

Preserving the Legacy of the Special Court for Sierra Leone

Can Sierra LII become an instrument for strengthening the rule of law?

Maria Warren

Special Court for Sierra Leone

Abstract

The groundbreaking study “Free Access to Law – Is it here to stay?” states that the study will explore the notion of *incentive for innovation*. For the Sierra Leone Legal Information Institute (“Sierra LII”), the purpose of innovation is not simply an *incentive* but rather an *imperative*.

The purpose of setting up Sierra LII is not merely to find a more convenient way to access law, but, more crucially, to facilitate access to justice and promote the rule of law for all citizens of Sierra Leone.

This paper is in two parts. The first part discusses the motivations for deploying an innovation like the legal information institute in a post-conflict setting and proposes a development framework and strategy. The second part charts the real-life implementation of the strategy, discusses the challenges, the opportunities and presents a prognosis for Sierra LII to become the tool for improving access to justice and strengthening the rule of law.

Keywords

Peace - justice – post-conflict societies – legacy – access to justice – legal information institute – Sierra Leone – donors – United Nations

PART ONE

1. Introduction

The Methodology Guide for Researchers involved with the groundbreaking study “Free Access to Law – Is it here to stay?” states that the study will explore the notion of *incentive for innovation*¹, that is, the original purposes behind the FAL initiatives and how those have affected their capacity to be successful and sustainable.

For the Sierra Leone Legal Information Institute (“Sierra LII”), researchers will likely discover that the purpose for innovation was not simply an *incentive* but rather an *imperative for innovation*.

The purpose of setting up Sierra LII is not merely to find a more convenient way to access law, but, more crucially, to facilitate access to justice and promote the rule of law.

2. Sierra Leone – From Conflict to Peacebuilding

2.1 Sierra Leone Civil War

Between 1991 and 2001, Sierra Leone experienced a particularly brutal 10 year civil war. Rebel groups known as the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC) fought against the government and a government-backed militia group, the Civil Defence Forces (CDF), which supported the Sierra Leonean Army in fighting the rebels. Widespread and systematic attacks against the civilian population were perpetrated. Mutilation was common – chopped off limbs sent a particularly strong message to the population to heed the demands of the rebels. . An estimated 275,000 women and girls became victims of sexual violence² which served military and supply purposes as rape and sexual slavery helped to maintain the morale of the fighting forces during the protracted war. Children under 15 years were systematically enlisted and conscripted into armed groups. Offences against

¹ The Centre for Internet & Society, Lexum, SAFLII (2010) *Local Researcher’s Methodology Guide* [Online] Available from http://www.idrc.ca/uploads/user-S/12754256481Methodology_Guide.pdf (Accessed on 28 May 2011)

² Kamara, JF (2009). Preserving the Legacy of the Special Court for Sierra Leone: Challenges and Lessons Learned in Prosecuting Grave Crimes in Sierra Leone. *Leiden Journal of International Law*, 22, pp 761-777

civilian property were also common - including looting and the bloody struggle to control diamond mines.

In July 1999, in an effort to stop the war, the Government of Sierra Leone and the Revolutionary United Front (RUF) rebel group signed the Lomé Peace Agreement. The Agreement contained provisions that required, inter alia, the establishment of a truth and reconciliation commission and institute reforms in the military, police, judiciary, and other government institutions. Notably, the agreement also granted a blanket amnesty for all parties, a decision that was heavily criticized and which has, to this day, prevented the domestic prosecution of middle and lower level perpetrators - a grievance for which the affected population has not been able to obtain redress. The rebel leaders, on the other hand, had to face international criminal justice.

2.2 Special Court for Sierra Leone

In June 2000, Sierra Leone's President Ahmad Tejan Kabbah requested the United Nations to help Sierra Leone find justice for the tens and thousands of victims of the civil war. In response, the United Nations partnered with the Sierra Leone government to establish the Special Court for Sierra Leone (“SCSL”) with the specific mandate to investigate and prosecute those bearing “the greatest responsibility” for violations of international humanitarian law and some provisions of Sierra Leone’s domestic law during Sierra Leone’s civil war since November 30, 1996. [The SCSL](#) started operations in July 2002. The Prosecutor issued indictments against 13 individuals. Of these, two have died before the proceedings against them were completed, one is a fugitive but reported dead, eight have been convicted and serving prison sentences in Rwanda, and the last case in its workload – the trial of the former President of Liberia, Charles Taylor, closed the evidence phase in March 2011 and judgment is being awaited.

When the Taylor case is over, the SCSL would have completed its mandate and will close its doors. A very scaled down Residual Court will then be established to discharge the continuing obligations of the Court such as the supervision of sentences, the security of protected witnesses and the maintenance of the archives.

The SCSL is often referred to as a “hybrid tribunal”, due to its mixed jurisdiction over both international criminal law as well as national Sierra Leone law. It is, however, independent and completely distinct

from Sierra Leone's legal system and enjoys primacy over domestic courts. The SCSL is the first example of this particular model, and has therefore set a precedent in the administration of international justice. In addition, the SCSL has also set jurisprudential precedents, most notably in its judgments establishing conscription and enlistment of child soldiers, forced marriage and kidnapping of United Nations peacekeepers as crimes against humanity.

If the SCSL can successfully deploy Sierra LII as a tool for strengthening the rule of law and consolidate peacebuilding, then it could possibly have the opportunity once again to set a precedent.

2.3 Progress from post-conflict to peacebuilding

Post –Conflict and Recovery

Like most countries emerging from conflict, Sierra Leone was characterized by weak or non-existent rule of law, inadequate law enforcement, little regard for human rights, insufficient capacity in administration of justice. Not surprisingly, this situation led to an acute lack of public confidence in State authorities and the judicial system. Exacerbating the problem even more is the dual system of law under which the country operates. Approximately 70 percent of the population lives under the jurisdiction of customary/traditional law. There is great reliance on traditional community-based dispute resolution methods which is often discriminatory and where abuses of power among officials occur. The formal justice system is hardly accessed, often due to its physical and figurative distance from the population but also due to the lack of infrastructure and awareness, leaving the affected population with only limited options for grievances to be addressed satisfactorily. ³..

It was of utmost concern that this state of affairs closely mirrored the situation that existed in the years preceding the civil war and which was acknowledged as its root cause. In post-conflict societies, the need to develop an effective system to redress feelings of injustice to avoid a return to violence is urgent.

Peacebuilding

³ The Advocates for Human Rights (n.d.) *Background on Sierra Leone Leone* [Online] Available at http://www.theadvocatesforhumanrights.org/Background_on_Sierra_Leone.html#Legal+System (Accessed on 21 May 2010)

With a strong commitment to restore the country to a vibrant, democratic society, the national government together with generous support from the international community implemented key recommendations from the Truth and Reconciliation Commission. After a successful and peaceful elections in 2007, the current government initiated systematic improvement programmes to rebuild the public institutions.

The extraordinary challenges of nation-building remain. In its 2011 report to the Universal Periodic Review of the Human Rights Council⁴, the Government listed as its top challenge the “pressing need to strengthen and nurture democratic institutions and mechanisms for the ultimate consolidation of good governance, peace and security, and human rights nationwide.

3. Sierra LII – innovation looking for an incentive?

The increasing membership of the Free Access to Law Movement is a testament to the value of LIIs. The success of the various LII deployments around the world - especially in the established democracies - underline the benefits that accrue to a society that has free and open access to its legal information.

In post-conflict societies, rebuilding a country into a rule-of-law-abiding state is definitely an imperative and the core challenge of recovery and peacebuilding efforts.

Is establishing a LII an innovation that has found a problem to solve in Sierra Leone? This section will briefly explain the incentives for innovation that the SCSL for Sierra Leone considered in relation to establishing a LII.

3.1 Incentives for Innovation – Rule of Law, Peacebuilding

The UN Secretary-General in his report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, stated that "our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained

⁴ [United Nations/HRC/WG.6/11/SLE/1](#) 14 February 2011 Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies [Online] Available at www.un.org (Accessed on 17 May 2011)

through legitimate structures for the peaceful settlement of disputes and the fair administration of justice."⁵

It can be argued that peaceful settlement of disputes and the fair administration of justice are predicated on providing clear and ready access to justice. Access to justice, in turn, can be effectively promoted by, inter alia, free and open access to legal information and related materials. The development of a LII would certainly be an innovation in legal information dissemination in Sierra Leone. The potential to use it as a tool to promote access to justice to advance the rule of law and consolidate the country's peacebuilding efforts is a powerful incentive for its development. This rationale presented an ideal incentive to develop Sierra LII as a rule of law tool which can then form part of the legacy of the SCSL.

3.2 Incentives for Innovation - Legacy

In the same 2004 *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* report, the Secretary-General stated : "It is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned."⁶

The primary goal of international criminal courts and tribunals, including the SCSL, is to fight impunity and bring justice to victims of gross violations of international law. For the SCSL, this means that it would have achieved this goal when it completes its mandate of successfully prosecuting those most responsible.....⁷. In practical terms, in the effort to preserve and maximize the impact of their legacy, there is also a strategic commitment to contribute to national capacity building within the limitations of individual mandates and available resources⁸. In the SCSL, this commitment takes the form of its Legacy

⁵ [United Nations S/2004/616](#) 3 August 2004 *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies* [Online] Available at www.un.org (Accessed on 21 May 2011)

⁶ *Ibid.*

⁷ See the preambles to various UN Resolutions creating an international court or tribunal. For example, Security Council Resolution 1315 creating the Special Court for Sierra Leone at [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1315%20\(2000\)&Lang=E&Area=UNDOC](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1315%20(2000)&Lang=E&Area=UNDOC)

⁸ Joint Statement

Programme – a series of community-based projects that manifests the SCLS’ contribution to peace and security in direct and tangible way.

PART TWO

4. Sierra LII Development Framework

This Section charts the decision-making process and the early steps that the SCSL took to convert an idea to a near-reality – subject to upcoming stress tests.

The Office of the Prosecutor (“OTP”) in the SCSL enthusiastically volunteered to lead the effort at exploring the viability of establishing a LII in Sierra Leone as a legacy project. One senior member of staff was designated to manage the project on a part-time basis. One Project Coordinator works almost-fulltime on the development of Sierra LII in collaboration with Kerry Anderson of AfricanLII.

Following the lead of successful LII initiatives elsewhere and taking heed of the lessons and advice they generously share, the OTP devised a Development Framework that included the following elements:

- Consultation with potential stakeholders
- Guiding Principles
- Development Approach
- Funding Strategy

4.1 Consultation with potential stakeholders

A serendipitous meeting with Tererai Mafukidze and Mariya Badeva-Bright at the AsianLII conference held in Sydney in 2008, inspired the idea of setting up a LII in Sierra Leone. Following the advice of many other LII initiators, the OTP’s first step was to gauge the interest from the potential sources of the primary information: the Judiciary and Parliament.

The Judiciary, through the Chief Justice and the Master and Registrar, welcomed the idea with great enthusiasm as they believed it would complement the projects that have been initiated under the Justice Sector Reform Programme of the Government of Sierra Leone. In fact, there was already underway a

scanning project of Sierra Leone Supreme Court judgments dating back to the early 1960's and the Judiciary was willing to share those with the putative LII project. The Judiciary understood that a website that could make the laws of the land easily accessible would demonstrate a transparent judicial system and facilitate access to justice. The power of collaboration and cooperation among the FALM network was also demonstrated to the Master and Registrar when she joined the SCSL at the Law via the Internet Conference in Durban in 2009. Finally, the mental images have turned to tangible experiences which strengthened the resolve to see a legal information institute in Sierra Leone come to fruition.

Attempts to contact the Sierra Leone Parliament were not successful at this time although an alternative source of current legislation was quickly identified. The owner and publisher of a Sierra Leone-based website, Mr Peter Andersen, generously agreed to share the electronic files of legislation that he managed to collect and publish on his website⁹.

Exploratory meetings were also held with potential major users of a LII: the Sierra Leone Bar Association, the Law School and some civil society leaders. All seemed to have understood the concept of a LII and appreciated the benefits that free access to law would provide. It was obvious, however, that there is a wide gap between appreciating the theory and actually applying it. If the plan to set up a LII is to move forward, major efforts would have to be invested in understanding the information seeking behavior of the potential user groups.

Crucially, it was important to appreciate that the sources of the primary legal materials are themselves major user groups who carry a lot of influence over the other target users. Close working relationships with them would be crucial success factors.

Finally, consultations were conducted with key external groups such as potential funders and other LII experts. Prof Graham Greenleaf, Andrew Mowbray and Phillip Chung of AustLII helped the SCSL with its first tentative steps by working on the SCSL decisions and judgments for WorldLII. Tererai Mafukidze, Mariya Badeva-Bright and Kerry Anderson formerly of SAFLII and now AfricanLII were extremely supportive and passed on a lot of feedback from their own experiences in helping set up the other LIIs in Africa. Kerry Anderson, especially, has been instrumental in the project management and delivery. The Open Society Foundations through Melissa Hagemann showed, once again, their

⁹ See <http://www.sierra-leone.org/>

commitment to the development of open and democratic societies by providing their generous support to turning an idea into a reality.

4.2 Guiding Principles

With the benefit of information harvested from the consultations, and by adding in-context knowledge, a set of principles to guide the development of a legal information institute in Sierra Leone became apparent quite early:

- A legal information institute in Sierra Leone will be developed to benefit all Sierra Leonians by way of providing access to justice and assisting to strengthen the rule-of-law.
- The success of a legal information institute is not possible without direct and active participation of national actors. Therefore, its development can only proceed when there is express commitment from relevant national actors.
- The development and operation of a legal information institute in Sierra Leone should be consistent with the principles as set out in the Declaration on Free Access to Law, with a view to participating in the global movement as soon as it is practical to do so.
- The optimal use of limited resources cannot be overemphasized.

4.3 Development Strategy

On the basis of the articulated guiding principles, the early consultations and information harvested from other LII experts, the OTP proceeded to develop the Sierra LII, in accordance with a number of strategies:

- Pilot project

It was crucial to be able to deliver a “proof of concept” to demonstrate to SCSL Management and potential funders that the idea of a Sierra LII is not only laudable, it is also deliverable within the very limited time and resources available to SCSL before it closes. Based on a pilot project proposal, a small grant was received from Open Society Foundations in March 2010 that enabled the pilot project to proceed. There were operational obstacles that materialized early in the implementation but because their size and the dimensions were limited to “pilot” proportions, costly delays were avoided and changes in

the design and scheduling to address the obstacles were easier to accommodate. This would likely not have been the case if the SCSL had opted for a full blown design and implementation.

- Strategic Partnerships

Strategic partners were identified from early in the consultation phase of the project. The aim was to identify partners that either complemented SCSL skills or fully provided the skills that SCSL did not have. Once again, this enabled the project to move at a steady phase at minimum cost. The best example of this strategic partnership is the one with AfricanLII to whom all the technical aspects of the project were outsourced. This allowed the Sierra LII project team to focus on crucial success factors on the local level that no one else would have been able to do.

- Relevance

To maximize the potential for success, Sierra LII must be relevant, not only in the strictly legal space but also in related contexts. This is not only the finding of the early Sierra LII consultations, it is also documented by the most recent FAL studies.¹⁰ The early Sierra LII user consultations report interests in the use of the Sierra LII for the provision and acquisition of other law-related information such as law reform, information about the upcoming elections, anti-corruption issues. This can be a double-edged sword as far as sustainability is concerned. A broad variety of content may be attractive to sustain user interests but would be very costly to maintain. A system of prioritization would need to be devised.

For the moment, the Sierra LII relevance strategy is to “position” Sierra LII as a useful tool in the judicial reform strategy of the Government’s Judicial Sector Reform Strategy¹¹. It sets out clear prioritized goals listed below. Sierra LII proposes to use these as its primary points of reference in the choice of content, design elements and target user groups.

Goal 1 - Safe communities

Goal 2 - Access to justice

Goal 3 - Strengthened rule of law

Goal 4 - Improved justice service delivery

¹⁰ Moncion I ((2010) *Building Sustainable LIIs - or Free Access to Law as Seen Through the Eyes of a Newbie* [Online] Vox PopuLII 3 May 2011 Available from <http://blog.law.cornell.edu/voxpath/2011/05/03/> (Accessed on access 20 May 2011)

¹¹ Sierra Leone Ministry of Justice (2008) *Harmonised Justice Sector Reform Strategy and Investment Plan 2008 – 2011* Sierra Leone, pp v - viii

The SCSL decided to position Sierra LII as a tool that can uniquely support the Government's goals. Through Sierra LII's web publishing capabilities, the Reform Strategy's goals of "access to justice", "strengthened rule of law" and improved justice delivery will be well supported by Sierra LII.

- Security of Content

At the time of writing this paper, it is understood that a Freedom of Information bill has already been debated in Parliament. Such a bill, if passed into law, would be favourable to Sierra LII but would fall short of the legislative mandate that KenyaLII enjoys.

For now, Sierra LII's strategy relies on sustaining close professional relationship building than any legal or legislative initiative.

SCSL has taken note of the early results of the landmark study : " FALM –Is it here to stay? Environmental Scan Report " dated August 2010 and some "lessons learned" contained therein regarding content.¹²

- Training and Advocacy

In November 2010, the SCSL conducted what were essentially training sessions but were styled as "information" sessions. The objective was to "introduce" Sierra LII to target user groups without having to "launch" it. Having a vibrant civil society movement in Sierra Leone , it was not surprising to see a lot of interest for the site. The challenge is to convert that interest into actual and sustained usage when the pilot site eventually rolls out. A lot will depend on factors that are not directly controlled by Sierra LII such as the technology gap. For now, what is quite apparent is that an advocacy/advertising program should go hand-in-hand with training to produce the widest coverage for the site.

4.4 Funding Strategy

¹² The Centre for Internet & Society, Lexum, SAFLII (2010) *Local Researcher's Methodology Guide Environmental Scan Report* [Online] Available from <http://idl-bnc.idrc.ca/dspace/bitstream/10625/44787/1/131248.pdf>(Accessed

Sierra LII's funding to complete the pilot project is secure. A recent presentation¹³ to potential donors and major partners created a lot of interest and SCSL is quite confident that a multi-year multi-donor sponsorship will not be difficult to secure.

4.5 The FALM family

It should also be noted that Sierra LII is very fortunate to have access to the collective wisdom, experience and expertise of the various LIIs who belong to the Freedom of Access to Law Movement. Respectful collaboration with one or more of these parties will only be beneficial to Sierra LII and should form part of its strategy.

4.5 Implementation Outline

The key milestones set out below depict the progress of the project so far:

2009

June – August : Initial low-key feasibility consultations with potential national and international stakeholders.

October – November : Submission of pilot project proposal to potential donor

2010

March : Donor funding approved

May : SAFLII engaged, Sierra LII website registered, site development, scanning and uploading of content initiated

June : Sierra LII website basic functionality in place

¹³ Presentation on Sierra LII at the Sixth Colloquium of International Prosecutors 14 – 15 May 2011 at Freetown Sierra Leone

July : - First of a series of national Stakeholders meeting convened

November : Series of “familiarization” sessions conducted in Freetown by Kerry Anderson.

December : Draft Memorandum of Articles for incorporation of Sierra LII submitted to Stakeholders

2011

(Jan – April most of Sierra LII activities temporarily suspended due to trial activities)

May : Stakeholders group designated a core Working Group to complete two tasks :

- Registration of national entity
- Draft a Management and Sustainability Plan

The key challenges that have been dealt with so far relate to the development and maintenance of effective relationships built on mutual trust. Clear, honest and respectful communications have been essential throughout the period. For this process to bear good fruits, time and patience is required.

The key achievement in this period is the establishment of the pilot website in an orderly, collaborative and low-key manner within time and under budget. Again, building relationships based on trust, respect and mutual advantage was the key to achieving the objectives.

5. Prognosis

The most challenging part of the Sierra LII project is still to come. The national Steering Committee Working Group had been delegated by the Stakeholders Group to incorporate the entity and to draft the Management and Sustainability Plan. There is a plan to meet on the progress of these tasks in mid-July 2011. These tasks will show if there is adequate commitment from national actors to launch, plan for and manage a fully operating LII. With the SCSL committing to provide the Secretariat services to Sierra LII through to the closure of the court, there is still some time to wean the child from its parent and set it on a sustainable way.

6. Conclusion

The institutional incentive for SCSL to maximize the impact of its legacy very conveniently coincided with the national need in Sierra Leone to strengthen the rule of law and consolidate the peacebuilding efforts. Both these motivations would be well-served by a well-functioning Sierra LII. It is almost like a “marriage made in heaven” that all actors involved know will need to be played out on earth with all the attendant of financial, organizational and political realities scattered along the way. But these could be counterbalanced by well thought-out strategies that build on the enormous potential for collaboration among peers, support from donors and sheer will of a vibrant civil society. Fifteen years of the Free Access to Law Movement have produced achievements from which Sierra LII will not fail to learn. The time is right to do the right thing, the opportunity to make a difference shall not be missed.

REFERENCES