatic disparity in circumstances between the accusers and the accused that might discredit our work if we should falter in even minor matters of being fair and temperate. Unfortunately the nature of these crimes is such that both prosecution and judgment must be by victor nations over vanquished foes. The world wide scope of the aggressions carried out by these men has left but few real neutrals. Either the victor must judge the vanquished or we must leave the defeated to judge themselves. After the First World War we learned the futility of the latter course."

One could argue that Jackson partially skirted the dilemma himself by invoking the specter of the failed Leipzig trials. Nonetheless, the London Charter negotiations and the trial itself reflected a continuous effort to struggle with this question and arrive at a balance between expedition and resources that has caused so many divergent voices at this Conference to articulate confidence that Nuremberg stands in large part for the principle of challenging impunity. I remain concerned that efforts at the Special Court to wrap that tribunal's efforts in the mantle of Nuremberg may ultimately fail because the forces shaping that court have not shown comparable concern for the functional needs of the defense.

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<sup>1</sup>Rule of Law Among Nations Speech, April 13, 1945  
<http://www.roberthjackson.org/Man/theman2-7-7-1/>

<sup>2</sup> Statute of the Special Court for Sierra Leone, pursuant to S.C. Res. 1315 (2000) of 14 August 2000, at arts. 2, 3, &5, available at <http://www.sc-sl.org/>

<sup>3</sup> See for an early optimistic assessment of the two institutions which concedes the lack of planning Elizabeth M. Evenson, 'NOTE: Truth and Justice in Sierra Leone: Coordination Between Commission and Court', 104 COLUM. L. REV. 730 (2004) and Report from the Freetown Conference on Accountability Mechanisms for Violations of International Humanitarian Law in **Sierra Leone** (Feb. 20-22, 2001), available at <http://www.sierra-leone.org/npwj0200.html>

<sup>4</sup> The principle forces in the Sierra Leonean civil war were: the regular Sierra Leonean Army (SLA), the Revolutionary United Front (RUF), who was the earliest rebel group, the AFRC composed of military factions that mutinied during the Civil War, and a civilian militia, which fought for the government (CDF). Witnesses frequently called the AFRC personnel "junta" members, the CDF "Kamajors" for the traditional hunters that comprised much of its personnel. Other terms like "rebels" were used without clear distinctions. Because relatively few personnel outside of the SLA wore complete uniforms ("combat") efforts to visually distinguish the groups were less than precise. As trials commenced there were nine detainees in the Special Court Detention Facility. (No accused had been granted bail). Each of the main military forces other than the SLA was represented. Three accused were from the RUF, three from the CDF, and three from the AFRC. Although prosecutors originally sought a joint trial, the Special Court severed the accused into three different trials conforming to their group identification. The three RUF accused were Issa Sesay, Augustine Gbao, and Morris Kallon. They faced indictment SCSL-04-15-T. I was co-counsel to Morris Kallon.

<sup>5</sup> David Crane, an American, was Chief Prosecutor at the Special Court for Sierra Leone until the summer of 2005. He shared responsibility for delivering the Opening Statement in the RUF case with a Sierra Leonean in the Office of The Prosecutor, Abdul Tejan Cole.

<sup>6</sup> Tr. Page 19 Lines 17 – 22. Brown’s objection “The reference to dogs of war, my client - that may be a metaphor - I find that objectionable” was sustained at Page 20 Line 2. [Videotapes of this and other relevant portions of the opening statements were played during my presentation at the Nuremberg Conference].

<sup>7</sup> Tr. Page 22 Lines 17 – 22. An objection to this passage was overruled.

<sup>8</sup> Tr Page 72

<sup>9</sup> Tr.76 Lines 7-9.

<sup>10</sup> Trial Transcript, Special Court Sierra Leone, Trial Chamber I, Thursday, 22 July 2004, Page 1, Lines 27-29.

<sup>11</sup> I have been visiting detention facilities, prisons, and jails in the United States for over 20 years and the general conditions in the Special Court Detention Facility compare favorably, if not indeed better, than in the United States.

<sup>12</sup> CONCORD TIMES, July 25, 2004, Fig.1, available on Illustration File for Nuremberg, Justice and the Beast of Impunity at [www.brownaikin.com/home/pageView.jsp?view=WMA\\_Festschrift&figure=0](http://www.brownaikin.com/home/pageView.jsp?view=WMA_Festschrift&figure=0), the author’s website.

<sup>13</sup> SALOME TIMES, July 25, 2004, Fig.2, available on Illustration File for Nuremberg, Justice and the Beast of Impunity at [http://www.brownaikin.com/home/pageView.jsp?view=WMA\\_Festschrift&figure=1](http://www.brownaikin.com/home/pageView.jsp?view=WMA_Festschrift&figure=1), the author’s website.

<sup>14</sup> CONCORD TIMES, July 25, 2004 Fig.3, available on Illustration File for Nuremberg, Justice and the Beast of Impunity at [http://www.brownaikin.com/home/pageView.jsp?view=WMA\\_Festschrift&figure=2](http://www.brownaikin.com/home/pageView.jsp?view=WMA_Festschrift&figure=2), the author’s website.

<sup>15</sup> Transcript Of Hearing, Special Court Sierra Leone, Trial Chamber I, Thursday, 23 July 2004.

<sup>16</sup> Wallace had testified at the Special Court hearing that he had ordered the searches because the detainees had been consuming more malaria diarrhea medication than was reasonable for their number.

<sup>17</sup> The Index is published as part of UNDP’s Annual Development Report, entitled in 2004, Cultural Literacy in Today’s Diverse World, available at [http://hdr.undp.org/reports/global/2004/pdf/hdr04\\_HDI.pdf](http://hdr.undp.org/reports/global/2004/pdf/hdr04_HDI.pdf) (last visited June 5, 2004).

<sup>18</sup> Sierra Leone ranked 177<sup>th</sup> out of the 177 ranked nations. The ranking is based on UNDP’s Human Development Index Value which is a function of *inter alia* GDP, per capita GDP Education Index, Life Expectancy Index, and Literacy Index.

<sup>19</sup> Afghanistan ranked 173<sup>rd</sup> in the 2004 Human Development Index.

<sup>20</sup> The Sierra Leone Truth and Reconciliation Commission found that “even before the war public service delivery had ground to a halt”. SLTRC VOL 2.3 paragraph 249. It noted further that even after the war, and with UNAMSIL still present the government continued to spend more on the military than on education.” ”. SLTRC VOL 2.3 paragraph 249.

<sup>21</sup> Law and the Humanities’ Representation of the Holocaust, Genocide and Other Human Rights Violations, presented by Thomas Jefferson School of Law and the Law and Humanities Institute, January 16-17, 2005 at Congregation Beth Israel and Thomas Jefferson School of Law is known as the “Genocide Conference” for which the author presented an earlier version of this paper. “This Conference” refers to JUDGING

NUREMBERG: THE LAWS, THE RALLIES, THE TRIALS *Returning to Courtroom 600 on the 60th Anniversary of the Nuremberg Trials*, July 17 - 20, 2005, Nuremberg, Germany.

<sup>22</sup> The International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia.

<sup>23</sup> These include *inter alia*: Special Panels for Serious Crimes in East Timor, Regulation 64 Courts in Kosovo, Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, and the Special Court for Sierra Leone.

<sup>24</sup> *Bringing Justice: The Special Court for Sierra Leone Accomplishments, Shortcomings and Needed Support*, 16 HUMAN RIGHTS WATCH 1, 4 (2004).

<sup>25</sup> *Id.* at 10 (Human Rights Watch, which generally supports the Special Court's mission, concedes that some of the "biggest fish" are absent).

<sup>26</sup> Statute of the Special Court for Sierra Leone, Art 1.1 (2000).

<sup>27</sup> Sam Hinga Norman, the former Minister of Internal Affairs and National Security of Sierra Leone and a leader of the Kamajors, by virtue of his former government high office might be said to be one of those accused encompassed by the statute.

<sup>28</sup> In a Sep. 25, 2000 press briefing by UN Assistant Secretary-General Office of Legal Affairs, Ralph Zacklin stated, "In terms of those who bear the greatest responsibility for the crimes, in our report we will be suggesting a slightly different variation of this formula. That would be 'those most responsible'. The reason for this is that we feel that the formula 'greatest responsibility' probably pitches the personal jurisdiction very narrowly and probably too high to capture all of those who bear some degree of command or leadership responsibility may have committed crimes. And so we will be proposing in our report that the personal jurisdiction should extend to those who are most responsible. This is intended to cover those who were in leadership positions, either politically or militarily." Press Release, UN Assistant Secretary-General Office of Legal Affairs, Ralph Zacklin, (Sept. 25, 2004).

<sup>29</sup> *The Heat Is On: Just when he thought he could breathe easy, exiled former Liberian president, Charles Taylor finds himself facing an uncertain future as pressure mounts on his hosts Nigeria to hand him over to the International War Crimes Tribunal*. By Martin Luther King, VOL. 11 No. 6 AFRICA TODAY, June 2005.

<sup>30</sup> Sierra Leone Still in intensive care: Despite British and UN help, Sierra Leone remains too fragile to go it alone, THE ECONOMIST, June 25, 2005

<sup>31</sup> Spotlight falls on corruption in Sierra Leone, by Rod MacJohnson/South African Press Association-Agence France-Presse, Independent Online, May 6, 2004, available at <http://www.odiousdebts.org>

<sup>32</sup> *Sierra Leone Misses Out on Debt Relief This Time Out: Corruption and Poor Democratic Governance the cause?*, Article available at <http://www.cocorioko.com>.

<sup>33</sup> See photo of the author, Wanda M. Akin, with husband and co-counsel, Raymond M. Brown, outside of the newly constructed courthouse at the Special Court of Sierra Leone, July 20, 2004. The courthouse is by far the best structure *in the entire country*. Fig. 4, available on Illustration File for Nuremberg, Justice and the Beast of Impunity at [http://www.brownaikin.com/home/pageView.jsp?view=WMA\\_Festschrift&figure=3](http://www.brownaikin.com/home/pageView.jsp?view=WMA_Festschrift&figure=3), the author's website.

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<sup>34</sup> DECISION ON PRELIMINARY MOTION BASED ON LACK OF JURISDICTION (CHILD RECRUITMENT) PROSECUTOR V SAM HINGA NORMAN (Moinina Fofana intervening) Case Number SCSL-2003-14-AR72(E) May 31, 2004.

<sup>35</sup> Rupert Skilbeck, *Building the Fourth Pillar: Defence Rights at the Special Court for Sierra Leone*, 1 ESSEX HUMAN RIGHTS REVIEW, 66, 69 (2004).

<sup>36</sup> Even Human Rights Watch which has given the Special Court high marks overall concedes that “the lack of resources available to defense teams paid for by the court, which relates at least in part to under funding of the court more generally by donors, could constrain their ability to mount a defense. *Bringing Justice: The Special Court for Sierra Leone Accomplishments, Shortcomings and Needed Support*, *supra* note 25, at 6. My experience with the UN version of the British VHCC system which requires lawyers to guess at their own, or the client’s peril how much they will require for fees and costs is unworkable in international trials. (For a detailed description of this system see Skilbeck, *supra* note 36.)

<sup>37</sup> UNICEF, Child protection, available at [http://www.unicef.org/infobycountry/sierraleone\\_statistics.html](http://www.unicef.org/infobycountry/sierraleone_statistics.html) (last visited June 8, 2005).

<sup>38</sup> The Progress of Nations 1998 Civil Rights: Commentary, available at <http://www.unicef.org/pon98/civil1.htm> (last visited June 8, 2005).

<sup>39</sup> RUF Case No. SCSL-204-15-PT Amended Consolidated Indictment, so amended to charge forced marriage.

<sup>40</sup> H.M. Joko Smart, SIERRA LEONE CUSTOMARY FAMILY LAW (Freetown: Atlantic Printers Ltd. 1983).

<sup>41</sup> Municipal Law: the law of nation states as opposed to international law.

<sup>42</sup> Whitney R. Harris, TYRANNY ON TRIAL, THE TRIAL OF THE MAJOR GERMAN WAR CRIMINALS AT THE END OF WORLD WAR II AT NUREMBERG, GERMANY, 1945-1946, 17 (Dallas 1999).

<sup>43</sup> *Id.*, at 18.